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NORTHERN CHEYENNE TRIBE: TRADITIONAL LAW AND CONSTITUTIONAL REFORM

Sheldon C. Spotted Elk*

This tribal profile will examine the effects of the infringement of the Northern Cheyenne's inherent and political sovereignty through United States action. The primary purpose of this paper is to explain the traditional Cheyenne approach to governance and law through their oral history; although such an explanation is not an easy task for a system described as unmatched among the plains tribes in its complexity.¹

The Cheyenne governing system has been in existence for "centuries upon centuries, perhaps thousands of years" and goes to the core of our people's existence and identity.² In order to govern our people as Cheyenne in a post-Indian Reorganization Act (hereinafter "IRA")³ period, we had to adapt our traditional governing structure and live under two constitutions and two governments, one traditional and the other a more western-based system. The main difference between the two systems is that the Western-based system is expressed through writing, secularism, individualism and majority rule, while the traditional system is oral, largely spiritual, tribal-based and consensus-oriented. The IRA Constitution introduced this western-based philosophy to the Cheyenne.⁴

The formally elected government of the Northern Cheyenne tribe has from time-to-time encountered great political turmoil because of these conflicting systems. In the initial meeting of the Cheyenne system of law and the American system of law, there has been incongruence based upon fundamentally different values. For instance, under federal law, there is a wall of separation between church and state to prevent the government from establishing a religion. This arrangement created a safeguard against the corruption witnessed in Europe from a church-led state. However, in the Cheyenne system, government and spirituality must be together for tribal harmony and to prevent corruption. The values of the United States and Cheyenne systems also differ in terms of how each handles the relationship between political leadership and military activity. For the Cheyenne system it was necessary to separate political government and military action to safeguard against a conflict of interest between the two.⁵ Conversely, the United States President possesses powers both as a political leader and as the Commander in Chief of the military. These two examples demonstrate ways that the Cheyenne law and government are fundamentally opposed in their cultural values to the political practicality of the law that is set forth in the United States Constitution. This paper will show the effects of Western governance that have been detrimental to the social and economic well-being of the Northern Cheyenne.

Many American Indian tribes have encountered similar political strife with the introduction of Western constitutions and governance.⁶ The forced acquiescence with political liberalism, which is a system based upon individual

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¹ K.N. LLEWELLYN & E. ADAMSON HOEBEL, *THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE* 67 (1941).

² Steve Brady, Sr., Former Member, Northern Cheyenne Constitutional Reform Committee, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 92 (Eric D. Lemont ed., 2006).

³ 25 U.S.C. § 478 (1934).

⁴ Eric D. Lemont, *Introduction to AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS* 3 (Eric D. Lemont ed., 2006).

⁵ E. ADAMSON HOEBEL, *THE CHEYENNES: INDIANS OF THE GREAT PLAINS* 37 (1960).

⁶ See Eric D. Lemont, AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 200-12 (Eric D. Lemont ed., 2006).

rights, hierarchy and centralism, rather than a tribe's cultural sovereignty has disrupted the natural political climates of all tribes to some degree.⁷ A tribal constitutional reformation must take into consideration the variation of each tribe's current political climate. Although the imposition of Western political institutions occurred with all tribes, this assimilation and acculturation took place on a continuum.⁸ At one end of this continuum are tribes that have intact traditional governments; while at the other end are tribes that accepted Western political thought at an early stage. For tribes more Western in their world cosmology, reverting back to traditional governments today may be unnatural. However, in order for such reform to reflect the tribe's community values, the indigenous knowledge of the tribe's traditional governments must be taken into account during reform.

Generally, tribes have held constitutional conventions, much like the work of the United States' "founding fathers," in order to glean their societal values and draft them into a Western document. However, they have from time immemorial held ceremonies, told stories and taught their children the mores of their way of life. Today, many tribes possess their oral constitutions, and they are often different from their written IRA document.

A body of research demonstrates the importance of a representative government to the success of a tribe's well-being.⁹ The nexus lies with a government that reflects the values of a people, thus exercising the control, management and ability to determine the political future of the people¹⁰ – the core of the definition of sovereignty.¹¹

The preservation and restoration of Cheyenne language and culture are pressing issues in the twenty-first century. The Cheyenne have been taking steps to sustain their cultural sovereignty. One of the major ways the Northern Cheyenne people can affirm their political sovereignty is through a constitutional reformation that reflects their values. An attempt at reconciling the American and Cheyenne systems has many obstacles – the foremost being the extent to which the traditional system should be implemented in a Western approach. The finer details of a hybrid approach of drafting traditional law into a code and/or amending the Cheyenne Constitution to preserve traditional governing authority or eliminating the Western constitution all together is the topic of another paper.

The Cheyenne Constitution expresses the values of the tribe through cultural stories, ceremonies, governing organizations and gender roles among many other things. This paper will study Cheyenne governance through a historical understanding of the Cheyenne Oral Constitution by examining the cultural heroes of Sweet Medicine and Erect Horns, the Forty-Four Chiefs, Military Societies, ceremonial roles through law, and gender roles. Lastly, this paper will discuss the implications of constitutional reform.

AN INTRODUCTION TO THE NORTHERN CHEYENNE

Through the adoption of the generic IRA Constitutions, the Northern Cheyenne and many other tribes have been denied the basic human right of gathering their core values in a written political document. A culturally relevant constitution would reflect Cheyenne values expressed through core principles of

⁷ See MARSHALL C. EAKIN, *The Americas—Collisions and Convergence, lecture twenty-four on CONQUEST OF THE AMERICAS* (The Teaching Company (2002), available at <http://marshall-c-eakin.thelyricarchive.com/conquest-of-the-americas/>).

⁸ *Id.*

⁹ Eric D. Lemont, *Preface to AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS*, at xi (Eric D. Lemont ed., 2006).

¹⁰ *Id.*

¹¹ *Id.*

cooperation, sharing, generosity, religious spirituality and tribal welfare, all of which conflict with Western notions of competition, materialism, self-interest and individual achievement.¹²

The Northern Cheyenne Nation is located in southeastern Montana, situated about 100 miles east of Billings, Montana and 75 miles north of Sheridan, Wyoming.¹³ The reservation spans 440,882 acres; bordered by the Crow Indian Reservation to the west and the Tongue River to the east.¹⁴ The Northern Cheyenne reservation was established in 1884 by Executive Order and later expanded to its current size in 1900.¹⁵

The tribe's modern government was established by an IRA Constitution adopted in 1936 and amended in 1960 and 1996.¹⁶ The Executive office is filled by a president, vice president, secretary, sergeant-at-arms and treasurer.¹⁷ The Legislative office has ten elected tribal council positions that represent five communities; one representative for every two hundred enrolled tribal members.¹⁸ The Judicial branch has two judges elected during a general election.¹⁹

The tribe has a rich history. A significant shift in Cheyenne life occurred in the autumn of 1876 at a time when the Northern Cheyenne people were at the zenith of wealth and independence. They had successfully defended their freedom from terrorist attacks with their allies, the Sioux and Arapaho tribes. During that summer the Cheyenne defeated General George Armstrong Custer who led the Seventh Cavalry at the infamous Battle at Greasy Grass.²⁰

This great wealth of the Cheyenne lasted only a short time. On November 25, 1876, six months to the day of the great victory at Greasy Grass, United States military troops led by Colonel Ranald MacKenzie waged a surprise early morning attack that proved to be the beginning of the great assault on traditional Cheyenne governance.²¹

Later in 1877, after a brief stay at Fort Robinson, Nebraska, the United States removed the Cheyenne to Oklahoma. After a short stay in Oklahoma, iconic Cheyenne leaders, Dull Knife and Little Wolf, led a heroic escape to return the tribe back to their homeland in the north. After the Cheyenne made this great exodus, the United States granted the Tongue River reservation in 1884.²² Despite being on the reservation, Cheyenne governance continued to be controlled by the Chief Society – the Council of Forty-Four. All the while, the United States had a superintendant stationed on the reservation to monitor and govern the tribe.

