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Oglala Sioux Tribal Profile

Karen Kimbro Chase*

The first peace, which is the most important, is that which comes within the souls of people when they realize their relationship, their oneness with the universe and all its powers, and when they realize that at the center of the universe dwells the Great Spirit, and that this center is really everywhere, it is within each of us.

~ Black Elk - Oglala Sioux

This profile will provide a sketch of the traditional and contemporary law of the Oglala Sioux.¹ This profile will show how the organic, pragmatic and adaptive nature of the Tribe's traditional law, especially the underlying cultural and spiritual values of the Oglala Sioux's traditional law, remain intact, despite the Tribe's adoption of a contemporary law influenced and structured in large part by the Indian Reorganization Act of 1934. Part I is a brief introduction to the Tribe that offers general information about the Oglala Sioux's tribal history, its eighteenth century migration to the plains of South Dakota and Nebraska, and the Tribe's response to white migration and encroachment. Part II examines the traditional tribal law of the Oglala Sioux through the defining metaphor for Lakota society, the sacred hoop – a strong and unbroken circle. Part III then focuses on the structure of tribal government developed by the Oglala Sioux after the enactment of the Indian Reorganization Act of 1934. Part IV summarizes the Tribe's contemporary enacted law. Part V concludes with a brief overview of the Tribe's history of political activism and shows how the recently enacted United Nations Declaration on the Rights of Indigenous Peoples is providing an internationally based legal argument that may prove to support an important local issue.

I. INTRODUCTION

The Sioux Nation consists of three major linguistically and regionally based groups: the Lakota (or Teton), the Dakota (or Santee) and the Nakota (or Yankton).² These three major groups can be divided into seven large subgroups or tribes – Mdewakanton, Sisseton, Teton, Wahpekute, Wahpeton, Yankton, and Yanktonai.³ The Oglala Sioux ("they scatter their own") is one of the seven bands

* J.D. 2012 - University of New Mexico School of Law. Karen thanks her husband, Gregory W. Chase, for taking such extraordinary care of her in the midst of her many school responsibilities and deadlines, and thanks her children who never fail to show their pride and support in their mom's later-in-life ambition to become a lawyer. The author also wishes to thank Professor Christine Zuni Cruz for her inspiration to the study of the law of indigenous people. Finally, this profile is dedicated to my grandsons, Noah and Caleb, members of the Oglala Sioux Tribe. It has been my privilege and honor to learn about the tribe of your father, my son-in-law, Richard Keilbarth.

¹ "Law" is defined as "[t]he regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system." *BLACK'S LAW DICTIONARY* 410 (3rd pocket ed. 2006).

² ROBERT H. RUBY, *THE OGLALA SIOUX: WARRIORS IN TRANSITION*, xxi (Bison Books 2010) (1955).

³ *Id.*

of the Teton Tribe.⁴ The Oglala Sioux are the largest band of the Teton-Dacotah division of the Sioux Nation.⁵

The Sioux originally migrated from the southeastern United States and settled near the headwaters of the Mississippi in the sixteenth century.⁶ Their search for new riches -- “the beavers of the rivers and streams and the bison herds that grazed upon the open prairie west of the Mississippi” -- prompted their migration westward.⁷ In the early eighteenth century, intertribal conflict caused the Sioux to migrate farther west toward the Missouri River and south into South Dakota.⁸ Finally, in 1775, an Oglala war party led by Standing Bull went far enough west to discover the gold rich Black Hills.⁹ Once settled in this region, the Oglala Sioux roamed freely through Minnesota, the Dakotas, Wyoming, Colorado and Utah and spent their time procuring food, clothing, and other household goods, in addition to warring, celebrating, feasting and dancing.¹⁰ *Tatanka*, the buffalo, provided the Tribe with almost everything they needed, including food, raw materials necessary for clothing, lodge covers, utensils, ceremonial objects, and goods for trading.¹¹

The westward expansion of the United States in the early 1800s created increasing white migration through the Plains where the Oglala Sioux lived and resulted in uncertainties and changes for the Oglala Sioux.¹² By the 1850s, white migration was at an all time high as more and more prospectors literally trampled across the inhospitable Great Plains in search of California gold.¹³ The Oregon Trail was being transformed into “a swath of stinking refuse.”¹⁴

Half-buried corpses of humans stricken with Asiatic cholera, and rotting carcasses of worn-out horses, mules, oxen, and sheep putrefied the air and water of the [Platte] valley. Broken-down wagons, old shoes, clothes, papers, cans, and other effects littered the road. Living beings inflicted further ecological damage. Emigrants chopped down cottonwood trees for fires in a land where vegetation was already scarce, and the beasts they drove - over one hundred thousand cattle and fifty thousand sheep in 1853 alone - competed for water and nutrients with indigenous buffalo herds.¹⁵

⁴ *Id.*

⁵ IRA H. GRINNELL, *THE TRIBAL GOVERNMENT OF THE OGLALA SIOUX OF PINE RIDGE, SOUTH DAKOTA*, 5 (Issued as Special Project No. 22, Gov't Research Bureau, Univ. of S.D., 1967).

⁶ GEORGE E. HYDE, *RED CLOUD'S FOLK: A HISTORY OF THE OGLALA SIOUX INDIANS*, 3 (Rev. ed. 1979).

⁷ CATHERINE PRICE, *THE OGLALA PEOPLE 1841-1879: A POLITICAL HISTORY* 1 (1996).

⁸ HYDE, *supra* note 6, at 3.

⁹ *Id.* at 20.

¹⁰ RUBY, *supra* note 2, at 15.

¹¹ PRICE, *supra* note 7, at 1.

¹² *Id.* at 28-29.

¹³ *Id.* at 29.

¹⁴ *Id.* at 30.

¹⁵ *Id.*

Central to the Tribe's growing concerns over white migration was the decimation of the buffalo herds.¹⁶ The Oglala Sioux believe that their ancestors were born from the Buffalo Cow Nation and they cannot exist without the buffalo.¹⁷ "Should the buffalo disappear entirely, the tightly woven threads that bind together the Lakotas, the land, and the buffalo in this sacred relationship would begin to unravel."¹⁸ Indeed, the loss of the buffalo was an important and legitimate concern.¹⁹ By 1878, with the construction of the Union Pacific railroad and the introduction of commercial and sports hunters, the buffalo herds had not only been separated, but also slaughtered in such great numbers that "Indians [were] starving" because they found so few buffalo.²⁰

The Oglalas were forced to confront their relationship with U.S. government representatives given the extremely disruptive and destructive presence of emigrants.²¹ Oglala leaders had conflicting strategies, with some leaders refusing to negotiate and sign treaties and other leaders advocating peace.²² While negotiations resulted in government promises to protect tribal homelands from white encroachment, those promises were repeatedly broken.²³ After several years of on and off again hostilities and attempts at peace negotiations between the Oglala Sioux and U.S. forces, the Great Sioux Reservation was created by the Fort Laramie Treaty of 1868.²⁴ In the Fort Laramie Treaty, the United States promised the Sioux Nation (of which the Oglala Tribe was considered a major tribe) that the Great Sioux Reservation, including the Black Hills, would be "set apart for the absolute and undisturbed use and occupation of the Indians herein named. . . ."²⁵

The United States government expected that the Lakotas would settle peacefully on the Great Sioux Reservation once the Fort Laramie Treaty of 1868 was signed.²⁶ The government also expected that the Oglala Sioux would adopt the customs of the "Great Father's people".²⁷ The Oglalas viewed the treaty differently and resisted the government's expectations to abandon their traditional culture and to confine themselves to the area proscribed by the Great Sioux Reservation, especially during hunting season.²⁸ In addition, the young warriors refused to abandon their means of gaining honor through warfare.²⁹ Tensions mounted and reached a peak when white settlers and gold miners invaded the gold rich Black Hills, land belonging to the Sioux as part of the Great Sioux Reservation, without

¹⁶ PRICE, *supra* note 7, at 49.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 47-48.

