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Accountability, Legitimacy, and the Foundations of Native Self-Governance

by

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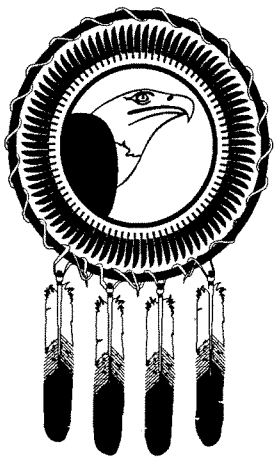

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The occasion for this paper is the proposed devolution of significant powers from the Canadian government to Canadian native communities. The anticipated empowerment of native communities has led both federal and native policymakers in Canada to consider the issue of accountability: How can native governing institutions best be made accountable to their peoples? The First Nations Accountability Project within the Canadian Ministry of Native and Northern Affairs undertook, among other things, to examine the experience of Indian tribes in the United States in search of insights and ideas that might contribute to the development of governing institutions that can serve as effective vehicles of self-determination among Canadian natives.

This paper has been written at the request of that Project. Its topic is the relationship between accountability and legitimacy and the significance of both in native self-governance. It draws on a growing body of research on Indian reservation poverty, economic development, and institutions of tribal self-governance, undertaken over the last five years by the Harvard Project on American Indian Economic Development (see especially Cornell and Kalt 1992a, 1992b, 1991).

The Concept of Accountability

Accountability is an important aspect of self-government, and the idea that governments should be accountable to the communities they ostensibly represent surely needs no defense. Furthermore, if the primary policy objective in the present case is to

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1. This paper is a revised version of a report prepared by the author at the request of the Devolution Task Force, First Nations Accountability Project, Native and Northern Affairs Canada, 1992. The paper is based largely on research carried out under the auspices of the Harvard Project on American Indian Economic Development, while most of the ideas presented here are products, in one way or another, of numerous discussions with my Project co-director and collaborator on Project research, Joseph P. Kalt. I also would like to thank Jeff Weintraub, Joane Nagel, and Akos Rona-Tas for comments and advice.

maximize the accountability of native governing institutions to their own communities, then the task facing policymakers and institution-builders, while complex, is a *relatively* simple one. But if the ultimate objective is to maximize native self-determination — a more ambitious and, from the native viewpoint, important goal — then the task is considerably more complicated. Research on U.S. cases strongly suggests that accountability alone is not enough to insure either that institutions have community support or that they effectively serve community interests. To accomplish these goals, governing institutions must not only be accountable to their communties. They also must have legitimacy in the eyes of those communities, and accountability and legitimacy are not the same thing.

The dictionary on my shelf defines "accountable" as "answerable." My thesaurus offers as synonyms, among other things, "answerable," "responsible," and "liable." These words all have slightly different connotations, but the drift is in two directions: "we're responsive to you," and "the buck stops here." One might say that the concept of accountability involves some combination of being responsive to those to whom you are accountable and taking responsibility for what happens (which also involves paying the consequences when things go wrong). From a governmental point of view the fundamental task of accountability is guaranteeing that constituents have ultimate control over governors. The source of that control is the incentives governors have to listen to and respond to their constituents. These incentives are embedded largely in formal institutions: in the formal organization, rules, and processes of governance. It is the formal institutions of governance that provide accountability by specifying relationships and organizing and controlling behavior.[2]

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2. The term "institution" is a slippery one which has had a number of social scientific meanings. In general, it refers to the enduring organization of collective behavior. Institutions are sets of rules that organize, shape, or constrain interaction among human beings (for some discussion see Hechter 1990, p. 14; North 1990, chapter 1; and, more generally, Douglas 1986). Governmental institutions are those that organize or shape governmental behavior into enduring, regularized patterns. Like all institutions, these can be either formal or informal. Formal governmental institutions include, for example, the explicit laws or rules that define the relationship between the legislative and executive branches of government, or, more mundanely, the rules that control the processing of a financial appropriation or specify the powers of individual bureaucrats. Informal institutions include the

In the present context, then, we can think of accountability as having two aspects: relationships (who is accountable to whom?) and procedures or rules (how are those relationships expressed and maintained?).