The Chiefs traditionally determined where villages were to be set up, when to move and how to deal with deviants among the tribe. Their function was parliamentary in nature - establishing the traditions and law of the people - and as a judiciary – interpreting the law.

¹² Bob Struckman & Ray Ring, *A breath of fresh air: Surrounded by massive build up, the Northern Cheyenne defend its homeland*, HIGH COUNTRY NEWS, January 20, 2003, available at <http://www.hcn.org/issues/242/13658>.

¹³ TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS 667-68 (Veronica Tiller ed., 2 Sub ed. 2006).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 667.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS 667-68 (Veronica Tiller ed., 2 Sub ed. 2006).

²⁰ See generally DEE BROWN, BURY MY HEART AT WOUNDED KNEE, 264-96 (1970) (detailing the events leading up to the campaign waged against the Sioux and Cheyenne).

²¹ See LLEWELLYN & HOEBEL, *supra* note 1, at 120.

²² For a more detailed account of the Cheyenne Exodus, see BROWN, *supra* note 20, at 316-30.

**CHEYENNE HEROS, SWEET MEDICINE AND ERECT HORNS, & THE
FORMATION OF THE SACRED OBJECTS – CENTRAL TO
CHEYENNE’S TRADITIONAL GOVERNENCE**

Long before the military intrusion by the United States, the Cheyenne were a poor people living in the Great Lakes region. It was the Cheyenne prophet, Sweet Medicine, who led his people to become one of the dominant tribes of the Great Plains. Sweet Medicine is the most venerated cultural hero among the tribe. Sweet Medicine prophesied about the Cheyenne people and the transition of their cultural practices as he saw the coming of the White people, the horse and the decimation of the buffalo.²³ Sweet Medicine’s prophecy is as follows:

“Far away in that direction is another kind of buffalo. It has long hair on its neck, and a tail that drags on the ground. It has a round hoof – not a split one like the buffalo – and it has teeth in the upper part of its mouth as well as below. You will ride this animal. The buffalo will disappear. When the buffalo are gone, the animal you will eat will be spotted. Soon you will find among you a people with hair all over their faces. Their skin will be white. When that time comes, they will control you. The white people will be all over the land; and at last you will disappear.”²⁴

Sweet Medicine was unlike any Cheyenne holy man to have ever lived with the people. Sweet Medicine’s essence and life epitomizes Cheyenne law. He received the four Sacred Arrows, two for war and two for hunting from the Ma’heono (holy people)²⁵, inside of Novavose (Bear Butte).²⁶ The Sacred Arrows symbolize the collective existence of the tribe, and are taken care of properly so the tribe will prosper.²⁷ The Sacred Arrows are the heart of the tribe and are the Cheyenne’s greatest resource against their most manifested anxieties – failure of the food supply and extermination by enemies. The Sacred Arrows, as Ma’heono’s greatest gift to the Cheyenne, are “their central insurance for survival.”²⁸

Sweet Medicine also provided four primary taboos to the Cheyenne: murder, theft, infidelity and incest.²⁹ These taboos were to prevent conflict and promote harmony and unity among the tribe. Each of these taboos invoked religious, criminal and civil repercussions. As such, the taboos are collectively classified as sins, crimes and torts.³⁰

In addition to Sweet Medicine, Erect Horns is also a venerated leader, and much of Cheyenne culture can be attributed to him. Erect Horns was a member of the So’taa’e.³¹ The So’taa’e are linguistically connected to the Cheyenne and lived with the tribe many years before they both were assigned to the reservation in Montana.³²

²³ PETER J. POWELL, SWEET MEDICINE: THE CONTINUING ROLE OF THE SACRED ARROWS, THE SUN DANCE, AND THE SACRED BUFFALO HAT IN NORTHERN CHEYENNE HISTORY 466 (1969).

²⁴ *Id.*

²⁵ WAYNE LEMAN, MARIE SANCHEZ, LEROY PINE SR., & LOUISE FISHER, CHEYENNE DICTIONARY 132 (2008).

²⁶ POWELL, *supra* note 23, at 447.

²⁷ HOEBEL *supra* note 5, at 7.

²⁸ *Id.* at 8.

²⁹ COURTNEY MILNE, SACRED PLACES IN NORTH AMERICA: A JOURNEY INTO THE MEDICINE WHEEL 33 (1995).

³⁰ See LLEWELLYN & HOEBEL *supra* note 1, at 118.

³¹ LEMAN, SANCHEZ, PINE, & FISHER, *supra* note 25, at 254.

³² See POWELL, *supra* note 23, at 24 (explaining the So’taa’e and Cheyenne met during a battle, during the fighting they learned they spoke the same language and became allies eventually living together).

Erect Horns' defining moment came during a great famine. Erect Horns, together with a woman, went to Sacred Mountain to speak to the All Father. In turn, the All Father gave them the Sun Dance and a buffalo horned hat and then instructed them on how to keep and use it to bless the people.³³ Through the Esevone (Sacred Hat),³⁴ the Earth blessed the So'taa'e people with herds of animals and fruits to be free from famine.³⁵

Esevone is of female renewing power, the name literally translates to mean herd of buffalo and the Hat derives her power to renew the herds.³⁶ Before Erect Horns left the So'taa'e people he instructed:

“You must tell whoever you pass it [Esevone] over to, that they must take good care of it, and never injure it in any way. If, in any manner, the Hat is abused or hurt, the buffalo will disappear, because the Hat is the head chief of the buffalo.”³⁷

The Cheyenne people received their constitutional emblems, the Maahotse (Sacred Arrows)³⁸ and Esevone (Sacred Hat), through Sweet Medicine and Erect Horns. Together they bring the “blessed male-female relationship,” harmony, unity and self-identity.³⁹ These two cultural heroes were foreordained for their positions. One story recounts Grandmother Earth meeting with the two leaders to help end a famine. She provided corn and meat for the tribe. Soon after Grandmother's generosity, the buffalo roamed plentiful so that tribesman could kill them on foot. The following spring, the tribe planted corn, only to have their crops stolen in the fifth year. This event is the catalyst for Erect Horns to meet with Grandmother again to re-emerge with the Sacred Hat.⁴⁰ Erect Horns then foretells that sometime in the future Sweet Medicine will bring another sacred medicine, Sacred Arrows.⁴¹

This story illustrates the transition of Cheyenne life through the agricultural names of the two heroes, Sweet Medicine (also known as Sweet Root Standing) and Erect Horns. Cheyenne were once farmers of the woodlands relying upon corn,⁴² the sweet root standing high above the ground,⁴³ but then transitioned to buffalo hunting on the plains.⁴⁴ Most importantly, the two sacred objects that define the People in ceremonial practices is evidence of these leaders' contributions to Cheyenne life.