²¹ *Id.* at 30.

²² PRICE, *supra* note 7, at 29.

²³ *Id.* at 27.

²⁴ George D. Watson, Jr., *The Oglala Sioux Tribal Court: From Termination to Self-Determination*, 3 GREAT PLAINS RESEARCH 61, 62 (1993).

²⁵ *Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. United States*, 650 F.2d 140, 141 (8th Cir. 1981) (The United States violated the Fort Laramie Treaty in 1877 when it seized the gold-rich Black Hills. In 1974, after fifty years of ongoing litigation, the Indian Claims Commission entered a monetary judgment against the federal government in the amount of \$17,000,000, plus five percent interest, accruing since 1877. The judgment remains unclaimed by the Sioux Nation because it continues to seek equitable, not monetary, relief: the return of the Black Hills land reserved by the treaty.).

²⁶ PRICE, *supra* note 7, at 102.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

any U.S. government enforced protection.³⁰ The battle of the Little Bighorn was “the climactic conflict of the 1876 war between the Lakotas and the United States.”³¹ Despite the Lakota victory in defeating U.S. forces at Little Bighorn, General Custer’s Last Stand, the U.S. government proceeded to illegally seize the Black Hills and eventually restructured the Great Sioux Reservation into five smaller reservations.³²

The Pine Ridge Indian Reservation, once part of the Great Sioux Reservation, is located in southwest South Dakota and is the second largest reservation in the United States.³³ The Act of 1889 established Pine Ridge as the home of the Oglala branch of the Sioux Tribe.³⁴ The reservation encompasses 1,780,760.29 acres, and consists of grasslands, rolling hills, and a portion of the Badlands.³⁵ The Oglala Sioux currently estimates that 45,000 people live on Pine Ridge.³⁶

The forced and systematic destruction of tribal culture that began in earnest with the signing of the Treaty of Fort Laramie Treaty in 1868, along with the geographic isolation of the reservation, have resulted in a contemporary reservation life wrought with symptoms of poverty.³⁷ The average life expectancy for men is 48 years old and for women is 52 years old, ages that fall well below the 77 years of age life expectancy for the United States as a whole.³⁸ Infant mortality rates are 300% higher than the U.S. national average.³⁹ The teenage suicide rate is 150% higher than the national average.⁴⁰ Additionally, alcoholism, diabetes, heart disease, cancer and malnutrition are pervasive.⁴¹ The unemployment rate is disproportionately high, and there is “little industry, technology or commercial infrastructure on the Reservation to provide employment.”⁴² These conditions contribute to the Reservation remaining virtually undeveloped.⁴³

Despite these overwhelming challenges and obstacles, leaders of the Oglala Sioux are working diligently to awaken and reclaim their tribe’s self-sufficiency and traditional culture.⁴⁴ Active efforts include exploring alternative education programs, creating wind or water energy initiatives, providing substance abuse programs, and developing employment opportunities.⁴⁵ Anchoring these

³⁰ PRICE, *supra* note 7, at 155.

³¹ *Id.*

³² *Id.*

³³ Watson, *supra* note 24, at 62.

³⁴ *Id.*

³⁵ *Id.*; See also Map of the Pine Ridge Reservation, S.D. Dep’t of Tribal Gov’t Relations, [available at http://www.sdtribalrelations.com/oglaa.aspx](http://www.sdtribalrelations.com/oglaa.aspx).

³⁶ Lori Murphy, *Enough Rope: Why United States v. White Plume Was Wrong on Hemp and Treaty Rights, and What It Could Cost the Federal Government*, 35 AM. INDIAN L. REV. 767, 769 (2010-2011).

³⁷ Stephanie M. Schwartz, *The Arrogance of Ignorance: Hidden Away Out of Sight and Out of Mind, Regarding life, conditions, and hope on the Pine Ridge Oglala Lakota (Sioux) Reservation of SD*, NATIVE VILLAGE (Oct. 15, 2006), <http://www.nativevillage.org/Messages%20from%20the%20People/the%20arrogance%20of%20ignorance.htm>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Schwartz, *supra* note 37.

⁴⁴ *Id.*

⁴⁵ *Id.*

efforts is the Tribe's focus on its cultural heritage and spiritual values that define the Oglala Sioux:

We are one people, with shared languages, beliefs, and relationships. We are unique in our understanding of how we came to be people. . . . Our way of life comes from Creation and from the teachings of creation and cannot be turned away from or, who we are as a people will be lost. Like many people who meet others with powerful military weapons and a strong sense of righteousness and determination, we were unprepared for the onslaught of European and East Coast settlers onto our homelands. Our people fought hard to keep our homelands and to save our way of life.

While it is true that every Native American is touched in some way by poverty and by the symptoms of poverty - addictions, health problems, lack of access to education and resources - every Native American is also touched by their spirituality and love of their homelands and their knowledge of what it means to be a tribal people. This knowledge is what binds us together as people who love and support one another. This knowledge is what gives us roots in our homelands and what keeps us in the place of our ancestors. This knowledge is what inspires hope and promise for our children today and for future generations.⁴⁶

The Oglala Sioux's response to its large homeless population on the reservation is evidence of their traditional values in a contemporary setting. In the tradition of their kinship relationship duty to be a "good relative," families on the reservation "never turn away a relative, no matter how distant the blood relation."⁴⁷ As a result, many homes have large numbers of people living in them.⁴⁸

The Tribe's response to contemporary reservation life reflects the Tribe's traditional culture that is providing the foundation for redefining itself in the twenty-first century.

II. TRADITIONAL TRIBAL LAW

An understanding of the Tribe's kinship relationships and leadership concepts helps to reveal the "ordering principles of society as embodied in the Lakota password *Mitakuye oyasin*, 'We are all related.'"⁴⁹

The Sioux traditionally conceived the world as pervaded by a great, mysterious and undifferentiated force which encompassed

⁴⁶ Cheryl Crazy Bull, *Northwest Indian College President Addresses ABC "20/20" Pine Ridge Special*, NATIVE NEWS NETWORK (Oct. 27, 2011, 7:50 AM), <http://www.nativenetwork.com/northwest-indian-college-president-addresses-abc-20-20-pine-ridge-special.html>.

⁴⁷ Schwartz, *supra* note 37.