(1) Relationships. Who is accountable to whom? This refers to the network of relationships — economic, political, social — within which a government operates. For example, a government may be dependent for its survival on the support of its citizens, or on the support of the army or the security forces, or on the support of other governments, or on the support of some other set of outsiders, and so on. In the United States, many tribal governments are fiscally or legally dependent, to varying degrees, on the federal government. In other words, they would have trouble operating without federal approval and support. That means that — to some extent at least — they are accountable or answerable to that government. Typically, they are also accountable, to some degree, to their citizens, who vote in elections for tribal government positions. If they are elected by the citizens but depend for funds on the federal government, they are accountable to both, but in different ways, and are likely to be more accountable to citizens around election time and more accountable to the federal government before and after. In cases where tribal government is dependent for support on corporations who employ large numbers of tribal citizens, or who pay large fees for access to tribal resources, then the government is likely to be accountable, to some degree, to those corporations, as well as to its citizens and, perhaps, the federal government. And so forth. In other words, a government may be accountable to a number of different constituencies at the same time. To know to whom the government is accountable, we have to know what the relationships are between that government and other persons or organizations.

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culturally-rooted and largely unstated (but widely accepted) rules that indicate, for example, that politicians should be honest, or that elders (or someone else) should have the final say, or that leaders should (or shouldn't) look out for their kinfolk first. When we talk about accountability, we're talking mostly about formal institutions. When we talk about legitimacy, informal institutions begin to play a central role.

(2) Procedures. How are these relationships expressed and maintained? If the government is dependent for its support on the approval of its citizens, how does it obtain that support? Through elections? Referenda? Consultation with local community groups? Patronage, or under-the-table financial dealings? If via elections, what kind of elections, and when? If it is dependent for its support on the federal government, how is that support obtained? Lobbying the legislature? Litigating in the courts? Bribing politicians? If it is dependent on non-Indian constituencies (such as corporations, or organized interest groups in the surrounding society), how is that support obtained? Via coalition politics? By trading access to resources in return for political support or funds? And so forth.

In democratic political systems, governments are ideally accountable to their citizens, and the classic basis of accountability is the franchise: if we (the governors) do not listen to you (the citizens) and respond to your indicated interests, you vote us out of office. If we wish to stay in office, we listen and respond. That incentive is the ultimate source of our accountability to you; the procedure or mechanism by which accountability makes itself felt is the election process.

Of course the incentive to listen and respond may be based on something other than the vote: for example, compensation (we are paid by you according to how well our performance meets your goals); coercion (we either listen to you or you shoot us); or even cultural conception (we listen to you because our common culture still effectively teaches us that the primary function of a leader is to serve, not to govern, and provides us with guidelines for how to do that). Even in this last case, however, accountability ultimately rests on the fact that you will reject us, should we violate the understanding of our role that is embedded in the cultural conception. Our standing in our community depends on how well we fulfill that culturally-prescribed leadership role. To do otherwise is to risk our esteem not only in the community's eyes but in our own.[3]

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3. Aboriginally in Indian societies, this culturally-prescribed role varied: For example, Mescalero Apache leaders, according to Basehart (1971, p. 43-44) "were men of influence rather than wielders of power....

Viewed in these terms, the problem of accountability appears to be a relatively simple one because it also appears to be largely procedural or mechanical: what kinds of incentives are necessary and what kinds of procedures or mechanisms should be put in place so as to guarantee accountability? Are elections sufficient? What kinds of elections? At large? By district? How often should they take place? Should governors have to consult with their constituents? How often? On what topics? The Yakima Nation, for example, in the state of Washington, has both an elected tribal council and a general council. The general council, which is composed of all voting-age members of the tribe, elects the members of the tribal council and delegates authority over certain areas to that council, which administers the tribe and implements general council directives. Certain kinds of decisions — such as major decisions over land use — have to go before the general council, which meets once a year, except under exceptional conditions, and retains the authority to repeal any decisions of the tribal council (O'Brien 1989, p. 189). This effectively makes the tribal council accountable to the general council, i.e., to the people.

