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# Oglala Lakota Nation Profile

## Danielle Her Many Horses<sup>1</sup>

### INTRODUCTION

This tribal profile discusses the governance of the Oglala Lakota Nation from two distinct time periods: at the height of the Lakota horse culture and under the current constitutional government. Section Two describes the traditional governance of the Oglala Lakota Nation, focusing on the tiospaye system, men's societies, and women's rights. Section Three discusses the current government, which includes a tripartite central government and a local community government. The conclusion notes that although the governance structure of the Oglala Lakota Nation has changed dramatically since the imposition of the reservation system and the creation of its IRA-influenced tribal constitution, the traditional laws and values of the tiyospaye remain the driving force of Oglala society today.

The Oglala Lakota Nation is a subdivision of the historic Lakota Nation more commonly referred to as the Sioux Nation.<sup>2</sup> The majority of current Oglala tribal landholdings are on the Pine Ridge Reservation in southeastern South Dakota. The reservation consists of approximately 2,800,000 acres in Shannon, Bennett and Jackson counties.<sup>3</sup> There are approximately 40,000 enrolled Oglalas;<sup>4</sup> approximately 20,000 live on the Pine Ridge Reservation.<sup>5</sup> The remainder of the reservation population consists of non-Indians and non-member Indians.<sup>6</sup>

### I. Traditional Lakota Governance

Traditional tribal governance structure has not survived the adoption of a tribal constitution and by-laws pursuant to the Indian Reorganization Act of 1934 (IRA).<sup>7</sup> The Oglala Lakota Nation under its constitution reserved the right to have its Tribal Council make laws.<sup>8</sup> By reserving this right, the tribal governance structure has left open a door for the reintroduction of traditional law. However, traditional tribal governance has not as yet been incorporated in the codified laws of the Oglala Lakota Nation.<sup>9</sup> Traditional law is perhaps best reflected in the

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<sup>2</sup> The other tribes that make up the Lakota Nation are the: *Sicangu, Itazipco, Si Hasapa, Oohenumpa, Hunkpapa, and Minneconjou*. The Lakota Nation is also a subset of the Sioux Nation, which is a linguistically connected group that also includes the Dakota and the Nakota. James R. Walker, *Divisions of the Lakotas*, in *Lakota Society* 19 (Raymond J. DeMallie ed. 1982). This collection of traditional Lakota knowledge and teachings was the second volume of recordings made by James R. Walker, agency physician on the Pine Ridge Reservation, between 1896 and 1914. *See* Preface, in *LAKOTA SOCIETY* at xiii; *see also infra* note 27.

<sup>3</sup> Oglala Sioux Tribe, *Oglala Sioux Tribe Community Environmental Profile*, at <http://mnisose.org/profiles/ogla.htm> (last visited Apr. 23, 2001) [hereinafter Mni Sose] (on file with the Tribal Law Journal). Mni Sose is an inter-tribal organization dedicated to the preservation of Indian water rights on the Missouri River. *Id.* The Oglala Sioux Tribe is a member of Mni Sose. *Id.*

<sup>4</sup> Telephone Interview with Michael Her Many Horses, Tribal Councilman, Wounded Knee District (Oct. 8, 2000).

<sup>5</sup> Mni Sose, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> 25 U.S.C. §§ 461-479 (1994).

<sup>8</sup> OGLALA LAKOTA NATION Const. art. IV.

<sup>9</sup> *See* OGLALA SIOUX TRIBAL LAW & ORDER CODE (1996).

decisions of the tribal court judges.<sup>10</sup> The discretionary decisions of judges are often based in Oglala concepts of family, responsibility and rights.<sup>11</sup>

### A. Tiospaye

Traditional Oglala governance is based on two main ideas: individual adherence to the four virtues, and the external controls of the individual through family, based on the tiospaye system.<sup>12</sup> Adherence to the four virtues is interwoven within the tiospaye system because it is the family that is responsible for teaching and fostering the virtues within the individual members of the family.