⁴⁸ *Id.*

⁴⁹ PRICE, *supra* note 7, at 2.

all the supernatural and was the source of all power. Men, both as individuals and as a group, were believed to be dependent on this power reservoir. They must humble themselves and supplicate it for a successful living. . . . Leadership was connected in the minds of the traditional Sioux with the acquisition of supernatural power rather than with any power or talents or skills inherent in the individual himself. People should live a normal life, be brave, strong, generous, and loyal, and perform their proper functions and ceremonies as men, women, and children. Otherwise, they would suffer sickness and misfortune.⁵⁰

The Sacred Hoop

The sacred hoop (*cangleska wakan*) defines Lakota society as a strong and unbroken circle.⁵¹ “If danger lurked outside the circle, the people sought peace, prosperity, and cooperation within.”⁵² The Oglalas’ daily life revolved around the *tiyospaye* (band), which were often ten or more bilaterally extended families.⁵³ The *tiyospaye* was the basic governmental unit where tribal traditions and laws were taught and enforced within the family.⁵⁴ Larger bands were divided into several camps (*wicoti*).⁵⁵ Central to the *tiyospaye* was forming camps into circles, in close proximity to one another.⁵⁶ The most revered families had a reserved place of honor opposite the camp entrance.⁵⁷ The holy men (*wicasa wakan*), “whose dreams and visions marked them as the Great Mystery’s intermediaries, understood the sacred symbolism of the circle.”⁵⁸ The holy men observed that everything in nature was round – humans, animals, the sun, moon, stars, rocks, and “Yum the Whirlwind,” the younger brother of the South Wind.⁵⁹ By organizing lodges and camps into circles was to dwell in the circle and live in the cosmic center.⁶⁰ It was an opportunity to commune with divine forces.⁶¹ “Ostracized families were forced to move their tipis outside the circle, a punishment most Lakotas could scarcely bear.”⁶² The significance of the circle was reflected in the holy man Black Elk’s explanation of his ability to interact with small children, “I who am an old man am about to return to the Great Mysterious and a young child is a being who has just come from the Great Mysterious; so it is that we are very close together on the circle of life.”⁶³

Kinship Relationships

⁵⁰ GRINNELL, *supra* note 5, at 18.

⁵¹ PRICE, *supra* note 7, at 1-2.

⁵² *Id.* at 2.

⁵³ *Id.*

⁵⁴ Danielle Her Many Horses, *Oglala Lakota Nation Profile*, 2 TRIBAL L. J. (2002).

⁵⁵ PRICE, *supra* note 7, at 2.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ PRICE, *supra* note 7, at 1-2.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

Kinship relationships ordered Oglala Sioux society and shaped the attitudes and behavior of the Oglala Sioux.⁶⁴ Kinship responsibilities and political customs were believed to protect the sacred hoop and keep it alive in the people's hearts by minimizing conflict.⁶⁵ Children were instructed from early childhood that it was their duty throughout their lives to be a "good relative."⁶⁶ This aspiration included sharing wealth with those who were less fortunate.⁶⁷ It was through an attitude of communalism that comfort and security were fostered and supported.⁶⁸ "Acts of generosity reinforced the lesson that kinship ties were more precious than tangible goods."⁶⁹

Each member of the *tiyospaye*, male or female, old or young, blood related to not, learned from earliest childhood how to conduct himself or herself within the group.⁷⁰ The accepted use of Lakota kinship terminology reflected gender, generation, and birth order, and established behavioral rules and moral obligations.⁷¹ A younger brother addressed his older brother as *ciye*; an older brother called a younger sibling *misunkala*.⁷² A woman referred to her older brother as *tiblo* and her older sister as *cunwe*.⁷³ Grandchildren called their maternal grandmother *onci*, or *oncisi*, and their paternal grandmother *kunsi*.⁷⁴ A maternal grandfather was called *tunkansi*, and a paternal grandfather was called *tunkasila*.⁷⁵ A woman called her husband *mihingna* and a husband called his wife *mitawicu*.⁷⁶ This system promoted peace and harmony within the *tiyospaye*, and was a cultural code of conduct reflecting the rules and customs of the band.⁷⁷

Leadership

Oglala leadership concepts, like *itancan* (symbolic fathers of bands or *tiyospaye*), headmen, and warriors, reflect the ongoing traditional attitudes of the Oglala toward political institutions, social norms, religious practices and the law.⁷⁸ The *tiyospaye* was the source of group consensus and legislative duties, although there was no recognized centralized political body.⁷⁹ Councils were formed based on the population of the member camp or camps.⁸⁰ Leaders that emerged were expected to be "kind, generous, patient, wise, diplomatic, and brave."⁸¹ Leaders were also chosen based on their spiritual powers or by reaching a certain age.⁸² It

⁶⁴ PRICE, *supra* note 7, at 2-3.

⁶⁵ *Id.* at 5, 24.

⁶⁶ *Id.*

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ PRICE, *supra* note 7, at 3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ PRICE, *supra* note 7, at 3.

⁷⁷ *Id.* at 5, 7.

⁷⁸ *Id.* at ix; GRINNELL, *supra* note 5, at 18.

⁷⁹ *Id.* at 23. PRICE, *supra* note 7, at 7.

⁸⁰ *Id.*

⁸¹ *Id.* at 9.

⁸² GRINNELL, *supra* note 5, at 19.

was equally important that leaders have the ability to persuade councils and influence policy.⁸³

Leaders filled a variety of offices within the *tiyospaye*. *Itancan* were the head chiefs to the Lakota and the ultimate protectors of the sacred hoop.⁸⁴ *Itancan* were expected to be “good men” and demonstrate all the requisite leadership qualities described above, in addition to being successful warriors.⁸⁵ *Blotahunka* were war party leaders and helped ward off external threats to the sacred hoop.⁸⁶ Head shirtwearers were the most prominent warriors and epitomized the “Lakota virtues of bravery generosity endurance, and wisdom.”⁸⁷ They would publicly vow to “defend the land, the sacred hoop, and to feed and clothe the poor and orphaned.”⁸⁸ The head shirtwearers resolved internal conflicts that threatened the sacred hoop.⁸⁹ The most prestigious offices were the *wakiconza* (camp administrators) and *akicita* (enforcer of decisions and messenger).⁹⁰ The *wakiconza* and *akicita* supervised the daily affairs of camp life, performing executive, legislative, judicial and police functions.⁹¹ They were noted for their talents for war, hunting, organization and diplomacy.⁹²

The Oglala also had six military societies that cut across band lines and admitted only the most promising young men of the *tiyospaye*.⁹³ The military societies were responsible for “sponsoring giveaways for the needy and hosting camp festivities.”⁹⁴ The military societies were a source of developing future leaders.⁹⁵

When council meetings were called, anyone could speak, including senior women.⁹⁶ However, only the leaders and the *akicita* were allowed to discuss and participate in decision-making.⁹⁷ Decision-making was arrived at “through a continuous weighing of views until objections to the proposals under consideration had been reduced to a minimum.”⁹⁸ Unanimity of opinion, was the goal in

⁸³ *Id.*; One example of Oglala Sioux leadership is Red Cloud, regarded by federal emissaries as the “head chief” of the Sioux at the time of heightened white encroachment. He was the Oglala Sioux leader who earned the respect and trust of his tribe and eventually negotiated and signed the 1868 Treaty of Fort Laramie. See PRICE, *supra* note 7, at ix; See also HYDE, *supra* note 6, at 166-67. The Oglalas recognized Red Cloud “for his commitment to removing the American presence from the Powder River hunting grounds, his ability to maintain the support of the warrior societies, and for his superb war strategy.” PRICE, *supra* note 7, at 67. Red Cloud was also known for the great care and concern he showed for the Oglalas’ welfare. *Id.* at 68.

⁸⁴ PRICE, *supra* note 7, at 9.

⁸⁵ *Id.*

⁸⁶ *Id.* at 17.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ PRICE, *supra* note 7, at 11, 14.

⁹¹ *Id.* at 13.

⁹² *Id.*

⁹³ *Id.* at 12.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ PRICE, *supra* note 7, at 7. “[T]raditional Lakota society was not ‘male dominated’ but rather was much more complementary with women and men performing quite different but equally value roles. Indeed, the Lakotas, like the Cheyennes, often stated that their society was no stronger than their women.” *Id.* at 19.

⁹⁷ GRINNELL, *supra* note 5, at 19.