On the Pine Ridge Sioux Reservation in South Dakota, home of the Oglala Sioux Tribe, there is no such general council. The reservation is divided into districts, each of which elects representatives to the tribal council. There is a tribal president, elected at large. Decision-making rests fully in the hands of the president and tribal council, who are

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In fact, the leader did not command; he could not order his followers to take any specific course of action, however reasonable. He could exhort and persuade, and his effectiveness was in large measure a function of his ability to 'preach to the people,' as the Mescalero say. 'Good thinking' and 'good talking' were inseparably linked attributes of the leader. Other qualities, such as renown as a warrior, were decidedly secondary in importance. An inarticulate man, however great his knowledge and experience, would be unable to assume the role of leader. But in spite of the emphasis placed on verbal facility as a prerequisite for leadership, the Mescalero leader was not described as gregarious. He was expected to offer food and drink to his followers after the customary morning discussion of problems, as he was expected to be generous and aware of the needs of his people. I have the impression (although the evidence, admittedly, is slight) that leaders tended to maintain a degree of social distance from ordinary members of their bands, preserving a demeanor of dignity and, perhaps, of aloofness."

Compare this to Crow leadership. Individual Crows rose to leadership largely as a result of demonstrated military prowess and religious vision; there were specific things that a warrior/medicine man had to do in order to rise to a position of recognized — albeit limited — authority and status within the group. Retention of chiefly authority was dependent on performance. Writes Lowie (1956, p. 6), "... a camp chief served as long as the tribe enjoyed good luck under him, failing which there was a change." See also Voget (1980).

the holders of constitutional power on the reservation. Accountability is dependent largely on the electoral process: every two years new elections take place, and those perceived by enough persons to have failed in their leadership roles are voted out of office.

Some of the New Mexico Pueblos, in contrast, have no elected leaders at all. The chief administrators of the tribe are appointed annually by the chief religious leaders. The tribal council at Cochiti Pueblo, for example, is made up of all present and previous office-holders, that is, of all those who at one time or another have served — by the appointment of the religious leaders — in one of the six appointed offices. To be appointed is to become a council member for life. But while the religious leaders appoint the chief administrators, politically that is all they do, leaving the tasks of administration and decision-making to the persons they appoint. It is these administrators and the tribal council that make all the major decisions.

Does this mean the governors of the tribe are not accountable to their community? Not really. These procedures, while significantly changed since the arrival of Europeans, still have roots deep in Pueblo tradition and culture.[4] One of the central tasks of administrators is to protect that cultural heritage. In a sense, the administrators are accountable to the culture, via its primary representatives, who are the religious leaders. The ultimate authority is "the way of the people," that is, the culture itself. By appointing the tribal administrators, the religious leaders are serving as the voice and ultimate guardians of that culture; they are expressing it and reinforcing it through their actions, and by saying to those they appoint, in effect, "you are now responsible for our future as a people, and for maintaining our ways. Act responsibly and well."

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4. On the background and history of Cochiti governance, see Lange (1990, chapter 7). Not all the Pueblos follow the same system. See, for example, the discussion of Isleta governance in O'Brien (1989, chapter 9).

These three examples illustrate a variety of approaches to the problem of accountability. In each case, the institutional structures make those who occupy governing positions accountable, in one way or another, to their peoples.

Accountability vs. Legitimacy

On the other hand, varying amounts of conflict accompany the operation of these different systems. Tribal government on the Pine Ridge Sioux reservation, for example, is highly conflictual, with continual turnovers in personnel and strained relations between the central government and various communities on the reservation. At Cochiti Pueblo, there is little overt conflict over tribal government, which appears to have widespread support among the people.

Does this variation indicate problems in accountability? Not necessarily. Pine Ridge tribal governors certainly are accountable to the people. But while much of the political conflict at Pine Ridge appears to be issue-specific, involving the kinds of disagreements over policies and decisions that any government can expect to encounter, a good deal of it raises much more profound issues. At the time of contact with Europeans, the Oglala Sioux were a loose association of highly autonomous bands. There was no centralized government that exercised substantial, continuous power over all of these bands (Walker 1982; Hassrick 1964). When the reservation was established, bands tended to settle in different areas, so that today the reservation settlement pattern replicates the aboriginal structure. Yet the tribe now has a highly centralized political system, with significant power concentrated in the hands of the tribal council and tribal president. This has had significant effects on Oglala attitudes toward government. As a long-time observer and student of Pine Ridge society wrote in the late 1970s, many Oglalas "do not identify with the tribe as a political group and would prefer to run their own affairs at the local level, under the direction of local leaders whose support comes from community faith in their abilities" (DeMallie 1978, p. 274).