The laws and ceremonies that correspond with the maintenance of the sacred objects promote a sacred unity within the tribe. Laws relating to murder, theft, infidelity and incest safeguard against significant disputes within the tribal body.⁴⁵ These rules can be defined as public laws; in other words, the law that is enacted on behalf of the society that is administered by both public and religious officials.⁴⁶ These laws are what sustain the People and provide an environment for survival and holistic growth.⁴⁷ The relationship between the Sacred Emblems and

³³ See POWELL, *supra* note 23, at 467-71.

³⁴ LEMAN, SANCHEZ, PINE, & FISHER, *supra* note 25, at 31.

³⁵ POWELL, *supra* note 23, at 470-71.

³⁶ *Id.* at xxiii. The author provides an interesting account from an aged Sac and Fox woman who upon hearing the word “Esevone” recalled that it was used as a woman's name and its meaning was “Something Coming Out of the Ground”. *Id.*

³⁷ *Id.* at 70-71.

³⁸ LEMAN, SANCHEZ, PINE, & FISHER, *supra* note 25, at 123.

³⁹ POWELL, *supra* note 23, at xxiii.

⁴⁰ *Id.*

⁴¹ *Id.* at 872.

⁴² PEGGY BECK, THE CHEYENNE 3 (Navajo Community College Press 1977).

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 2-5.

⁴⁵ HOEBEL, *supra* note 5, at 49-50.

⁴⁶ *Id.* at 49.

⁴⁷ *Id.* at 50.

the People is cyclical; the objects (arrows and hat) bless the People and the People's harmony empowers the objects.⁴⁸ Conversely, if the Sacred Objects are abused and mistreated, destruction and death may loom over the tribe.⁴⁹

Today, the Sacred Arrows are kept with the Southern Cheyenne in Oklahoma, while the Sacred Hat is kept with the Northern Cheyenne in Montana.⁵⁰ Both sacred objects require a full-time Keeper to watch and pray over them daily.⁵¹ The Arrows and Hat are assurance from Ma'heono, the supernatural powers, that the tribe will not be corrupted.⁵² Unlike other political leaders, such as the members of the Forty-Four Chiefs, Keepers of the Sacred Arrows can be removed for failure to perform their duties.⁵³ However, there are no pre-qualifying standards for Keepers to be selected except that "they [be] good-natured and honest and [they should] not get mad too easily."⁵⁴

In cases of impeachment of the position of a Keeper, the proper procedure allows anybody in the tribal body to protest the Sacred Hat's care.⁵⁵ Grievances are heard before the military society, not the Chiefs, to determine if the Keeper needs to be removed from his office.⁵⁶ The primary societies that guard the Sacred Bundle are the Bowstring and Crazy Dogs (Dog Soldier) groups.⁵⁷

A contemporary Keeper of the Sacred Hat, Douglas Spotted Eagle explained the job insecurity of his appointment in the tribe, "As Keeper you have to accept that you may care for the Sacred Bundle for the rest of your life, or She may be removed from your care tomorrow."⁵⁸

The two Sacred Bundles are central to Cheyenne governance and law. Collectively the health, prosperity, renewal and survival of the Cheyenne people are invested in the care of these objects.⁵⁹ The rest of Cheyenne traditional government and ceremonies are appendages to these central Sacred Objects.

To adequately understand Cheyenne government structure, an introduction to the Chief Society and their function is necessary.

TRADITIONAL CHEYENNE GOVERNANCE – THE FORTY-FOUR CHIEFS AND SUBORDINATE SOCIETIES

In the contemporary literature regarding Cheyenne government, there are three primary theories of the organization of the Forty-Four Chief structure. The first of these theories attributes the vast organizational structure of the Forty-Four Chiefs (Chief Society) to the work of a woman who was captured by a neighboring tribe.⁶⁰ Another theory suggests Sweet Medicine received the government structure and the Sacred Arrows from the Holy People (Ma'heono).⁶¹ The last of the theories is a story about young children that were initially deserted by the tribe but survived and were taught by the animals about the necessity of leadership.⁶² When the

⁴⁸ *Id.* at 50-51.

⁴⁹ *Id.*

⁵⁰ RONALD H. LIMBAUGH, CHEYENNE AND SIOUX: THE REMINISCENCES OF FOUR INDIANS AND A WHITE SOLDIER 6, n.7 (Thomas B. Marquies ed., 1973) (explaining the Northern and Southern Cheyenne bands are said to have last gathered as one band around the establishment of Ft. Laramie 1849 and by 1857 had split into two separate bands).

⁵¹ JOHN STANDS IN TIMBER & MARGOT LIBERTY, CHEYENNE MEMORIES 74 (1967).

⁵² *Id.*

⁵³ See LLEWELLYN & HOEBEL *supra* note 1, at 79.

⁵⁴ *Id.* at 74.

⁵⁵ SERLE L. CHAPMAN, PROMISE: BOZEMAN'S TRAIL TO DESTINY 165 (2004).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 165.

⁶⁰ *Id.*

⁶¹ Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008).

⁶² LLEWELLYN AND HOEBEL, *supra* note 1, at 69-73.

children reunited with the tribe, they organized Forty-Four Chiefs.⁶³ Given that there are three different theories, the origin of Cheyenne governance is controversial. Also, there is no external evidence to support the beginning of the Forty-Four Chiefs of the Cheyenne. “[W]hile the migration legends of the Cheyenne can be substantiated by historical and archeological fact . . . the origins of the chiefs enjoy no such buttressing. . . . [T]hey remain pure mythology.”⁶⁴

George Bird Grinnell, an author and ethnologist, recorded the oldest accounts through interviews at the turn of the nineteenth century. These accounts confirm the theory of the young children being taught by animals. The children in turn brought the government structure they learned from the animals to the Cheyenne. Other authors doubt the notion of the captured woman because no evidence exists of similar governing structures by other tribes. However, many oral history accounts substantiate Sweet Medicine as the author of the Chief Society organization.⁶⁵

Regardless, Cheyenne traditional government is an unmatched organization among the Plains tribes.⁶⁶ The Council of Forty-Four Chiefs was a self-perpetuating body of tribal trustees; each member was selected by a predecessor and in turn, each member eventually selected a successor to serve in the Chief capacity for a ten-year term.⁶⁷ The Council of Forty-Four Chiefs was based upon democratic principles of representation, consensus and access.⁶⁸ It was estimated that each band had equal representation on the council, “and the ratio of forty-four chiefs for no more than four thousand is better than one representative to one hundred citizens.”⁶⁹

Representation was a primary concept of Cheyenne government where a variety of representative political and personal interests were to be embodied by the Chiefs.⁷⁰ This representation permitted a spot for a non-Cheyenne, most often a Dakota, to have a voice in the Chief Society, usually by marrying into the tribe.⁷¹ It is said to have been a regularly observed rule that one member of the Council was always from an alien Indian tribe.⁷² This rule guaranteed formal governmental recognition of the Cheyenne-Sioux alliance by providing a voice to a non-Cheyenne.⁷³

The foundation of the “Cheyenne social structure is the tribal council of Forty-Four Chiefs.”⁷⁴ In the unwritten constitution of the Cheyenne people, there is a strong separation of civil authority and military power.⁷⁵ Once a Chief is chosen into the Chief Society, he maintains his membership in his military society but is no longer active.⁷⁶ Chief Society membership requires, above all, a disposition for peace even though Chiefs are usually proven warriors.⁷⁷

Cheyenne governance possesses two fundamental branches, the Council of Forty-Four Chiefs (Chief Society) and Military Societies.⁷⁸ Each branch performs a primary function; however, flexibility within the government is

⁶³ *Id.* at 73.