⁹⁸ GRINNELL, *supra* note 5, at 25.

decision-making.⁹⁹ If the council failed to reach a consensus on controversial issue, the council adjourned and issues were left unresolved.¹⁰⁰ The council considered issues like negotiations with whites,¹⁰¹ upcoming war campaigns,¹⁰² and movement of camps for hunting buffalo.¹⁰³ Leaders were responsible for carrying out their respective duties in accord with their office and with council decisions.¹⁰⁴

The Bureau of Indian Affairs took over the ordering of most phases of Oglala life after the reservation was established in the 1870s and consequently, traditional tribal governance has not survived.¹⁰⁵ The Bureau of Indian Affairs instituted steps to assimilate the Oglala Sioux into non-Indian society and eradicated all Oglala traditions.¹⁰⁶ “The traditional office and leadership patterns among the Oglala became vestigial[,]” in the sense that only remnants remain.¹⁰⁷ The *tiyospaye* is one such remnant that remains and is evident in families on the reservation that have stayed in close proximity and continue to pass on tribal traditions and laws.

Despite the absence of traditional office and leadership patterns, other aspects of traditional Oglala culture continue to influence tribal governance, justice policy and community relations.¹⁰⁸ For example, once called to order, the Oglala Sioux Tribal Council meetings open with prayer and words of encouragement, and with some regularity an honoring song is sung.¹⁰⁹ Words of wisdom and encouragement, *wocekiye*, are also given at the beginning of each Comprehensive Indian Resources for Community and Law Enforcement meeting and the beginning of each “sweat lodges for youth in Kiyuksa Otipi,” in the hope of “healing community members through improved justice system functioning.”¹¹⁰ Finally, the Oglala Sioux still practice the Wiping of the Tears Ceremony, a Lakota ritual meant to release the spirits of the dead and heal the grieving.¹¹¹

⁹⁹ Id.

¹⁰⁰ PRICE, supra note 7, at 8.

¹⁰¹ Id.

¹⁰² Id. at 16.

¹⁰³ Id. at 7.

¹⁰⁴ Id.

¹⁰⁵ Id.; Danielle Her Many Horses, supra note 54.

¹⁰⁶ GRINNELL, supra note 5, at 25.

¹⁰⁷ Id.

¹⁰⁸ STEPHEN BRIMLEY ET AL., STRENGTHENING AND REBUILDING TRIBAL JUSTICE SYSTEMS: LEARNING FROM HISTORY AND LOOKING TOWARDS THE FUTURE 115, available at <http://www.ncjrs.gov/pdffiles1/nij/grants/210893.pdf>.

¹⁰⁹ Council Summaries, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, http://www.oglalalakotanation.org/OLN/Council_Summaries.html (last visited Aug. 8, 2012).

¹¹⁰ BRIMLEY, supra note 108, at 115.

¹¹¹ Id.; Wiping the Tears of Seven Generations (Kifaru Productions 1992) (In December 1990, 300 Lakota Sioux “inspired by dreams and visions of unity and spiritual awakening” decided to bring their people out of mourning and commemorate the lives lost at the Wounded Knee Massacre of 1890 through a Wiping of the Tears Ceremony); Jon Lurie, Wiping of the Tears: 25 Years After the Era of A.I.M. Militancy on Pine Ridge (8/1/2000) (reprinted from THE CIRCLE), available at http://www.oocities.org/crazyogla/WipingTears_Lurie.html (A Wiping of the Tears Ceremony was held in June 2000 twenty-five years after what was called the “era of American Indian Movement militancy on Pine Ridge that began two years earlier with the siege of Wounded Knee.”); Vette Middleton & Richard Simonelli, A Stairway at Ground Zero. Hoop Journey IV Visits the Sacred September 11 Site, WELLBRIETY! White Bison’s Online Magazine (April 17, 2003), available at <http://www.whitebison.org/magazine/2003/hoopjourney/vol4no5.html> (The American Indian Community House in New York City organized the Sacred Hoop of 100 Eagle Feathers in the Wiping of the Tears Ceremony in a “place to forgive the unforgivable.”).

III. LAW OF GOVERNANCE

The Oglala Sioux accepted the provisions of the Indian Reorganization Act of 1934 and voted on and passed the Constitution and Bylaws on December 14, 1935.

Pursuant to an order, approved December 11, 1935, by the Secretary of the Interior, the attached constitution and by-laws was submitted for ratification to the members of the Oglala Sioux Tribe of Indians of the Pine Ridge Reservation and was on December 14, 1935, duly approved by a vote of 1,348 for, and 1,041 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (Pub., No. 147, 74th Cong.).¹¹²

In early 1935, Constitutional committees comprised of Oglala citizens worked on the Oglala Sioux Tribe Constitution.¹¹³ However, the options available to the Oglala Sioux were limited to the “IRA constitution,” model based on the checklist provided by the Office of Indian Affairs.¹¹⁴ The Oglala Sioux’s Constitution and Bylaws closely followed the model outlined in Felix Cohen’s “Basic Memorandum on Drafting of Tribal Constitutions,” submitted in November 1934.¹¹⁵ There was little to no regard for incorporating indigenous culture or governance traditions in the adopted Constitution.¹¹⁶ That said, the Oglala Sioux Constitution and Bylaws provide that the Tribal Council has the power to “regulate, preserve, and strengthen native arts, crafts, culture, and the Lakota language.”¹¹⁷ The Constitution and Bylaws further provide in its Bill of Rights that the Tribal Council shall *not* make any “tribal law or enforce any tribal, state or federal law that: (a) [p]rohibits the full exercise of Lakota culture and spirituality.”¹¹⁸

The Oglala Sioux’s IRA-modeled Constitution and Bylaws have remained in force since 1935, but have faced opposition since its adoption. After the first Tribal Council was formed, some Oglala Sioux members formed indigenous “Treaty Councils” and refused to recognize the authority of the Tribal Council.¹¹⁹ The *Treaty Councils* protested, *inter alia*, the use of tribal funds by Tribal Council

¹¹² CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation), Certification of Adoption (Approved January 15, 1936). According to Thomas Biolsi, the vote was 1,169 to 1,095 with 56% of the eligible voters attending the polls. THOMAS BIOLSI, ORGANIZING THE LAKOTA: THE POLITICAL ECONOMY OF THE NEW DEAL ON THE PINE RIDGE AND ROSEBUD RESERVATIONS 78-79 (1992). Mr. Biolsi contends that “some of the positive votes may have been based on the anticipation of material benefits (perhaps even the return of the Black Hills) ... rather than on informed opinions about the Act.” *Id.*

¹¹³ BIOLSI, *supra* note 112, at 92-108.

¹¹⁴ *Id.*

¹¹⁵ FELIX S. COHEN, ON THE DRAFTING OF TRIBAL CONSTITUTIONS (David E. Wilkens ed., 2007).

¹¹⁶ BIOLSI, *supra* note 112, at 92-108.

¹¹⁷ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. IV, § 1(n).

¹¹⁸ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. XII.