What this remark suggests is that the primary problem tribal government faces at Pine Ridge is not accountability but legitimacy: the structure of tribal government, however accountable it may be, via the franchise, to the people of Pine Ridge — and the fact is that every two years they have a chance to throw out anyone they think isn't doing his or her job — is viewed by many of them as an inappropriate way to organize collective activity on the reservation. It fails to fit with their conception of how their collective life — their life as a tribe — ought to be organized and run.

In contrast, Cochiti tribal government, which on the face of it appears to be much less directly accountable to the people, has a substantial degree of legitimacy with the community. It is rooted in Cochiti traditions that are still vital and vibrant in many people's minds and daily lives. For the most part, members of the Pueblo view it as an appropriate structure and method of governance. It fits with their ideas of how things ought to be done.

On the one hand, we have a case of high direct accountability and low legitimacy; on the other, a case of low direct accountability and high legitimacy. It is in the latter case — at Cochiti — that we find effective tribal collective action.

What this suggests is that accountability, while it appears to be a relatively simple matter of designing procedures that keep ultimate control of the governing process in the hands of the community being governed, is considerably more complex. If tribal government is to be an effective vehicle of collective action and self-determination, those procedures — and, more importantly, the institutions themselves — have to have *legitimacy* in the eyes of the community. Accountable institutions that lack legitimacy will be unable to maintain the allegiance of the people or to mobilize the community effectively in support of government policy, development strategy, or collective action. In such situations, whatever the degree of control the people exercise over long-term government action, the psychological distance between the community and its own governing institutions will be substantial, with negative effects on self-determination and the effective

pursuit of community goals. Accountability without legitimacy means the community will be continually second-guessing and overturning governmental actions, and government itself ultimately will be unable to pursue an effective, coherent, long-term set of policies, not because it is unaccountable, but because, as a set of institutions, it lacks the support of its own people. The task for those who would make tribal governing institutions accountable to the communities they govern is to see that both the relationships of accountability and the procedures through which accountability is maintained themselves have legitimacy within the tribal community.

Of course one might argue that if institutions are truly accountable to their peoples, then they necessarily will have legitimacy, for if they were not legitimate the people would change them. In other words, people ultimately get the institutions they desire. But for Indian tribes in the United States, at least, this has not been the case. Most tribal governments were not designed by Indian tribes themselves, but by the federal government, and not after indigenous models of governance but after the institutional models in use in the dominant society. Only recently have many tribes had the freedom and resources to initiate significant reforms in their own governing structures.

The Sources of Legitimacy[5]

"Legitimacy," writes Lipset (1963, p. 64), "is evaluative. Groups regard a political system as legitimate or illegitimate according to the way in which its values fit with theirs." What is important is that the community see the institutions by which it is governed as fundamentally appropriate for that community. To be legitimate, those institutions have to fit the community's ideas about how things ought to be done — in particular the sorts of things government does, such as exercising power and representing interests. The issue,

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5. One of the primary sources of social scientific thinking about the role of legitimacy in systems of political control is Max Weber's *Economy and Society* (1968). His discussions of the topic are in some ways elusive — long on the classification of types of legitimacy, short on definitions of the entity itself. But see, for example, pp. 31-38 and 212-16.

in other words, is fundamentally one of congruence between the community's conceptions of fair and appropriate governmental organization and action on the one hand, and actual governing institutions and their actions on the other.[6]

This doesn't mean that legitimate institutions necessarily meet some universal standard of fairness or democracy. Indeed, Lipset goes on to point out (p. 64) that "legitimacy, in and of itself, may be associated with many forms of political organization, including oppressive ones." Many highly oppressive regimes have found support among segments of their oppressed populations. Even today, in the dawning of democracy in the former Soviet Union, there are Russians who believe that Stalin's brutally authoritarian rule was the proper way to run the society.[7] Legitimacy, in other words, refers not to any universal set of "best ways" of doing things, but to a perceptual relationship between sets of institutions on the one hand and groups of persons on the other. The people governed by a particular set of institutions have to view those institutions as appropriate *for them.*