⁶⁴ LLEWELLYN & HOEBEL, *supra* note 1, at 68.

⁶⁵ STANDS IN TIMBER & LIBERTY, *supra* note 51, at 12.

⁶⁶ LLEWELLYN & HOEBEL, *supra* note 1, at 67.

⁶⁷ GEORGE BIRD GRINNELL, CHEYENNE INDIANS 340-43 (1922).

⁶⁸ HOEBEL, *supra* note 5, at 46.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ LLEWELLYN & HOEBEL, *supra* note 1, at 76.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ HOEBEL, *supra* note 5, at 37.

⁷⁵ *Id.*

⁷⁶ LLEWELLYN & HOEBEL, *supra* note 1, at 99.

⁷⁷ HOEBEL, *supra* note 5, at 37.

⁷⁸ *Id.*

practiced.⁷⁹ The principle duties of the Chief Society are to establish the political direction of the tribe and also to act as a judiciary.⁸⁰ Separately, the Military Societies, whom are subordinate to the Chief Society, perform police and martial functions.⁸¹

To prevent the vesting of the two types of office in any one individual and under the principle of checks and balances, it was required that the newly appointed Chief give up his military post.⁸² A Chief of a Military Society (Military Chief) could be elevated to the Council of Forty-Four but it was necessary he have emeritus status with his military society.⁸³ The relinquished military post also served to prevent any conflicts of interest that might arise with a Chief fulfilling his foremost duty of peace while leading a military expedition.⁸⁴

Chiefs did not campaign nor graduate through age into office, but instead they were selected among the men in the tribe with an expectation to uphold a high ethical code.⁸⁵ The ideals for a man in the Chief Society were the qualities of Cheyenne leadership – “wisdom, courage, kindness, generosity and even temper.”⁸⁶ Specific examples of behavior include an altruistic disposition and constantly giving to the poor.⁸⁷ “Whatever you ask of a chief, he gives it to you. If someone wants to borrow something of a chief, he gives it to that person outright.”⁸⁸

In the case studies provided in *The Cheyenne Way*, the authors note the circumstances of Pawnee, a young Cheyenne deviant who had been physically punished by the Bow String Society for stealing horses on multiple occasions.⁸⁹ Left for dead far from the tribe’s camp, he was found by High Back Wolf, a newly appointed Chief.⁹⁰ In this case study, High Back Wolf exemplifies the conduct of a chief by taking care of young Pawnee even after the Bow String soldiers punished him for his crimes.⁹¹ In the depiction he tells Pawnee, “That is what I am here for, because I am a Chief of the people. Here are your clothes. Outside are three horses. You may take your choice! . . . Here is a mountain lion skin. I used to wear this in the parades. Now I give it to you.”⁹²

In this case study, the two functions of flexible Cheyenne governance are displayed: 1) the Chief Society’s role as counselor and peace-maker; and 2) the Bow String Society’s role as police and judiciary. The roles of the Chiefs and Military Societies diverge throughout this account of Cheyenne criminal prosecution. As a subordinate organization, the Bow String Society enforces public law (crime against property) and executes the corporal punishment for young Pawnee’s crime. As a Chief, High Back Wolf is able to provide rehabilitation through guidance and counseling to Pawnee.

In this case the Chief did not serve as Pawnee’s judiciary; but instead, the Bow String provided both the roles of enforcement and ad hoc judges. The Bow Strings determined the extent of Pawnee’s punishment based on his criminal past. They utilized the flexibility in traditional government for efficiency because often times the lack of centralized government permit Military Societies to rule on

⁷⁹ LLEWELLYN & HOEBEL, *supra* note 1, at 67.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 102.

⁸³ *Id.*

⁸⁴ LLEWELLYN & HOEBEL, *supra* note 1, at 49.

⁸⁵ GRINNELL, *supra* note 67 at 340-43.

⁸⁶ *Id.* at 73.

⁸⁷ LLEWELLYN & HOEBEL, *supra* note 1, at 79.

⁸⁸ HOEBEL, *supra* note 5, at 37. Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008) (“If you have your last five dollars and someone in need asks you for it, a Chief will give it to [you].”).

⁸⁹ See LLEWELLYN & HOEBEL, *supra* note 1, at 6-9.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 8.

matters that do not affect the tribe as a whole.⁹³ The military societies were limited to issues that only pertained to individuals.⁹⁴

After 1884, during the transition period from a complete sovereign to the “quasi-sovereign”⁹⁵ status, the Cheyenne preserved their traditional governance particularly in the form of tribal police known as the Dog Society. The purpose of the Dog Society was to carry out orders from the Chief Society. At all times they were camp guards required to keep themselves ready to do whatever fighting might be necessary to repel a sudden attack. When these tribal policemen were on duty they carried a picket-pin with rawhide rope attached. In case of serious attack they were to tether themselves to the ground to conquer or to die in their duty.⁹⁶

Gradually, through the years, the presence of agency officials supplanted Cheyenne self-government by substituting their traditional governance and management of public affairs.⁹⁷ Today, except in directing ceremonial occasions, the Cheyenne have little left of their old governing system.⁹⁸

MILITARY SOCIETIES

The Military Societies were an essential arm of the governing body of the Cheyenne. The separation of Chief and Military Societies were safeguards to prevent the conflict of interest between a Chief Society leader whose primary objective is peace and a member of a Military Society whose objective is bravery.⁹⁹ This separation safeguard was in the form of the Chief relinquishing his responsibilities with his Military Society before taking his seat as a Chief.¹⁰⁰

Traditional Cheyenne government is not a central government led by a strong executive leader; rather it is spread out among the Chiefs, society leaders and the tribally-oriented.¹⁰¹ Before the Northern and Southern branches divided in the mid-nineteenth century, all the bands would gather together every summer to appoint new political leaders and to perform renewal ceremonies for the tribe.¹⁰²

There are conflicting accounts of the original societies that were organized. John Stands-In-Timber in *Cheyenne Memories* gives the following account, “different people have made different lists of the [M]ilitary [S]ocieties and their customs, and this is a confusing thing.”¹⁰³ The number of original societies in the literature ranges between four through ten. However, the consistent groups among the accounts are the four original societies: Fox, Elk, Shield and Bowstring.¹⁰⁴ Other societies such as Dog Soldiers and Contrary Society may have come later.