The Oglala are a very proud people.<sup>13</sup> Their pride is reflected in their adherence to and practice of the four cardinal virtues: Bravery, Fortitude, Integrity and Generosity.<sup>14</sup> The Oglala have a highly developed kinship system that recognizes the relationships between parties and the responsibilities associated with each position.<sup>15</sup> The basic governmental unit is the tiospaye.<sup>16</sup> It is responsible for instilling adherence to these values.<sup>17</sup> The tiospaye can best be described as a large extended family group, related though blood and marriage, in which traditions, mores and “laws” are taught and enforced.<sup>18</sup> The tiospaye system is still found on the Pine Ridge reservation. The tiospaye is most evident in families that have managed to keep their families in close proximity to one another.<sup>19</sup> Even in geographically dispersed and estranged families there is always one strong family member who is relied upon to hold the family together.<sup>20</sup> This head of the family passes on knowledge and wisdom to the other members of the family, and guides the family by example.<sup>21</sup> Additionally, he or she grooms another member of the family to take on the responsibility when the head of the family can no longer fulfill those responsibilities.<sup>22</sup>

Historically, several tiospayes would by mutual agreement align themselves into a band.<sup>23</sup> The governance and laws of the band provide perhaps the best example in Lakota culture of authority being exerted over individuals by

<sup>10</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

<sup>11</sup> *Id.*

<sup>12</sup> James R. Walker, *The Sundance and Other Ceremonies of the Oglala Division of the Teton Dakota* 62 (1979) (hereinafter *SUNDANCE*). See also William K. Powers, *Oglala Religion* 34 (1977).

The Lakota are allied against all others of mankind, though they may war among themselves. They are *oyate ikce* (native people), and are *ankantu* (superior), while all others of mankind are *oyate unma* (other-people), who are *ihukuya* (considered-inferior). This is the relation of the Lakota to all others of mankind, and if any refuse to acknowledge this relation they are *tokayapi* (considered-enemies), and should be treated as such.

<sup>13</sup> Introduction, *in* Lakota society, *supra* note 1, at 3.

<sup>14</sup> Walker, *SUNDANCE*, *supra* note 11, at 62.

<sup>15</sup> Telephone Interview with Norma Tibbitts, Head of the Tibbitts Tiospaye (Apr. 17, 2001).

<sup>16</sup> See Powers, *supra* note 11, at 34.

<sup>17</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

<sup>18</sup> Powers, *supra* note 11, at 34-35.

<sup>19</sup> Telephone Interview with Norma Tibbitts, *supra* note 14.

<sup>20</sup> *Id.*

<sup>21</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

people other than family.<sup>24</sup> The people by mutual consent chose an itancan,<sup>25</sup> or chief.<sup>26</sup> This man served in this capacity until he stepped down or was replaced.<sup>27</sup>

### B. Men's Societies

Oglala men of social stature belonged to societies depending on their individual skills.<sup>28</sup> Social stature, while partially coming from birth, was mainly a function of the individual's capabilities.<sup>29</sup> Consequently, it was entirely possible for a man who came from a poor family to rise above that position through exercise of his own prowess.

The societies of the Oglala were: Tokala (Foxes); Ihoka (Badgers); Cante Tinza (Brave Hearts); Wincin Ska (White Badges); Kangi Yuha (Crow Carriers); Ainila Wotapi (Silent Eaters) and Sota Yuha (Wand Carriers).<sup>30</sup> The warrior and hunting societies chose and initiated their members.<sup>31</sup> It would be a loss of face and esteem for a young man to ask for admittance into a society.<sup>32</sup> Each society had distinct criteria for accepting members; the Tokala, for instance, chose their membership based on bravery.<sup>33</sup> Each society taught, guided, and indoctrinated its members in the proper way of comportment.<sup>34</sup> Another function of the male societies was to police the camp.<sup>35</sup> Yearly, the societies competed for the honor of keeping the peace in camp.<sup>36</sup> The society selected was responsible for directing camp movements, settling disputes among tiospayes, and most importantly, taking care of the women, the elderly, orphans, and the destitute.<sup>37</sup>

### C. Women's Rights

Women have traditionally held an integral role in Oglala society and that continues today.<sup>38</sup> Although Oglala women did not actively participate in the tribal

<sup>24</sup> *Id.*

<sup>25</sup> Stephen Return Riggs, U.S. Dep't of Interior, *Dakota—English Dictionary* 211 (1890).