There is no assumption here that outsiders to the society necessarily also share this perception. Views may differ, and outsiders may have strong opinions regarding the legitimacy of a particular set of institutions for the society in question. This has been a significant issue in the history of Indian-white relations. Early Europeans found many of the political institutions by which indigenous North Americans governed themselves

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6. Lipset's conception of legitimacy also places great emphasis on "the capacity of the political system to engender and maintain the belief" in its own appropriateness (Lipset 1968, p. 64). Recently Ivan Evans, in a provocative discussion of civil society in South Africa (Evans 1992), has pointed out that this conception tends to focus analytical attention on the ability of the government to alter or control people's beliefs, an approach that has only limited utility for understanding the complex relationships between subordinated populations and those who govern them. I share Evans's skepticism regarding this part of Lipset's treatment of the topic, which implies that popular conceptions of fairness or appropriateness are relatively manipulable. What is striking about such conceptions, which typically reach deep into the cultural order, is more often their *durability* over extended periods of time and across institutional regimes. I suspect that in most cases, legitimacy is more easily achieved via change in institutions than via change in people's beliefs, but see the section on "Building Legitimate and Accountable Institutions," below.

7. See Chirot (1991) for a fascinating discussion of the role played by legitimacy — and in particular the loss of legitimacy — in the recent decline and fall of the authoritarian regimes of the Soviet Union and Eastern Europe.

virtually invisible or, if detected, incomprehensible and usually flawed: to the Europeans most Native Americans seemed to have little government to speak of, and such government as they did have the Europeans often viewed as uncivilized, pagan, and inefficient. For those reasons, among others, native governance frequently lacked legitimacy in the eyes of Europeans, whatever its standing with its own constituents.

But for present purposes it is standing in the eyes of those constituents that matters, and the fundamental issue is one of cultural match (Cornell and Kalt 1992a, pp. 17-18). What is at issue, in esssence, is the informal rules of behavior that are rooted in the culture, the sorts of things we learn or, more often, unconsciously absorb, when growing up or as we spend extended time as participants in a given community. These are commonly known to the social scientist as norms. The relevant norms in this case might include ideas about what sorts of governing or authority relationships are appropriate, normal, or "right" (e.g., it is either appropriate or inappropriate for one member of the community or one group in the community to tell another what to do; it is appropriate or inappropriate for elders to have a greater influence in decisions than other community members; it is appropriate or inappropriate for those in power to use that power to funnel resources to themselves or their own kin relations; it is appropriate or inappropriate for those in power to overrule minority opposition when there is a majority in support of a particular course of action; and so on).

Institutional structures and processes that conform to the community's generally accepted ideas about how persons should interact and relate to each other, about the appropriate exercise of power, about who should be entitled to speak or act for whom, about proper decision-making processes, and so forth, are likely to command significantly greater support within the community than those that depart from such standards or ideas, or that challenge them directly. Institutional form and process have to match — or at least not significantly violate — prevailing community norms, traditions, and cultural

conceptions if they are to retain community support.[8] As Meyer and Scott (1992, p. 201) put it, "organizational legitimacy refers to the degree of cultural support for an organization — the extent to which the array of established cultural accounts provide explanations for its existence, functioning, and jurisdiction, and lack or deny alternatives."[9]

Prevailing ideas at Pine Ridge hold that local communities should have a high degree of autonomy and self-control, a set of ideas that is in direct conflict with the centralization of power in the current tribal government. In contrast, prevailing ideas at Cochiti grant to the religious leaders of the community a high degree of control over community life, and assume that religiously sanctioned administrative leaders will best serve the collective interest. The organization of tribal government conforms to this set of assumptions. The difference in the legitimacy of the two governments lies not in their different form but in these different perceptions. This means that institutional solutions to the problems of collective action and governance may vary substantially from reservation to reservation, according to the differences in community conceptions of the appropriate ways of doing things.