¹¹⁹ BIOLSI, *supra* note 112, at 156.

members to cover questionable and excessive Council expenses.¹²⁰ These protests resulted in the impeachment of the Tribal Council president in 1941 for embezzlement.¹²¹ However, the general unrest among the Oglala Sioux eventually caused the Tribal Council to file a petition with the federal government to call for a tribal referendum on the repeal of the Oglala Constitution, but a referendum was never called.¹²²

In 2000 a group of Oglala Sioux identified as Grass Roots Oglala Lakota Oyate made its plea to return to a traditional form of government.¹²³ On January 16, 2000, the group entered the Red Cloud Building (tribal council headquarters), declared a takeover, and occupied the building for over a year.¹²⁴ Initially motivated by the Tribal Council's inaction in the face of alleged financial corruption, the group later advocated for a return to more traditional leadership.¹²⁵

Oglala Sioux Governing Body - The Tribal Council

The Oglala Sioux's Constitution and Bylaws remain in place despite the periodic internal uprisings in dissatisfaction with its governance. The Constitution and Bylaws have been amended four times since adoption in 1969, 1985, 1997, and 2008. The Oglala Sioux Tribal Council is the governing body of the Tribe and exercises constitutional authority to create law.¹²⁶ It has enumerated future and reserved powers.¹²⁷ The Council has also adopted the Oglala Sioux Tribe Law and Order Code. The Code contains forty-eight chapters of law focusing on the health, safety and welfare of its members.¹²⁸ The Law and Order Code also includes a criminal code, ethics code, transportation code, environmental code, and water quality management code.¹²⁹

The Tribal Council has elected district representatives from the nine districts comprising Pine Ridge Indian Reservation, with one representative for every 1,000 members or a remainder over 500.¹³⁰ There are currently nineteen district elected council members.¹³¹ Members of the Tribal Council are elected for two year terms.¹³² The Tribal Council conducts mandatory Regular Meetings the last Tuesday of each month and Special Meetings when called for by a majority of the Tribal Council.¹³³ Two-thirds of the elected members must be present to

¹²⁰ BIOLSI, *supra* note 112, at 158-59.

¹²¹ *Id.*

¹²² *Id.*

¹²³ BRIMLEY, *supra* note 108, at 115.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III.

¹²⁷ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. IV.

¹²⁸ See OGLALA SIOUX TRIBE: LAW AND ORDER CODE (1996), available at <http://www.narf.org/nill/Codes/oglalacode/oglatoc.htm>; See also Danielle Her Many Horses, *supra* note 54.

¹²⁹ See OGLALA SIOUX TRIBE: LAW AND ORDER CODE (1996), available at <http://www.narf.org/nill/Codes/oglalacode/oglatoc.htm>.

¹³⁰ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III. The nine districts are Oglala, Wakpamni, Wounded Knee, Porcupine, Medicine Root, Eagle Next, Pass Creek, Lacreek and Pine Ridge.

¹³¹ *Oglala Sioux Tribal Council*, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, http://www.oglalalakotanation.org/OLN/Tribal_Council.html (last visited Aug. 8, 2012).

¹³² CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III, § 8.

¹³³ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. XVI.

constitute a quorum.¹³⁴ The Tribal Council currently has six active standing committees.¹³⁵

Elected officers of the Tribal Council form an Executive Committee composed of five members – a President and Vice President (each elected by the Oglala Sioux Tribe at large), a Secretary and Treasurer (each elected by the Tribal Council from within or outside of its own number), and a liaison between the Executive Committee and Tribal Council.¹³⁶ Officers from outside the membership of the council do not have voting rights on the Tribal Council, except that the President can cast a vote in the case of a tie.¹³⁷ While each officer of the Executive Committee has certain individual responsibilities, generally the Executive Committee shall:

[A]ct on behalf of the Tribal Council when the Tribal council is not in session and shall be in charge of all routine matters that arise during such recess, including the administration of the land provisions of this constitution, and such other matters as may be delegated to it by the Tribal Council, and shall make a report at each Regular and Special session of the Tribal Council, and shall adopt resolutions that are not inconsistent with resolutions or ordinances adopted by the Tribal Council.¹³⁸

Oglala Sioux Tribal Court

The Tribal Programs Court Administration Page of the Oglala Sioux Tribe Website articulates the mission statement of the Oglala Sioux Tribal Court:

*The Oglala Sioux Tribal Courts are vested with the judicial powers of the Oglala Sioux Tribe pursuant to Article V of the Constitution and By-Laws of the Oglala Sioux Tribe and is established to function as the Judicial Branch of the Tribal Government for the maintenance of Law and Order and the administration of fair and impartial justice on the Pine Ridge Indian Reservation.*¹³⁹

The website further informs that the Oglala Sioux Tribal Court provides “justice to enrolled members of the Tribe whom [sic] reside within the boundaries of the Pine

¹³⁴ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. XVI.

¹³⁵ Oglala Sioux Tribe Committees, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, <http://www.oglalalakotanation.org/OLN/Committees.html> (last visited Aug. 8, 2012) (Economic & Business Development, Education, Health & Human Services, Finance, Judiciary, and Land & Natural Resources).

¹³⁶ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III; See also Oglala Sioux Tribe Executive Board, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, http://www.oglalalakotanation.org/OLN/Executive_Board.html (last visited Aug. 8, 2012).

¹³⁷ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III, § 6.

¹³⁸ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. XIII, § 6.

¹³⁹ Tribal Programs Court Administration, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, http://www.oglalalakotanation.org/OLN/Tribal_Programs_Court_Administration.html (last visited Aug. 8, 2012).

Ridge Indian Reservation.”¹⁴⁰ The Court manages, *inter alia*, civil and criminal cases, political and election disputes, family law, and work-related disputes.¹⁴¹

The history of the Oglala Sioux justice system can be divided into four distinct stages.¹⁴² The first is the period pre-1870 when the federal government had a policy of deference to the traditional tribal systems of law and order.¹⁴³ In the second period, 1871 to 1934, the federal government created and developed Indian courts as a part of its assimilation policies.¹⁴⁴ During the third period tribal courts were established following the enactment of the 1934 Indian Reorganization Act.¹⁴⁵ The final period, beginning in approximately 1975, is marked by policies of Indian self-determination and tribal self-government which recognize the importance of building and improving many aspects of tribal government including the tribal courts.¹⁴⁶

In response to the extraordinary levels of gang activity and high rates of sexual violence against Native American women, Congress passed the Tribal Law and Order Act of 2010.¹⁴⁷ The Act increases the resources available to tribes to combat this criminal activity, along with increasing the prosecutorial and sentencing authority of tribal courts.¹⁴⁸ The Oglala Sioux Tribal Court has jurisdiction over all offenses committed by a member of the Tribe, by non-member Indians who are members of any recognized Tribe under federal jurisdiction, or by any other person consenting to its jurisdiction.¹⁴⁹ The Oglala Sioux Tribal Court additionally has concurrent jurisdiction over offenses committed which federal or state courts may also have jurisdiction.¹⁵⁰ The Oglala Sioux Tribal Court also has jurisdiction over all civil actions where the defendant is a member of the Oglala Sioux Tribe, and all other suits between members and non-members who consent to the jurisdiction of the Tribe.¹⁵¹

Tribal courts are established by and subordinate to the Oglala Sioux Tribal Council.¹⁵² The judicial powers and structure of the Oglala Sioux tribal courts are established in the Constitution of the Oglala Sioux Tribe and the Oglala Sioux Tribe: Law and Order Code.¹⁵³ Judicial power is vested in a Supreme Court and other inferior tribal courts as established by the Tribal Council.¹⁵⁴ The justice system is comprised of the Supreme Court, an inferior tribal court, a Juvenile

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Watson, *supra* note 24, at 3.

¹⁴³ Id.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Gideon M. Hart, A Crisis in Indian Country: An Analysis of the Tribal Law and Order Act of 2010, 23 REGENT U. L. REV. 139, 139 (2010).

¹⁴⁸ Id.

¹⁴⁹ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 1 (1996).

¹⁵⁰ Id. at § 1.2.

¹⁵¹ Id. at ch. 2, § 20. There is a broadly worded implied consent to jurisdiction in civil actions by any person who is not a member of the Oglala Sioux Tribe who essentially transacts any kind of business on the Pine Ridge Indian Reservation.

¹⁵² CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. III, § 1(k) (providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers).