<sup>26</sup> See Thunder Tail, *Chieftanship*, in 1 *Lakota Tales and Text* 279 (Eugene Buechel, S.J. ed., Paul I. Manhart, S.J., trans.1998) (providing a written account of Thunder Tail as recorded by Ivan Stars in 1915, at Oglala, South Dakota).

<sup>27</sup> See Charles Garnett, *Bands, Chiefs, and Laws, in Lakota Society*, *supra* note 1, at 24. See also *Bad Bear, How New Bands and Chiefs Were Made*, in *Lakota Society*, *supra* note 1, at 25-28.

<sup>28</sup> See Thomas Tyon & John Blunt Horn, *Associations Among the Oglala Sioux, in Lakota Belief and Ritual* 260 (Raymond J. DeMallie & Elaine A. Jahner eds., 1980). This collection of traditional Lakota knowledge and teachings was the initial volume of recordings made by James R. Walker, agency physician on the Pine Ridge Reservation, between 1896 and 1914. See *id.* at xiii.

<sup>29</sup> See Iron Tail, *Akicita*, in *Lakota Society*, *supra* note 1, at 34.

<sup>30</sup> Tyon & Blunt Horn, *supra* note 27, at 260.

<sup>31</sup> See *id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 260-61.

<sup>34</sup> *Id.*

<sup>35</sup> See Clark Wissler, *Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota*, in 11 *anthropological papers of the American Museum of Natural History* 8-11 (1916).

<sup>36</sup> *Id.*

<sup>37</sup> See *id.*

<sup>38</sup> Women have been, and continue to be elected to the Tribal Council. Theresa Two Bulls was elected Vice President of the Oglala Lakota Nation in the last election, held November 7, 2000. This is the highest political position yet held by a woman in the Oglala Lakota Nation. Today it is the woman of the tiospaye who controls the political votes of her extended family. Hence political control is becoming feminized. See Telephone Interview with Norma Tibbitts, *supra* note 14.

politics or governance, they were not simply relegated to a position of household drudge, nor were they voiceless. An Oglala woman exerted her authority through her household.<sup>39</sup> The preservation of the family was her responsibility.<sup>40</sup> A woman was expected to be married and have children, feed and dress her children and husband well, and instill proper decorum in her children.<sup>41</sup> Women had complete property rights. For example, everything in the family lodge belonged to her with the exception of her husband's hunting, medicine, and war equipment.<sup>42</sup> The couple lived near the woman's parents, so that in the event of divorce or the unexpected death of her husband she would be taken care of by her brothers, her father, or other male relatives.<sup>43</sup> A woman could easily divorce her husband simply by placing his belongings outside the lodge.<sup>44</sup>

## II. Contemporary Government

In 1934, by a vote of 1,169 to 1,095, the Oglala chose to adopt a constitutional form of government, as provided by the IRA.<sup>45</sup> This vote tally represented only 55.5 percent of the 4,075 eligible voters on the Pine Ridge reservation.<sup>46</sup> Only two traditional Oglala councilmen were part of the final drafting process of the tribal constitution.<sup>47</sup> The councilmen's input was largely ignored, and instead, Felix Cohen and Fred Daiker of the Office of Indian Affairs (OIA) drafted the tribal constitution according to the outline developed by OIA.<sup>48</sup>

The final draft of the constitution that was approved by the OIA created the Oglala Tribal Council, and the "Officers of the Tribal Council."<sup>49</sup> Additionally, it recognized the inherent tribal authority to create a judiciary<sup>50</sup> and community government.<sup>51</sup>

### A. Tribal Council

The Tribal Council is for all intents and purposes the supreme authority of the tribe. The Tribal Council is a legislative body possessing twenty enumerated powers, twelve of which are subject to the review and/or approval of the Secretary

<sup>39</sup> See James R. Walker, *Oglala Social Customs*, in *Lakota Society*, *supra* note 1 at 50-57.