Membership in the Military Societies was open to men of all ages and the societies promoted free association at the discretion of the individual.¹⁰⁵ When a Cheyenne boy was ready to go to war, he could join any society of his choice.¹⁰⁶ It was rare that someone would change societies but it was not uncommon.¹⁰⁷

⁹³ LLEWELLYN & HOEBEL, *supra* note 1, at 131.

⁹⁴ *Id.* at 130.

⁹⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978) (explaining ‘quasi-sovereignty’ is what is left after tribes ceded lands over to the federal government, retaining a limited form of self-governance).

⁹⁶ LIMBAUGH, *supra* note 50, at 58.

⁹⁷ BECK, *supra* note 42, at 42-45.

⁹⁸ *Id.* at 59.

⁹⁹ HOEBEL, *supra* note 5, at 37.

¹⁰⁰ *Id.*

¹⁰¹ LLEWELLYN & HOEBEL, *supra* note 1, at 67.

¹⁰² *Id.* at 74.

¹⁰³ LIMBAUGH, *supra* note 50, at 58.

¹⁰⁴ LIMBAUGH, *supra* note 50, at 58.

¹⁰⁵ HOEBEL, *supra* note 5, at 33-34.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Each of the Military Societies, much like the Chiefs, had four leaders: two head chiefs who lead ceremonial meetings and two messengers.¹⁰⁸ Each of these leaders had a reserved place inside the lodge to perform their function. Head chiefs sat opposite the east facing door, in the customary place of honor in the lodge.¹⁰⁹ Messengers sat next to the door on the east-side; usually “these [were] the two bravest men in the society.”¹¹⁰

Unlike the governing Chief Society, leaders of the Military Societies were “subject to impeachment for malfeasance in office.”¹¹¹ One famous example of an impeachment was of Little Wolf, the leader of the Cheyenne exodus from Oklahoma. During the winter 1879, Little Wolf killed Starving Elk after the long exile in Fort Keogh.¹¹² Little Wolf voluntarily carried out his own impeachment rather than go before a tribunal. His character as a Chief would have required his conformance of the law.

There was a unique political flexibility between the Military Societies and the governing Chief Society. The Chiefs possessed a high status and seniority; but at times, the Military Society possessed the legislative and judiciary power to dictate the policy of the tribe or toward individuals as seen in the example of young Pawnee. Author Peter Powell observed in *Sweet Medicine*,¹¹³ “[u]ltimate legislative power rested in the hands of the Forty-Four. The power might be delegated, but it was the right of the Council Chiefs alone to initiate such delegation. Under any circumstances, a unanimous consensus would be sought before a decision was announced to the people.”¹¹⁴

Traditionally, there were shifting powers between the Military Societies and Chief Society regarding legislative authority during time of war. “[W]henver there was an important problem of tribal policy to be decided, it was ordinary to see the chiefs’ and the [Military Societies] send messengers moving back and forth between the meeting lodges.”¹¹⁵ In this way the legislative communication was achieved “without a resort to dictatorship or [political] friction” by the Chiefs deciding how the military should fight.¹¹⁶

Even though political power was shared between the two governmental entities, the Military Societies and Chief Society, the Military Societies had limited power.¹¹⁷ For example, as the protectors of the Sacred Hat, the military had the power to remove the Keepers of the Sacred Bundles.¹¹⁸ Military Societies played a subordinate role to the supreme authority in the tribe, the Chief Society.

The civil and ceremonial roles of both societies were essential in the law making and law breaking aspects of Cheyenne life. Each society was governed by different sets of guiding principles. The Chief Society’s principles were kindness, charity and wisdom, while the Military Societies’ principles were bravery, courage and service. These roles were defined even more through caring for the tribe’s sacred objects and administering the ceremonial observances.

ROLE OF CEREMONY IN LAW

The relationship between function, time, and place are important for Cheyenne ceremonial purposes. The three primary Cheyenne ceremonies are the

¹⁰⁸ *Id.* at 34.

¹⁰⁹ *Id.*

¹¹⁰ LLEWELLYN & HOEBEL, *supra* note 1, at 101.

¹¹¹ *Id.* at 102.

¹¹² *Id.* at 83.

¹¹³ POWELL, *supra* note 23, at 466.

¹¹⁴ *Id.* at 184 n.5.

¹¹⁵ LLEWELLYN & HOEBEL, *supra* note 1, at 94.

¹¹⁶ *Id.*

¹¹⁷ HOEBEL, *supra* note 5, at 37.

¹¹⁸ POWELL, *supra* note 23, at 357 n.3.

Arrow Renewal, Sun Dance, and Animal Dance.¹¹⁹ The former two symbolize the sacred function that Sweet Medicine and Erect Horns served in Cheyenne culture.¹²⁰ Pledgers of these ceremonies represent their cultural heroes performing their sacred acts over the duration of time when they received the tribe's cultural objects – the Sacred Arrows and Sacred Hat.¹²¹

Sweet Medicine received the Sacred Arrows at Novavose (Bear Butte), which is near present day Sturgis, South Dakota.¹²² Novavose represents the place of two major events in Cheyenne history. The two major events are when Sweet Medicine had his epiphany and, before that, when Bear Butte was introduced as the location of the Great Race. The Great Race is an account that demonstrates the role of humans as caretakers and stewards over other animals.¹²³ The story provides background to the spiritual significance of Bear Butte as well as background to the ceremony.¹²⁴

The Great Race took place at a time when humans and fellow animals preyed indiscriminately on each other.¹²⁵ Man suggested a race pitting the humans against the buffalo; however all the two-legged, winged and four-legged animals divided, took sides and vied for the position of the custodian of all living beings.¹²⁶ Each animal painted themselves in the colors they are fashioned in today and they also took vows.¹²⁷ For example, the eagle painted his body brown and his head white and vowed “I will whistle and my home will be the air between the sky and the earth.”¹²⁸

The race rose to such intensity that the ground they raced upon wore away and left the land to rise up into a mountainous bulge. This bulge became the Black Hills and the heart of the mountain range, the sacred Bear Butte.¹²⁹ As the animals approached the finish line, man was nowhere in sight and it seemed imminent that the buffalo was going to win when the magpie came out of the sky to win the race.¹³⁰ The magpie helped the humans by racing on their side and victory for the humans meant that the buffalo had to become the prey for the humans.¹³¹ Since the magpie was on the side of the humans, the Cheyenne vowed to never kill or eat a magpie.¹³² Because he was the victor, the magpie is also able to live off the flesh of other animals.¹³³

The significance of the Novavose location in both historical and contemporary Cheyenne life is that it is a place where the people visit often to receive their ceremonial power.¹³⁴ A significant interruption of Cheyenne ceremony was during the early reservation era by the federal agents who suppressed travel beyond reservation boundaries to Novavose,¹³⁵ and thus effectively smothered the traditional government structure of the Cheyenne. Cheyenne people were prohibited from taking pilgrimages to Novavose between the years of 1913 and 1939.¹³⁶ During that time the reservation was a prison and

¹¹⁹ See HOEBEL, *supra* note 5, at 6-17.