¹⁵³ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V. OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1 (1996).

¹⁵⁴ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V.

Court, and the office of the Prosecutor.¹⁵⁵ The Oglala Sioux does not have an indigenous forum as part of its judiciary.¹⁵⁶ “There is a mixture of tribal code, federal, state, and traditional law (from prior decisions of the tribal court) used in the Oglala tribal court.”¹⁵⁷

The Supreme Court and other inferior tribal courts shall be independent from the Tribal Council and the Executive Committee, and no elected official exercising powers of the Tribal Council or the Executive Committee shall exercise powers vested in the Supreme Court or other inferior tribal courts.¹⁵⁸

Both the inferior tribal court and Supreme Court also “have the power to declare laws of the Oglala Sioux Tribe void if such laws are not in agreement of the Oglala Sioux Tribe Constitution.”¹⁵⁹ Thus, despite its organizational subordination to the Tribal Council, the Tribe’s constitutional provisions certainly support some integral separation of powers structure for the judiciary, albeit weak. The Constitution and Bylaws were amended in 1998 to provide for the election of the Chief Judge of the inferior court – the first time the “people put the chief judge in rather than the council.”¹⁶⁰

The inferior tribal court is established by the Tribal Council and is composed of one Chief Judge, four Associates Judges, and one Special Judge.¹⁶¹ The Chief Judge of the inferior court is the only elected judge by the Oglala Sioux Tribe at large and serves a four-year term.¹⁶² The Chief Judge must have a Juris Doctorate from an A.B.A. accredited law school and be licensed to practice law in any state or federal court.¹⁶³ All other judges are appointed by the Tribal Council by a two-thirds vote of those voting at a Tribal Council meeting.¹⁶⁴ The judges of the inferior tribal court must meet the qualifications of judges in Section 2.4 of the Oglala Sioux Tribe: Law and Order Code, Chapter One - Court and Procedures.¹⁶⁵ These qualifications do not include the requirement of a law degree or license to practice law.¹⁶⁶ All inferior tribal court judges serve four-year terms.¹⁶⁷

¹⁵⁵ Watson, *supra* note 24, at 77; CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V; OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1 (1996).

¹⁵⁶ *Census of Tribal Justice Agencies in Indian Country, 2002*, NCJ 205332, Table 5, 29 (Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics December 2005), [available at http://bjs.ojp.usdoj.gov/content/pub/pdf/ctjaic02.pdf](http://bjs.ojp.usdoj.gov/content/pub/pdf/ctjaic02.pdf).

¹⁵⁷ Watson, *supra* note 24, at 77.

¹⁵⁸ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V, § 1.

¹⁵⁹ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V.

¹⁶⁰ Heidi Bell Gease, *Oglala Sioux Tribe to Vote on Constitutional Changes*, RAPID CITY JOURNAL, April 14, 2008, [available at http://rapidcityjournal.com/news/local/article_f28bfb9a-da40-5177-8538-e38fbde9f2e8.html](http://rapidcityjournal.com/news/local/article_f28bfb9a-da40-5177-8538-e38fbde9f2e8.html); CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V, § 4.

¹⁶¹ *Id.*; OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 2 (1996).

¹⁶² CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V, § 4.

¹⁶³ *Id.*

¹⁶⁴ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 2.2 (1996).

¹⁶⁵ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 2.4 (1996).

¹⁶⁶ *Id.* (qualifications include 25 years old or older; never been convicted of a felony; never been convicted of a misdemeanor within one year prior to assuming office; good moral character; can read, write and understand English; and demonstrates a knowledge of the Oglala Sioux Code, court procedures, and state and federal law and court procedures).

The Supreme Court is also established by the Tribal Council and is composed of one Chief Justice, two Associates Justices, and one Alternate Justice.¹⁶⁸ The Supreme Court Justices are appointed by the Tribal Council and serve six-year terms.¹⁶⁹ The Supreme Court Justices must have a Juris Doctorate from an A.B.A. accredited law school and be licensed to practice law in any state or federal court.¹⁷⁰ The Supreme Court has exclusive jurisdiction of all appeals from final Orders and Judgments of the Oglala Sioux Tribal Court.¹⁷¹

The Juvenile Court of the Oglala Sioux Tribal Court is a division of the Oglala Sioux Tribal Court and is tasked with enforcing the juvenile code of the Oglala Sioux Tribe and associated family matters.¹⁷²

The Tribal Council also oversees the Oglala Sioux Prosecutor's office and appoints the Prosecutor.¹⁷³ The Prosecutor receives complaints from members of the public and has the power to file complaints on his own initiative.¹⁷⁴ The Prosecutor is responsible for presenting criminal cases to the Court.¹⁷⁵

Oglala Sioux Tribal Court opinions and judicial statistics are not systematically compiled. According to a 2002 Census of Tribal Justice Agencies in Indian Country, the Oglala Sioux court system, while electronically networked within the Tribe, is not accessible outside of the Tribe.¹⁷⁶ Documents reporting the volume of cases handled by the Oglala Sioux Tribal Court vary. One report indicated that the Oglala Sioux Tribal Court handled over "12,000 criminal, civil, and juvenile cases" in 1985.¹⁷⁷ Another more recent report accounted the filing of only 2,000 criminal cases in 2001 and offered no information on civil cases filed.¹⁷⁸ In an attempt to gather current information on tribal court criminal case activity, the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, recently announced it is seeking proposals to administer a 2011 National Survey of Tribal Court Systems with a focus of statistical information on crime and criminal justice administration within the tribal court system.¹⁷⁹

The Oglala Sioux Tribal Court is located on the Pine Ridge Indian Reservation in southwest South Dakota.¹⁸⁰ The Pine Ridge Court House is currently known as the "Moses Two Bulls Judiciary Building."¹⁸¹ A new justice center is scheduled to begin construction in fall 2011, which will house the Oglala

¹⁶⁷ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 2.3 (1996).

¹⁶⁸ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 6.2 (1996).

¹⁶⁹ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. V, § 3.

¹⁷⁰ *Id.*

¹⁷¹ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 6.4 (1996).

¹⁷² OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 5, § 1 (1996).

¹⁷³ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1, § 9 (1996) (eligibility for prosecutor requires membership of the Oglala Sioux Tribe; 25 years of age or older; has lived on the Pine Ridge Indian Reservation for at least five years immediately prior to appointment; has never been convicted of a felony, or a misdemeanor within the previous year; has good moral character, and speaks both English and Sioux fluently).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Census of Tribal Justice Agencies in Indian Country, 2002*, *supra* note 156, at Table 12, 83.

¹⁷⁷ *Watson*, *supra* note 24, at 3.

¹⁷⁸ *Census of Tribal Justice Agencies in Indian Country, 2002*, *supra* note 156, at Table 11, 77.

¹⁷⁹ *National Survey of Tribal Court Systems 2011 Solicitation*, 2011-BJS-2947 (Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics), available at http://www.bjs.gov/content/pub/pdf/nstcs11_sol.pdf.

¹⁸⁰ *Watson*, *supra* note 24.

¹⁸¹ OGLALA SIOUX TRIBE: LAW AND ORDER CODE ch. 1 (1996).