<sup>40</sup> See Chief Luther Standing Bear, *Land of the Spotted Eagle*, 83-87 (1933).

<sup>41</sup> *Id.* at 84.

<sup>42</sup> See James R. Walker, *Oglala Social Customs*, in *LAKOTA SOCIETY*, *supra* note 1, at 56. The horses of the family were considered community property. *Id.*

<sup>43</sup> See Brave Dog, *A Young Man Marries a Wife*, in 2 *Lakota Tales and Text* 581-2 (Eugene Buechel, S.J. ed., Paul I. Manhart, S.J., trans. 1998). This is a written account of Brave Dog as recorded by Ivan Stars in 1915, at Oglala, South Dakota. *Id.*

<sup>44</sup> See James R. Walker, *Oglala Social Customs*, in *LOKOTA SOCIETY*, *supra* note 1, at 56.

<sup>45</sup> Thomas Biolsi, *Organizing the Oglala* 78 (1992).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See *id.* at 93-94 (explaining that because the Councilmen were "not sufficiently educated in legal terms," they presented their views to the constitutional committee, but the federal government wrote the actual constitution). See *id.*

<sup>49</sup> OGLALA LAKOTA NATION Const. art. IV, §1.

<sup>50</sup> *Id.* at art. V.

<sup>51</sup> *Id.* at art. VI.

of the Interior.<sup>52</sup> These twelve powers are general police powers relating to the internal governance of the tribe, its resources, members of the tribe and the regulation of non-members living on the reservation.<sup>53</sup> The authority to establish a formalized western tribal court system was vested in the Tribal Council.<sup>54</sup>

The Tribal Council has developed a full body of law pursuant to its constitutional authority. The Law and Order Code is the enacted law of the tribe. It contains forty-eight chapters of law.<sup>55</sup> The Law and Order Code has been supplemented and amended many times since it was adopted in 1937.

The majority of the code is dedicated to the health, safety and welfare of children. This is an extension of traditional Lakota values. Children are sacred to the Lakota. In fact, the Lakota word for children, wakanyega, means “sacred beings.”<sup>56</sup> Accordingly, the Dependent, Neglected and Delinquent Children Code (DNDCC)<sup>57</sup> and the Juvenile Code<sup>58</sup> are fully dedicated to the protection of minors.

The DNDCC defines the tribe’s criteria for a child to be considered dependent, neglected or delinquent.<sup>59</sup> It also regulates the reciprocal enforcement of child support obligations.<sup>60</sup> Under the DNDCC, anyone twenty-one years or older can file a petition in Juvenile Court to have a minor declared dependent, neglected or delinquent.<sup>61</sup> After a hearing, if the child is found to be either dependent or neglected, the Juvenile Court may impose home site visits by probation officers, or the child may be taken from the home and placed with a custodian or guardian.<sup>62</sup> The Tribe also has the reserved right to institutionalize the child in cases of serious consequences.<sup>63</sup> A delinquent child is subject to treatment similar to a dependent or neglected child, with the additional prospect of being sent to a detention facility.<sup>64</sup> The remainder of the DNDCC refers to court procedures for handling cases that arise under the code.<sup>65</sup>

<sup>52</sup> *Id.* at art. IV, § 1.

<sup>53</sup> *See id.*

<sup>54</sup> *Id.* at art. IV, § 1(k).