¹²⁰ *Id.* at 10-12.

¹²¹ *Id.* at 9.

¹²² See STANDS IN TIMBER & LIBERTY, *supra* note 51, at 36.

¹²³ *Id.*

¹²⁴ *Id.* at 35-36.

¹²⁵ *Id.*

¹²⁶ POWELL, *supra* note 23, at 476.

¹²⁷ STANDS IN TIMBER & LIBERTY, *supra* note 51, at 23.

¹²⁸ *Id.*

¹²⁹ *Id.* at 23-24.

¹³⁰ *Id.* at 23.

¹³¹ *Id.* at 24.

¹³² *Id.* at 23.

¹³³ STANDS IN TIMBER & LIBERTY, *supra* note 51, at 23-24.

¹³⁴ POWELL, *supra* note 23, at 477-78.

¹³⁵ *Id.* at 414.

¹³⁶ *Id.*

Cheyenne people needed permission to leave. Moreover, the Sun Dance was also prohibited on the Northern Cheyenne reservation between 1907 and 1934.¹³⁷ The Sun Dance was appalling to Anglo outsiders who viewed it as a “barbarous and demoralizing ceremony.”¹³⁸ The prohibition ended around the federal Indian policy shift from assimilation to reorganization (the Indian New Deal) beginning with IRA Constitutions.¹³⁹

The timing of each ceremony is as important as the acts of the pledgers. Among the three major ceremonies for Cheyenne, the first is the Arrow Worship, held annually as the first ceremony of the season.¹⁴⁰ No other ceremony may be held before the Arrows are renewed in June.¹⁴¹ The process of the ceremony takes four days and symbolizes when Sweet Medicine received the Arrows at Novavose.¹⁴² During the ceremony the Arrows are literally renewed; the feathers, stone points and stems are replaced from the year’s previous physical and spiritual damage.¹⁴³

If a murder occurs, it was mandatory that the Arrow Worship ceremony be performed to protect the tribe.¹⁴⁴ “Not only did the murderer become internally polluted and begin to rot inside, but flecks of blood soil the feathers of the Arrows.”¹⁴⁵ The theme of renewal was a major part of the justice system for the Cheyenne.¹⁴⁶ The tribe’s goals were to renew and restore harmony when murder – the most horrendous crime and sin – was committed.¹⁴⁷ The murderer would be exiled, unless there were mitigating reasons, such as self-defense.¹⁴⁸ The sentence of exile was enforced by the Military Society.¹⁴⁹ The convicted murderer was taken four rivers or four hills away from the tribe. The duration of his sentence would be three, five, or ten years;¹⁵⁰ however, at times this would be equivalent to a death sentence because of the struggle of surviving by oneself. Upon completion of the sentence, the convicted could be reintegrated back into the tribe.¹⁵¹ However, the ex-convict could never regain his or her previous status and his or her family was also banned from tribal gatherings.¹⁵²

The purpose of excommunication of the murderer from the tribe served both the interest of the tribe and the individual. Exile was viewed as corrective, not as a vindictively punitive measure.¹⁵³ The act of murder disrupted the fabric of the tribe and literally polluted the Sacred Arrows, the identity of the tribe.¹⁵⁴ The tribe asked that an individual place the interests of the tribe before his or her own.¹⁵⁵

So as with individual worship, the pledger will self-sacrifice on behalf of someone, possibly a family member, as well as the tribe.¹⁵⁶ Sacrificial acts typically take the form of fasting and prayer. The act of piercing the chest in the Sun Dance

¹³⁷ *Id.* at 354.

¹³⁸ *Id.* at 355.

¹³⁹ *Id.* at 354.

¹⁴⁰ HOEBEL, *supra* note 5, at 6-7.

¹⁴¹ Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008).

¹⁴² HOEBEL, *supra* note 5, at 7.

¹⁴³ *Id.* at 9-10.

¹⁴⁴ *Id.* at 50-51.

¹⁴⁵ *Id.* at 8.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 50-51.

¹⁴⁸ LLEWELLYN & HOEBEL, *supra* note 1, at 316.

¹⁴⁹ HOEBEL, *supra* note 5, at 51.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008).

¹⁵³ HOEBEL, *supra* note 5, at 51.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 51.

¹⁵⁶ *Id.* at 15-16.

is not a traditional rite; however, pledgers can perform the ritual if they feel that is what they need to do to worship.¹⁵⁷

In religious ceremonies, the ritual acts, not the words, are of most importance.¹⁵⁸ The acts are effective forces in themselves and “re-tune” the harmony of the Cheyenne as a whole.¹⁵⁹

To reiterate, the major ceremonies of the Cheyenne fulfill many roles of Cheyenne law. An outside observer noted, “When the man makes the vow [to Sun Dance], he does it not so much for himself or his family, [but] as for the whole tribe.” The ceremonies reinforce the organization of the tribe, as the Chiefs are the sponsors of the ceremonies. Moreover, ceremony functions as a reminder of the communal orientation of the law, and ritual reinforces Cheyenne and the role of human-kind as care-takers over the animals, earth and creation.

GENDER ROLES IN TRADITIONAL GOVERNANCE

Cheyenne government and law are primarily paternal entities with men occupying the offices in the Chief Society as well as in the Military Societies. This paper refers, to a great degree, to the male roles within the tribe; accordingly, this section will focus on the essential role women play in government, ceremony, law and community.

Women play important roles in Cheyenne law, often as instructors, priestesses and occasionally warriors.¹⁶⁰ In oral history, female figures have been identified for their significant roles. Grandmother Earth instructed Erect Horns on the Sacred Hat and Sun Dance.¹⁶¹ Women serve sacred roles in ceremonies, and as a Priestess as Medicine Lodge Women.¹⁶² One of the origin theories of the Chief Society is attributed to the work of a woman.¹⁶³ Thus, women have consistently played important roles in Cheyenne life throughout history.

In Cheyenne culture, women have always been considered nurturers, with nurturing being central to life itself.¹⁶⁴ Female children were taught at a young age to identify herbs for cooking and healing,¹⁶⁵ to do quill work for clothing,¹⁶⁶ and to learn the skills for maintaining a lodge.¹⁶⁷ Women, like men, were known to go off by themselves to remote places to fast, pray and perhaps bring forth guardian spirit helpers. Female chastity was highly valued for social and ceremonial reasons.¹⁶⁸ Cheyenne family structure revolved around the woman and customs were established from the mother’s side of the family.¹⁶⁹

Women possessed complete property rights, as the lodge was traditionally under the ownership of the woman alone.¹⁷⁰ A woman’s duty included setting up and taking down the lodge when it was time to move. Often times a lodge cover and tipi poles were good wedding gifts for newly married Cheyenne women.¹⁷¹

Politically, women were called the “final authority in camp.”¹⁷² Chiefs were inclined to listen to the opinions of women through their wives.¹⁷³ This

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 83.

¹⁵⁹ HOEBEL, *supra* note 5, at 83.

¹⁶⁰ Linda Wommack, *Cheyenne Women Honor Tradition*, WILD WEST MAGAZINE, Apr. 2008, at 22.