Sioux Tribe's judicial system under one roof.¹⁸² A ceremonial outdoor circular courtyard is planned/being built which will serve as a space for "restorative justice ceremonies, reflection and healing."¹⁸³ A special courtroom will "accommodate circle sentencing and talking circle events to keep with traditional native peacemaking principles."¹⁸⁴

IV. ENACTED LAW

The Tribal Council is vested with the power to develop, enact and enforce laws for the Oglala Sioux Tribe.¹⁸⁵ The Oglala Sioux Law and Order Code is the enacted law of the Tribe and contains a Criminal Code, an Ethics Code, a Transportation Code, an Environmental Review Code, Hemp Ordinances and Resolution, and forty-eight (48) area specific chapters of law.¹⁸⁶

The Law and Order Code covers all aspects of tribal life from regulating issues such as gaming, business, and crime, to regulating issues such as marriage, property, and education. The Criminal Code is the most extensive section of enacted law and takes up 216 pages of code all by itself.¹⁸⁷ It details crimes against property, crimes against persons, inchoate crimes, crimes against public justice, crimes against public health, safety and welfare, and traffic offenses.¹⁸⁸ The Tribe's commitment to the environment is reflected in its Environmental Code, enacted in 1998, and articulates the Tribe's goal to "protect and preserve the Pine Ridge Indian Reservation environment."¹⁸⁹ A detailed Water Quality Management Code prepared by the Oglala Sioux Tribe Environmental Health Technical Team, Environmental Protection Program, is an example of the how the Tribe is working to implement its environmental policy.¹⁹⁰ The Tribe enacted the Hemp Ordinances and Resolution in 1998, 2000 and 2001, respectively, in an exercise of tribal

¹⁸² ICTNM Staff, *New Pine Ridge Justice Center to Meet Unique Needs of Tribal Legal System*, INDIAN COUNTRY TODAY MEDIA NETWORK (July 5, 2011), <http://indiancountrytodaymedianetwork.com/2011/07/05/new-pine-ridge-justice-center-to-meet-unique-needs-of-the-indian-legal-system-41401>.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ CONST. OF THE OGLALA SIOUX TRIBE (Pine Ridge Indian Reservation) art. IV.

¹⁸⁶ *See* OGLALA SIOUX TRIBE: LAW AND ORDER CODE, [available at http://www.narf.org/nill/Codes/oglalacode/oglalatoc.htm](http://www.narf.org/nill/Codes/oglalacode/oglalatoc.htm). Chapters include: Court and Procedures; Civil Actions; Domestic Relations; Dependent, Neglected or Delinquent Children Code; Juvenile code; Elder Abuse Code; Heirship-Probate; Criminal Procedures; Penal Code; Removal of Non-members; Indian Custom Adoption; Health and Sanitation; Taxation Provisions; Rules of Court; Motor Vehicle Code; Enrollment Code; OST - Personnel Policies and Procedures; Tribal Employment Rights Office; Administration Operating Procedures; Records Management; Freedom of Information; Parade Ordinance of the Oglala Sioux Tribe; Zoning Code; Historic Site Preservation; Nuisance Abatement Code; Education Code of the Oglala Sioux Tribe; Election Ordinance; Food Services code; Oglala Sioux Tribal Gaming Code; Animal Control Code; Livestock Code; Water Code; Sewer and Sewage Code; Garbage and Refuse Disposal Code; Grazing Permit Contracts Code; Fish and Wildlife Code; Motor Vehicle Licensing Code; Oglala Sioux Tribal Mining Code; OST Gas and Oil Regulation Code; Oil and Gas Severance Code; Timber Cutting Permits; Coroner of the Oglala Sioux Tribe; Reservation-Wide School Board Code; Fee Schedule for Oglala Sioux Tribal Business Licenses Code; Oglala Sioux Tribal Bar Association; Oglala Sioux Tribal Leasehold Mortgage code; Oglala Sioux Tribal Employment Fee; and Oglala Sioux Fireworks Code.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

sovereignty and in the hopes of growing a profitable commodity for international trade.¹⁹¹ The Tribe's attempt to enforce its Hemp Ordinance was met with federal government legal action and resulted in a permanent injunction from growing hemp on the reservation.¹⁹² The Ethics Code is the most recently enacted code, adopted in April 2008, and states its purpose to "ensure that the Oglala Oyate have the utmost faith and confidence in the Oglala Sioux Tribe's government."¹⁹³

V. INTERNATIONAL LAW

The Oglala Sioux has a long history of political activism that reflects the Tribe's commitment to correct and/or prevent injustices. The Oglala Sioux experienced only a few years of peace after Red Cloud's victory in negotiating the Fort Laramie Treaty of 1868, and several conflicts with U.S. forces would ensue over the next century – most notably the Battle of Little Big Horn,¹⁹⁴ the Wounded Knee Massacre of 1890,¹⁹⁵ and Wounded Knee of 1973.¹⁹⁶ The Sioux Nation was also involved in the most significant takings case in United States history, a case involving the illegal federal seizure of the gold-rich Black Hills in 1877. The case

¹⁹¹ Id.

¹⁹² *United States v. White Plume*, 447 F.3d 1067 (8th Cir. 2006) (The district court of South Dakota found that members of the Oglala Sioux violated the Controlled Substances Act by cultivating hemp without DEA registration and that the 1868 Fort Laramie Treaty does not grant the Tribe the Right to cultivate hemp. Tribal members were ordered permanently enjoined from cultivating hemp without a valid DEA registration. The Eighth Circuit Court of Appeals affirmed the district court order.)

¹⁹³ See OGLALA SIOUX TRIBE: LAW AND ORDER CODE, available at <http://www.narf.org/nill/Codes/oglalacode/oglalatoc.htm>.

¹⁹⁴ On June 25-26, 1876, 263 soldiers, including Lt. Col. George A. Custer and attached personnel of the U.S. Army, died fighting several thousand Lakota and Cheyenne warriors. The Lakota and Cheyenne had been defending their land for over a year after word of the gold-filled Black Hills sent potential settlers and prospectors into a gold feeding frenzy. Their raids often took them off reservation land. The government, scorned by the Sioux's refusal to sell the Black Hills back to them, had decided to leave the territory unprotected and allow the gold seekers into the region. Growing weary of the persistent tribal hostilities, the commission of Indian Affairs ordered the tribes to return to their reservations or be treated as hostile "by the military force." The Lakota and Cheyenne did not comply and the army was called in to enforce the order. See Little Bighorn Battlefield National Monument, NATIONAL PARK SERVICE, <http://www.nps.gov/libi/index.htm> (last visited Aug. 8, 2012).

¹⁹⁵ Four hundred Lakota people, mostly families, had gathered on the Pine Ridge Reservation of the Oglala Sioux Nation in December 1890 to observe a religious ceremony known as the Ghost Dance. On December 29, 1890, the U.S. Army, flexing all of its federal power, fired thousands of shots in a mass execution. Estimates vary, but most place the number of dead at 300. (The Wounded Knee Massacre in 1890 is known as the event that ended the last of the Indian wars in America. In the years following the signing of the Fort Laramie Treaty of 1868 and the Battle at Little Big Horn, the government continued to coerce the Sioux into signing away more of their lands. The buffalo had nearly been driven to extinction and the government had not kept its treaty promises for either proper rations or protection. Word had spread among the reservations about a religious ceremony called the Ghost Dance and its promise to bring restoration to tribal lands. Fearing that ceremonies were war dances, the military chose to take action.) See Hugh McGinnis & Olive Glasgow, I Took Part in the Wounded Knee Massacre, OUR FAMILY HISTORY: BUILDING & SHARING GENERATIONS, <http://www.ourfamilyhistory.biz/woundedknee.htm> (last visited Aug. 8, 2012); see also Wounded Knee and the Ghost Dance, NATIONAL PARK SERVICE, <http://www.nps.gov/badl/planyourvisit/upload/Wounded-Knee-Bulletin.pdf> (last visited Aug. 8, 2012).