<sup>55</sup> The forty eight chapters of the Law and Order Code consist of the following: Court and Procedures; Civil Actions, Domestic Relations; Dependent, Neglected or Delinquent Children; Juvenile Code; Elder Abuse Code; Heirship and Probate; Criminal Procedure; Penal Code; Removal of Nonmembers; Tribal Extradition Code; Indian Custom Adoption; Health and Sanitation; Taxation Provisions Code; Rules of Court; Grand Jury Code; Motor Vehicle Code; Enrollment Code; Personnel Policies and Procedures; Trial Employment Rights; Administrative Operating Procedure; Records Management; Freedom of Information; Zoning Code; Historic Site Preservation Code; Nuisance Abatement Code; Education Code; Election Code; Food Services Code; Gaming Code; Animal Control Code; Livestock Code; Water Code; Sewer and Sewage Code; Garbage and Refuse Disposal Code; Grazing Code; Fish and Wildlife Code; Motor Vehicle Licensing Code; Mining Code; Oil and Gas Code; Oil and Gas Tax Code; Timber Cutting Permit Code; Coroner; Reservation Wide School Board; Fee Schedule for OST Business License Code; Tribal Bar Association Code; Leasehold Mortgages Code; and Fireworks Code. See OGLALA SIOUX TRIBAL LAW & ORDER CODE (1996) (Table of Contents).

<sup>56</sup> Telephone interview with Norma Tibbitts, *supra* note 14.

<sup>57</sup> OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 4 (1996).

<sup>58</sup> *Id.* at ch. 5.

<sup>59</sup> *Id.* at ch. 4, § 54.18.

<sup>60</sup> *Id.* at ch. 4, § 54.18A.

<sup>61</sup> *Id.* at ch. 4, § 54.22.

<sup>62</sup> *Id.* at ch. 4, § 54.27. The standard behind the court’s determinations is generally the best interests of the child. *Id.*

<sup>63</sup> OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 4, § 54.27 (1996).

<sup>64</sup> *Id.* at ch. 4, § 54.29; see also Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963 (1994).

<sup>65</sup> *See* OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 4 (1996).

The Juvenile Code serves a variety of functions to promote the health and welfare of Oglala children.<sup>66</sup> The Code also defines the procedures of the Juvenile Court,<sup>67</sup> and contains the provisions for actions taken pursuant to the Indian Child Welfare Act (ICWA).<sup>68</sup> It also provides the procedure for legitimizing a child born to an unmarried woman by a father publicly acknowledging the child as his own.<sup>69</sup> Furthermore, the Juvenile Code recognizes the traditional adoption of adults,<sup>70</sup> and provides licensing requirements for childcare facilities.<sup>71</sup>

There are very few areas in which the tribe does not have existing codified law. Under the Indian Self-Determination and Education Assistance Act (ISDEAA),<sup>72</sup> the tribe has assumed many of the functions that the BIA previously conducted on the reservation. As the tribe took control of the regulatory functions on the reservation, the Tribal Council passed laws respective to the administration of those functions. There is no lack of codified law for use in the Oglala Lakota Nation court system.

### **B. Executive Branch of the Oglala Lakota Nation**

The Oglala Constitution and by-laws did not create a strong executive branch.<sup>73</sup> The executive branch is referred to as the “officers of the Tribal Council.”<sup>74</sup> The Constitution creates the positions of President, Vice President, Secretary and Treasurer.<sup>75</sup> The President and Vice President of the tribe are elected at-large.<sup>76</sup> The Secretary and Treasurer are elected by the Tribal Council.<sup>77</sup>

The actual authority of the President is nominal. His duty is to preside over all meetings of the Tribal Council and “carry out all orders of the council.”<sup>78</sup> The President is authorized to vote on council issues only in the event of a tie.<sup>79</sup> The Vice President is charged with the responsibility of performing the duties of the President when the President is absent or if the office is vacant.<sup>80</sup>

The Oglala Lakota Nation also has many administrative programs designed to handle issues such as housing, environmental protection, veterans affairs, education, public safety, water and sewer services. The Tribal Council created programs to address these specific issues primarily in response to

<sup>66</sup> *See id.* at ch. 5.