¹⁶¹ POWELL, *supra* note 23, at 470-71.

¹⁶² GRINNELL, *supra* note 67, at 343.

¹⁶³ BECK, *supra* note 42, at 7.

¹⁶⁴ GRINNELL, *supra* note 67, at 127-28.

¹⁶⁵ BECK, *supra* note 42, at 20.

¹⁶⁶ *Id.* at 5.

¹⁶⁷ GRINNELL, *supra* note 67, at 159.

¹⁶⁸ *Id.* at 156.

¹⁶⁹ HOEBEL, *supra* note 5, at 22.

¹⁷⁰ GRINNELL, *supra* note 67, at 129.

¹⁷¹ Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008).

¹⁷² GRINNELL, *supra* note 67, at 157.

process was informal but Cheyenne women were noted for their abilities to convince and persuade and to determine advantageous outcomes.¹⁷⁴

Ceremonially, the female role of nurturer was essential to all of Cheyenne ceremony. Sacrifice exemplifies ceremony as it is pleasing to the Creator and Sacred Powers. Chastity was highly respected by both men and women. Great respect was given to men and women who after a marriage ceremony did not consummate their marriage until many months later.¹⁷⁵ Consequently, females place a high value on chastity as an expression of sacrifice and renewing.¹⁷⁶ Cheyenne women were popularly known for their chastity among other Plains tribes and among outsiders that came in contact with the Cheyenne.¹⁷⁷ R.L. Upshaw, a federal agent stationed on the Tongue River Reservation, noted in 1889 that “the habits of the women as to chastity are almost universally good; better than white people. This fact is known throughout this country and is in great contrast with the morals of some of the neighboring tribes.”¹⁷⁸

The union between male and female reproductive power symbolizes the harmony found between the Sacred Arrows and Sacred Hat. When the Sacred Objects are out of harmony and when the union between male and female is broken, the wholeness of Cheyenne relationships and life face destruction. Additionally, one of the taboos Sweet Medicine taught was against the practice of infidelity to maintain harmony in marriage.

Women’s role in the Sun Dance Ceremony is instrumental in achieving the ritual goal of renewal.¹⁷⁹ Cheyenne law stated:

“The law is this: the woman is above everything because Maheo (Creator) has given the woman power to spread people to cover the face of the earth. The Cheyenne people receive blessings for using her. Any man who pledges a minor ceremony or the Sun Dance has the Instructor use the Sacred Woman.”¹⁸⁰

Through the Sacred Woman, the earth and the people of the earth are replenished. Therefore, when the Medicine Lodge center pole is raised into position, female power is exercised in its highest ceremonial authority.¹⁸¹

The Sun Dance Ceremony was given to the Cheyenne through Erect Horns.¹⁸² When Erect Horns traveled to the Sacred Mountain to receive the Buffalo Hat, he was instructed to bring a woman (not his wife) to assist him.¹⁸³ Together they lived at the mountain for four years, learning the ceremonies associated with the Sacred Hat.¹⁸⁴ During the renewal ceremonies, women play a complementary role to the male Pledgers taking part in the ritual.¹⁸⁵

Traditionally, the first evening of the Sun Dance is when the Sacred Woman performs her renewing role. At this time she enters the Medicine Lodge and is cleansed with sage and painted by the Instructor with the symbol of the Sun, male power, on her chest. In turn, she blesses the Pledgers with renewing power, a harmony that is only found when male and female powers unite. Mary Little Bear

¹⁷³ *Id.* at 156.

¹⁷⁴ POWELL, *supra* note 23, at 445.

¹⁷⁵ GRINNELL, *supra* note 67, at 156.

¹⁷⁶ *Id.*

¹⁷⁷ HOEBEL, *supra* note 5, at 97.

¹⁷⁸ POWELL, *supra* note 23, at 446.

¹⁷⁹ *Id.* at 459.

¹⁸⁰ *Id.* at 444.

¹⁸¹ *Id.* at 448.

¹⁸² *Id.* at 444.

¹⁸³ *Id.*

¹⁸⁴ POWELL, *supra* note 23, at 444.

¹⁸⁵ *Id.* at 445.

Inkanish, a Cheyenne tribal member explained, “[a]s the Instructor has planted the seed of his ‘man power’ into the woman, so her offering of herself brings into being the rebirth of the people and land.”¹⁸⁶

Female roles among the Cheyenne vary and are complex. Women possess the ceremonial power as the renewing woman to initiate one of the major spiritual events for the tribe. Although Cheyenne recognize the Sacred Hat as the female power, male and female relationships are described as patriarchal and positions of power are concentrated in men. The patriarchy is “expressed in culturally approved rites.”¹⁸⁷ Thus, women did not possess political power to make decisions or effectuate change save it be through their male partners. However, a woman’s medicine is required for ceremonial practices to achieve the highest and appropriate order.

The organizations and values of the Cheyenne found in their cultural heroes, government societies, ceremonies and gender roles provide a basis to begin the dialogue of determining the political future of the tribe.

CONSTITUTIONAL REFORM

Understanding Northern Cheyenne organization based upon traditional notions of sovereignty, tradition and history¹⁸⁸ provides a framework for us to assert our political sovereignty. After enduring many decades of attack on our ability to represent ourselves culturally through law and governance, we have emerged victorious through Northern Cheyenne survival. However, current social ills continue to permeate the reservation in the form of poverty, alcoholism, political strife and various health issues.

Accordingly, in order to locate the tribe’s political sovereignty in our cultural context it must begin within the internal, “cultural-and-community based model of sovereignty,”¹⁸⁹ and specifically, by defining sovereignty through action, ceremony,¹⁹⁰ roles, governance and organic expressions of their unwritten constitution.

Furthermore, the history and tradition of the Northern Cheyenne along with many other tribes is closely tied together¹⁹¹ and helps to define us as distinct people. A tribe’s tradition is the “critical constructive material upon which a [tribal] community rebuilds itself.”¹⁹² The nature of preserving the tribe’s history was typically through oral means of communication and in this way moral principles were passed on through stories and ceremonies.

At the inception of the Howard-Wheeler Act of 1934,¹⁹³ model constitutions were alien intrusions on tradition patterns of governance. The traditional values of each tribe through governance were discarded for the general political culture of the United States under model constitutions.

The Northern Cheyenne adopted its IRA Constitution in 1935, and thus, began the two governments of the Northern Cheyenne people. Since the initial

¹⁸⁶ *Id.* at 450.

¹⁸⁷ HOEBEL, *supra* note 5, at 90.

¹⁸⁸ See Wallace Coffey & Rebecca Tsosie, *Rethinking Tribal Sovereignty*, 12 STAN. L. & POL’Y REV. 191, 196-97 (2001) (“These concepts – sovereignty, tradition and history – have a profound significance to all Native communities, both in terms of their own internal structures and in terms of their relationships with external communities.”).

¹⁸⁹ *Id.* at 197.

¹⁹⁰ ROBERT ALLEN WARRIOR, TRIBAL SECRETS: RECOVERING AMERICAN INDIAN INTELLECTUAL TRADITIONS 88 (1995) (statement of Vine Deloria, Jr.) (“[Native people] must return to Native ceremonies and traditions as they formulate a framework to exert their sovereignty.”).