¹⁹⁶ The American Indian Movement was formed to address issues concerning Native Americans. In 1971, it gathered members to protest in Washington, D.C., on what they called the "Trail of Broken Promises." In 1973, AIM led a 71-day armed standoff with federal forces at Wounded Knee, South Dakota, on the Pine Ridge Reservation. See WEST'S ENCYCLOPEDIA OF AMERICAN LAW, AMERICAN INDIAN MOVEMENT (2005), available at ENCYCLOPEDIA.COM, http://www.encyclopedia.com/topic/American_Indian_Movement.aspx

spanned almost a century of litigation before finally reaching the Supreme Court in 1980.¹⁹⁷

The Oglala Sioux is seasoned in fighting injustice and its first twenty-first century cause against the TransCanada Keystone Pipeline, led by Tom Poor Bear, the Vice President of the Oglala Sioux Tribe, has support from the international indigenous community. Drawing on the language of the Declaration on the Rights of Indigenous Peoples,¹⁹⁸ the Indigenous Environmental Network drafted a “Mother Earth Accord” in response to the Keystone XL Pipeline that “insists on full consultation under the principles of free, prior and informed consent from the U.N. Declaration of the Rights of Indigenous People.”¹⁹⁹ Article 29 of the Declaration states:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. ...
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. ...²⁰⁰

Indigenous Environmental Network representatives, along with a Tribal Delegation, traveled to Washington, D.C. and submitted the Mother Earth Accord to President Obama at the Tribal Leaders White House Summit in November 2011.²⁰¹

The giant oil company TransCanada seeks to build a pipeline from northern Canada across six U.S. states to destinations in Texas and Oklahoma; a portion of which threads a path between the Pine Ridge and Rosebud reservations.²⁰² The Oglala Sioux Tribal Council passed a resolution opposing the pipeline because the land at issue is represented in the Fort Laramie treaties of 1851 and 1868, and “involves accessing a 300-foot-wide corridor through unceded treaty lands of the Great Sioux Nation.”²⁰³ Oglala Sioux Tribe President, John Yellow

¹⁹⁷ United States v. Sioux Nation, 448 U.S. 371 (1980).

¹⁹⁸ On September 13, 2007, the United Nations General Assembly adopted by majority vote the Declaration on the Rights of Indigenous Peoples (“Declaration”). United Nations Adopts Declaration on Rights of Indigenous People, UN News Service (Sept. 13, 2007), available at <http://www.un.org/apps/news/story.asp?NewsID=23794>.

¹⁹⁹ Mother Earth Accord, INDIGENOUS ENVIRONMENTAL NETWORK, available at <http://www.ienearth.org/docs/mother-earth-accord.pdf>.

²⁰⁰ United Nations Declaration on the Rights of Indigenous Peoples, art. 29 (Sept. 13, 2007).

²⁰¹ U.S. Tribal Leaders Present President Obama with Mother Earth Accord Opposing Keystone XL, INDIGENOUS ENVIRONMENTAL NETWORK (Dec. 5, 2011), <http://www.ienearth.org/news/us-tribal-leaders-present-president-obama-with-mother-earth-accord-opposing-keystone-xl.html> (last visited Aug. 8, 2012).

²⁰² Stephanie Woodard, Pipeline Must Cross Pine Ridge’s Water-Delivery System, INDIAN COUNTRY TODAY MEDIA NETWORK (Sept. 21, 2011), available at <http://indiancountrytodaymedianetwork.com/2011/09/21/planned-oil-pipeline-must-cross-pine-ridge%E2%80%99s-water-delivery-system-54942>.

²⁰³ Carol Berry, Lakota Official, Tom Poor Bear, Chides President Obama About Keystone XL Pipeline, INDIAN COUNTRY TODAY MEDIA NETWORK (October 27, 2011), <http://indiancountrytodaymedianetwork.com/2011/10/27/lakota-officla-tom-poor-bear-chides-president-obama-about-keystone-xl-pipeline-60143>.

Bird Steele, has shared his concerns about pipeline safety and protection of reservation environmental and the cultural impact with TransCanada, along with state and federal agencies.²⁰⁴

More recently Tom Poor Bear, the Vice President of the Oglala Sioux Tribe, attended President Obama's economic address to a group of University of Colorado-Denver students in Denver, Colorado on October 26, 2011, where one of the key issues was the Keystone XL oil pipeline.²⁰⁵ Speaking out in protest, Tom Poor Bear expressed concerns about pipeline ruptures and the pipeline's projected crossing of the Mni Wiconi water supply system on Pine Ridge.²⁰⁶ Although Tom Poor Bear was removed from the speech, he posted on the Oglala Sioux Tribe Website the following:

I feel that the United States of America should fulfill their obligation to the Treaty Tribes of the territory of the 1851 and 1868 Fort Laramie Treaties, and also their obligation to us as the true owners of this territory. President Obama must honor these treaties. We just want Obama to respect Mother, the Earth. We just want Obama to respect our water, which is life – and to respect our future generations. We ask all indigenous people to join us in our plight to oppose the TransCanada Keystone XL pipeline. We feel that Obama, in his position as President of the United States, should look at this issue very seriously because he also purports to represent us as indigenous peoples. So we are asking all indigenous peoples and Treaty Nations, as well as all other peoples who also respect our Mother, the Earth, to join our opposition and stop the TransCanada Keystone XL pipeline. Through a unified effort, we will accomplish this task. As our great leader of our ancestral days, Crazy Horse, once said: “You cannot sell the land your people are buried on.” I believe today he would say: “You cannot desecrate the land your people are buried on.”²⁰⁷

On March 5, 2012, five members of the Oglala Sioux were arrested after a six-hour blockade on the Pine Ridge Reservation that stopped two large trucks carrying parts of the Keystone XL Pipeline.²⁰⁸ It was reported that about 50 to 75 people actually took part in the blockade.²⁰⁹

The traditional leaders of the Black Hills Sioux Nation Treaty Council, of which the Oglala Sioux Pine Ridge Reservation is a member, vow to fight the

²⁰⁴ Woodard, *supra* note 202.

²⁰⁵ Berry, *supra* note 203.

²⁰⁶ *Id.*

²⁰⁷ Oglala Sioux Tribe Vice President, OFFICIAL WEBSITE OF THE OGLALA SIOUX TRIBE, http://www.oglalalakotanation.org/OLN/Executive_Board_Vice_President.html (last visited Aug. 8, 2012).

²⁰⁸ ICTMN Staff, Keystone Blockade on Pine Ridge Reservation Leads to Arrests, NATIVE STRENGTH March 6, 2012, <http://nativestrength.com/2012/03/06/keystone-blockade-on-pine-ridge-reservation-leads-to-arrests/> (last visited Aug. 8, 2012).

²⁰⁹ *Id.*

Keystone XL on the basis of treaty rights “because of concerns over air, water and land pollution from oil spills and fossil fuel burning.”²¹⁰

CONCLUSION

Contemporary reservation life of the Oglala Sioux retains the underlying cultural and spiritual values of its traditional law. The *tiyospaye*, the family, continues to be the basic governmental unit where tribal traditions and laws are taught and enforced. Kinship relationships still serve as the foundation for the care and concern extended to tribal members in need. Tribal leaders remain committed to injustices in order to care for the general welfare of the Tribe and in order to protect the sacred hoop. The Oglala Sioux are a determined, intelligent, and proud People. The knowledge of what it means to be a tribal people is what will always bind them in support of one another.

²¹⁰ Talli Nauman, Oglala Sioux Tribe Opposes Keystone Talks, NATIVE SUN NEWS, Nov. 10, 2011, available at <http://64.38.12.138/News/2011/003707.asp>.