<sup>67</sup> *Id.* at ch. 5, subch. IV.

<sup>68</sup> *Id.* at ch. 5, subch. X; *see also* Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963 (1994).

<sup>69</sup> *See* OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 5, subch. VIII, § 8.03 (1996).

<sup>70</sup> *Id.* at ch. 5, subch. VII, § 8.05.

<sup>71</sup> *Id.* at ch. 5, subch. III, § 3.04.

<sup>72</sup> Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203, (codified as 25 U.S.C. §§ 450a-450n, and as amended in scattered sections of 25 U.S.C., 42 U.S.C., and 50 U.S.C.).

<sup>73</sup> *See generally* OGLALA LAKOTA NATION Bylaws art. I (1935) (discussing the duties of the officer of the Tribal Council). *Cf.* OGLALA LAKOTA NATION Const. art. IV (discussing the powers of the Tribal Council).

<sup>74</sup> OGLALA LAKOTA NATION Const. art. III, § 6.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> OGLALA LAKOTA NATION Bylaws art. I, § 1 (1935).

<sup>79</sup> OGLALA LAKOTA NATION Const. art. III, § 6.

<sup>80</sup> OGLALA LAKOTA NATION Bylaws art. I, § 2.

the ISDEEA.<sup>81</sup> The Act authorizes and encourages tribes to take over the administrative control of programs previously handled by the Bureau of Indian Affairs.<sup>82</sup> At Pine Ridge, the directors of these programs are appointed by the Tribal President, and confirmed by the Tribal Council.<sup>83</sup> And, while theoretically arms of the executive branch, the directors are subject to the overriding control of the Tribal Council.<sup>84</sup>

### C. Judiciary of the Oglala Lakota Nation

The courts of the Oglala Lakota Nation are subordinate to the Tribal Council. The Law and Order Code of the tribe authorizes the existence of the court system and details the powers granted to the court.<sup>85</sup> The court system consists of the Oglala Sioux Tribal Court and the Supreme Court of the Oglala Sioux Nation.<sup>86</sup> The Tribal Court at Pine Ridge has concurrent jurisdiction with federal and state courts to hear civil and criminal cases.<sup>87</sup> The Supreme Court serves as the appellate court for all appeals from “final Orders and Judgments of the Oglala Sioux Tribal Court.”<sup>88</sup>

The Tribal Council appoints Tribal Court judges.<sup>89</sup> There are six judges sitting on the Tribal Court: one Chief Judge, four Associate Judges, and one Special Judge.<sup>90</sup> Only the Special Judge must be an attorney licensed by the State of South Dakota.<sup>91</sup> The Supreme Court consists of four members: The Chief Justice, two Associate Justices and one Alternate Justice.<sup>92</sup> Three justices sit per case on the Supreme Court.<sup>93</sup> Of those judges that sit, two must be legally trained attorneys who are members of any state bar or the federal bar.<sup>94</sup>

The general inaccessibility of the decisions of the Oglala Supreme Court limits the practical application of case law in the Tribal Court. In theory, the Oglala Lakota Nation Supreme Court decisions are available for use in Tribal Court.<sup>95</sup> Some Supreme Court decisions are available through the Indian Law Reporter. Additionally, a digest of Supreme Court decisions is available on computer disk from the Supreme Court Clerk. The digest is searchable in Corel WordPerfect. The digest, however, has not been updated in two

<sup>81</sup> *Indian Self-Determination and Educational Assistance Act*, Pub. L. No. 93-638, 88 Stat. 2203.

<sup>82</sup> *Id.*

<sup>83</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

<sup>84</sup> *Id.*

<sup>85</sup> See OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 1 (1996).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at ch. 1, § 1.2. However, this provision is now modified by a recent U.S. Supreme Court decision. See *Nevada v. Hicks*, 121 S. Ct. 2304 (2001).