¹⁹¹ Coffey & Tsosie, *supra* note 188, at 202 (statement of W. Richard West) (“Political sovereignty and cultural sovereignty are inextricably linked, because the ultimate goal of political sovereignty is protecting a way of life.”).

¹⁹² *Id.* at 199.

¹⁹³ 25 U.S.C. § 478 (1934).

approval of the IRA Constitution, Northern Cheyenne has amended it twice; first in 1960, and again in 1996.¹⁹⁴ The recent 1996 amendment took a significant amount of effort by the then tribal constitutional revision committee.¹⁹⁵ In many ways this was the Northern Cheyenne equivalent to the United States' Constitutional Convention, because it prompted interaction within tribal government, written reports and meetings.¹⁹⁶

The Northern Cheyenne government aimed at reforming the structure of the tribal council, which used to be a much larger body of representatives that served only two year terms and depending on the outcome of the election could result in a complete turnover of council members every election cycle.¹⁹⁷ The amendment established the current ten member tribal council, with staggered four year terms.¹⁹⁸ Traditionally, the Tribal Council has been a strong branch of government, with brief periods of the Executive branch being strong.¹⁹⁹ In practice the courts have been the weakest branch of government, however the latest amendments established a Constitutional Court.²⁰⁰ This Court has limited powers, only hearing cases involving constitutional causes of action and cases initiated by general members to strike down actions by the Tribal Council.²⁰¹

There remains great inconsistency between current federal Indian policy that promotes self-determination efforts by tribal governments and the antiquated IRA period that gave rise to these constitutions. For instance, when the Cheyenne people decide to amend their constitution, the resulting amendment is subject to the approval of the Secretary of the Interior.²⁰² The political future of the tribes is determined by the federal government, reminiscent of the paternal policies aimed at assimilation. Removing that provision in the constitution would go a long way in reducing the role of the federal government in governing tribes.²⁰³ A constitution is not a mandatory requirement of tribes. Pursuant to research conducted in 1981, only 45 percent of Native American tribes "had a written constitution drawn up under IRA or the 1935 Oklahoma act."²⁰⁴

Northern Cheyenne have taken ownership of their constitution in many ways through the constitutional amendment projects in 1960 and 1996. As a society, we have addressed the needs of our government. For instance, the tribe has provided four year terms on tribal council seats and placed only half the seats for election every two years, rather than having a complete turnover in the council membership. Tribal government reform has taken place in modern political steps through the constitutional amendment process. However, the IRA constitution still does not reflect the cultural sovereignty of the people.

In light of the limitations within the current federal Indian law regime, including the status of tribes as "domestic dependents" and negative court rulings, tribal sovereignty is at its strongest when matters are considered the internal affairs of the tribe. Tribes have the ability to assert their traditional ways of governance

¹⁹⁴ Steven Chestnut, Lawyer, Northern Cheyenne Tribe, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 221 (Eric D. Lemont ed., 2006).

¹⁹⁵ *Id.* at 222-27.

¹⁹⁶ *Id.* at 221.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 222-23.

¹⁹⁹ *Id.* at 221.

²⁰⁰ Steven Chestnut, Lawyer, Northern Cheyenne Tribe, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 224-25 (Eric D. Lemont ed., 2006).

²⁰¹ *Id.*

²⁰² Steve Brady Sr., Member of Northern Cheyenne Tribe Constitutional Reform Committee and Instructor in Tribal History and Government, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 281 (Eric D. Lemont ed., 2006).

²⁰³ Elmer Rusco, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND REBUILDING OF NATIVE NATIONS 74 (Eric D. Lemont ed., 2006).

²⁰⁴ *Id.*

constitutionally or through unwritten constitutions, much like the Navajo and Pueblo tribes have done through traditional codes and courts.²⁰⁵

One example of how the Northern Cheyenne could further cultural sovereignty through constitutional means is through enacting a constitutional recognition of the role of the Chief Society, which is still active and hosts regular meetings. An amendment provision could establish the Chief Society as a special standing committee to the Executive Branch. The Chiefs would fulfill their traditional role, resolving governmental disputes,²⁰⁶ offering counseling to youth as an alternative to criminal court for juvenile crimes, and addressing other issues that would affect culture and tradition.²⁰⁷

Cultural sovereignty refers to “the effort of Indian nations and Indian people to exercise their own norms and values in structuring their collective futures . . . [and] the battle to protect and defend tribal cultures from the multitude of forces that threaten the cultural survival of Indian nations.”²⁰⁸ Sam Deloria, member of the Standing Rock Sioux Tribe, emphasized the need for tribes to institutionalize cultural sovereignty to fit the needs of each tribe’s community and people by stating:

“If we are going to talk about our cultures and their survival, let’s really mean it. Let’s put some practical importance into dealing with problems that we have with our families and communities and children. For we are creating institutions. Indian tribes are engaged in some of the most delicate and complicated creative work that is being done in this world right now – trying to adapt social and political institutions to the needs of their own communities, question what to change and what to preserve. The only thing that’s going to humanize those institutions is us, ourselves, setting down our own standards and instituting them.”²⁰⁹

The immutable themes of cooperation, sharing, generosity, flexibility, tribal welfare and harmony found in Cheyenne law and governance are expressed through Sweet Medicine, Erect Horns, tribal society organizations, ceremony roles, and gender roles. The tribe’s greatest government and legal achievement was the “absolute and total elimination of feud.”²¹⁰ All the legal tools through the ceremony and Societies reinforce the lack of dispute by promoting communication and organization where duties are flexibly outlined. Cheyenne ceremonies are generally more concerned about correct action and less concerned about correct language.

The Northern Cheyenne have traditionally been less concerned with procedure and more with the results. In order for the Northern Cheyenne “to form a more perfect union,”²¹¹ we must assert ourselves constitutionally and dictate laws that are consistent with our culture. It is up to the tribal people whether the Northern Cheyenne should again modify the foreign written IRA constitution or seek alternative methods of advancing traditionally inherent governing principles. It is critical that all IRA constitutionally controlled tribes consider changing their

²⁰⁵ WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 74-75 (5th ed. 2009).

²⁰⁶ Alaina Medicine, *Northern Cheyenne Politics in Montana*, *THE NATIVE VOICE*, Nov. 5, 2004, available at <http://www.highbeam.com/doc/1P3-784686511.html> (last visited April 26, 2010).

²⁰⁷ Telephone interview with Navitt Spotted Elk, modern member of the Chief Society (Nov. 20, 2008).

²⁰⁸ Coffey & Tsosie, *supra* note 188, at 196.

²⁰⁹ Sam Deloria, Director, American Indian Law Institute, Keynote Address at Warm Springs (Nov. 12, 1979), in Wallace Coffey & Rebecca Tsosie, *Rethinking Tribal Sovereignty*, 12 *STAN. L. & POL’Y REV.* 191, 209 (2001).

²¹⁰ HOEBEL, *supra* note 5, at 50.

²¹¹ U.S. CONST. pmb1.

constitutions to reflect their values or face the consequence of effectively relinquishing their political future to a seventy-five year old document.