<sup>88</sup> OGLALA SIOUX TRIBAL LAW AND ORDER CODE ch. 1, § 6.4 (1996).

<sup>89</sup> *Id.* at ch. 1, § 2.2.

<sup>90</sup> *Id.* at ch. 1, § 2.

<sup>91</sup> *Id.* at ch. 1, § 2.4 (a)(7).

<sup>92</sup> *Id.* at ch. 1, § 6.2.

<sup>93</sup> *Cf. id.* (at least three Justices must sit per case in the event of a split decision).

<sup>94</sup> OGLALA SIOUX TRIBAL LAW & ORDER CODE ch. 1, § 6.2 (1996).

<sup>95</sup> Telephone Interview with Steve Emery, Chief Justice, Oglala Lakota Nation Supreme Court (Nov. 4, 2000).

years.<sup>96</sup> Consequently, a large amount of research would have to be done in order to effectively assess the decided case law.

The Tribal Court system follows the doctrine of stare decisis.<sup>97</sup> Tribal Court decisions are not handled in an ad hoc fashion.<sup>98</sup> Supreme Court decisions are binding on the lower court.<sup>99</sup>

#### D. Community Government

The Constitution also created community governments.<sup>100</sup> Each constitutionally recognized community elects an executive board that deals specifically with matters of local interest.<sup>101</sup> The people of the Pine Ridge Reservation refer to these communities as Districts. Each district government handles a wide variety of issues. For example, in 1999 the United States Department of Housing and Urban Development awarded an Empowerment Zone designation to the Oglala Lakota Nation.<sup>102</sup> These competitive Empowerment Zones are defined geographic areas that are placed on a priority list when they apply for federal grants and loans. This typically includes approximately 10 million dollars in direct grant funding over the ten-year designation period.<sup>103</sup> These direct grants can be used as leverage to obtain additional federal grant and loan programs. When used in conjunction with the priority rating, the Empowerment Zone has the capacity to bring large amounts of infrastructure development funds into an economically depressed area.<sup>104</sup> Although the tribe as a whole applied for the designation, each district on the Pine Ridge Reservation chose whether or not to participate in the Empowerment Zone: some Districts consented, others did not.<sup>105</sup> The primary reason some communities chose not to participate was a perceived lack of grass roots involvement in the planning phase.

The district government is also responsible for more basic duties such as distributing food bank items to needy members of the community.<sup>106</sup> Each district allows the people to have a political voice in matters concerning the community.<sup>107</sup> It also serves as an administrative arm of the tribal government by maintaining the lists of district members who need vital tribal services such as housing, water, energy assistance, and other services.<sup>108</sup>

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> OGLALA LAKOTA NATION Const. art. VI.

<sup>101</sup> *Id.*

<sup>102</sup> In 1997, Congress authorized a second round of Empowerment Zones and Enterprise Communities. The authorization allowed tribes to compete for the Empowerment Zone designation. Tribes were not allowed to compete for the designation in the first round. See Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (codified as amended in scattered sections of 26 U.S.C.)

<sup>103</sup> See Backgrounder: Rural EZ/EC Program, available at <http://www.ezec.gov/About/backgrounder.html> (last visited Dec. 12, 2001) (on file with the author).

<sup>104</sup> *See id.*

<sup>105</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

<sup>106</sup> *Id.*

<sup>107</sup> OGLALA LAKOTA NATION Const. art. VI.

<sup>108</sup> Telephone Interview with Michael Her Many Horses, *supra* note 3.

### E. International Law

The Oglala Lakota Nation is a member of the Four Directions Council, a non-governmental organization. The Four Directions Council was created to bring individual tribal issues to the attention of the world body through the United Nations.<sup>109</sup> The Four Directions Council consists of the Oglala, the Hopi, the Northern Cheyenne, the Haudensaunee (not the federally recognized Onondaga nation) and the Micmac. The Oglala began their relationship with the Four Directions Council to bring international attention to their claim against the United States for the illegal taking of the Black Hills.<sup>110</sup>

The significance of the Black Hills to the Sioux cannot be overstated. The Black Hills area of South Dakota is the cultural and spiritual heart of the Sioux nation. The creation story of the Sioux places their point of origin in the Black Hills. Additionally, the Black Hills hold some of the Sioux Nation's most sacred sites, including, Mato Tipi (Devil's Tower) and Mato Paha (Bear Butte).<sup>111</sup> As a more practical matter, the Black Hills are a bountiful oasis in the middle of the Great Plains. Everything that the Sioux use to live is found there: medicine, plants, animals, fish, timber, water, soils and minerals.<sup>112</sup>

In 1979, after years of litigation,<sup>113</sup> the United States Supreme Court granted a writ of certiorari to hear the Sioux Nation's case regarding the taking of the Black Hills by the federal government after discovering gold in the Black Hills.<sup>114</sup> The Sioux Nation as a whole litigated and re-litigated their claim that the 1877 Agreement, which diminished the reservation borders established by the Fort Laramie Treaty of 1868, was an unconstitutional taking under the Fifth Amendment.<sup>115</sup> The Sioux Nation continues to assert that the 1877 Agreement is not a valid agreement between the tribes and the United States because it was not signed by three fourths of the male population as required by Article 12 of the 1868 Fort Laramie Treaty.<sup>116</sup>

The Sioux Nation wants the return of the Black Hills rather than a monetary payment. Initially, the only judicial forum open to the Sioux Nation was the Court of Claims, which was only empowered to grant monetary awards. However, filing in the Court of Claims should not be construed as the Sioux Nation wanting a monetary settlement. Instead, that filing should be construed as the Sioux Nation taking issue with the United States' refusal to consider returning the cultural heart of the Sioux.

The Supreme Court in *United States v. Sioux Nation*, affirmed the Court of Claims decision and authorized a monetary settlement of more that eighty five

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Plaintiff's Statement of Fact, Request for Special Findings of Fact, and Brief at 266-270, *Sioux Tribe v. United States*, 97 Ct. Cl. 613 (1942) (No. C-531-(7)).

<sup>113</sup> In 1979, the Federal Court of Claims held that an 1877 statute constituted a taking of (a) the Sioux land in the Black Hills and (b) the rights-of-way acquired there under. In so ruling, the court determined that the United States owed the Sioux 85 million dollars. See *United States v. Sioux Nation*, 601 F.2d 1157 (1979).

<sup>114</sup> *United States v. Sioux Nation*, 444 U.S. 989 (1979).

<sup>115</sup> *United States v. Sioux Nation*, 448 U.S. 371 (1980).

<sup>116</sup> Treaty with the Sioux and Arapaho (Treaty of Fort Laramie), April 29, 1868, 15 Stat. 635 (1868).

million dollars.<sup>117</sup> Now, over twenty years later, the Sioux Nation has still not accepted the monetary award. The Sioux Nation does not want a monetary settlement; it wants the United States to return the Black Hills to the tribe.

Although the Oglala sought to enlist international support from European governments and international humanitarian groups in an effort to pressure the United States to return the Black Hills, or at least the federal portion of the Black Hills, this international assistance has not resulted in the return of the Black Hills. There is, however, a greater interest in Sioux culture and history throughout Europe, which in turn helps to fuel the tourism economy on the Pine Ridge Reservation.

### **III. Conclusion**

The governing structure of the Oglala Lakota Nation has changed dramatically since the imposition of the reservation system and the creation of its IRA-influenced tribal constitution. While certain tribal institutions such as the tiospaye have remained intact, many others have fallen into disuse or have been abandoned. Despite fundamental changes in the political organization of the Oglala, the tribe continues to see to the needs of the people, and follow its traditional beliefs that it is imperative to look after those who cannot look after themselves, and that it is better to give away all that you own to care for those with nothing.

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<sup>117</sup> *Sioux Nation*, 448 U.S. at 424.