On the other hand, institutions also have to be effective. While legitimacy may buffer institutions, for a time, from the consequences of their own ineffectiveness (Meyer and Rowan 1992, p. 30), in the long run, they have to perform. As Lipset says (1963, pp. 67-68, 70), "a breakdown of effectiveness, repeatedly or for a long period, will endanger even a legitimate system's stability" while "prolonged effectiveness over a number of generations may give legitimacy to a political system." In other words, institutions that, over an extended period, consistently fail to accomplish the goals of constituents, eventually will lose legitimacy with those constituents. This doesn't mean that they have to

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8. For some Native American case studies that lend further support to this argument, see Champagne (1989).

9. See also Hamilton and Biggart (1988, p. S75).

be effective in every case and at all times. All institutions occasionally fail, and some frequently fail. But as long as they continue, over time, to offer a persuasive promise of effective pursuit of community objectives, they will tend, other things equal, to retain community support. Those that consistently fail, on the other hand — or fail disastrously — can quickly lose that support. The traditional governing institutions of most Native American societies retained tribal support for a long time after first contacts with Europeans. But once those institutions were unable to produce effective responses to rapidly changing and highly stressful external conditions, their legitimacy began to crumble. In the latter half of the nineteenth century, for example, as traditional approaches to external threat failed to stem the tide of white settlement or to preserve indigenous ways of life, competing bases of organization and action — in particular revitalization movements such as the Dreamer Movement among the Sahaptin peoples of the Pacific Northwest, or the Ghost Dance on the northern plains — began to appear in growing numbers, competing with traditional forms of governance and action for individual and community allegiance. The legitimacy of the old ways was called into question in the face of their failure to protect the interests of the community (Cornell 1988, pp. 62-67).

Efficacy, therefore, ultimately is a source of legitimacy. People pay attention, eventually, to what works and what doesn't. Interestingly, the reverse is also true: legitimacy can be a source of efficacy. This simply reflects the fact that people are more likely to take up and pursue with energy and commitment those relationships and strategies of action that "feel" right, that seem normal and appropriate. Those that are pursued with energy and commitment are more likely, other things equal, to be effective. We can illustrate this also with reference to the Ghost Dance. The Ghost Dance had its origins among the Paiutes in Nevada; it built on traditional Paiute beliefs as well as some Christian ideas. It then found a willing audience among the Sioux, who found certain of its ideas congenial and transformed others to fit their own situation and concerns. But it found little support among the Navajos, certain of whose beliefs were in direct conflict with the

teachings of the Ghost Dance. In other words, the Ghost Dance proved most effective as a vehicle of collective mobilization where there was at least some fit between its ideas and practice and the cultural conceptions of the community — that is, where it had at least some resonance with received notions of how the world works, of what is appropriate behavior, and of what is desirable as a community goal (Wallace 1965, p. viii; Mooney 1965). Its eventual failure destroyed its credibility with most Indians, but for a time at least, thanks in part to this fit, it gained legitimacy as a basis of collective mobilization in certain Indian communities.[10]

A more contemporary illustration comes from Cochiti Pueblo. The Pueblo runs a number of successful tribal businesses through its own community development corporation. The traditional tribal government and the business-oriented development corporation are very different kinds of organizations. The effort to combine the two in an overall development strategy capable of meeting central Pueblo objectives — enhancing economic well-being while preserving Cochiti traditions and cultural life — is not easy. It requires major expenditures of time and energy and a high level of cooperative effort between religious and secular leaders, who spend long hours trying to integrate the various parts of the Pueblo's life. As one tribal official said, "It takes a commitment from all of us. It's a struggle. It's hard work."[11] The fact that the overall enterprise enjoys the support of the religious leaders is key: without their support it would be difficult to elicit the kind of individual commitment that makes the enterprise possible. Legitimacy in the eyes of the community is the foundation of individual effort, which in turn enhances the efficacy of the institutions themselves.[12]

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10. Other factors may well have influenced the diffusion of the Ghost Dance. See, for example, Thornton (1986), who argues that demographic factors played a significant role, and the discussion in Cornell (1988, pp. 62-67).

11. In conversation with the author and Dean Howard Smith, Cochiti Lake, September 1992.

12. In combining the two organizations, Cochiti in fact appeals to two very different sets of constituents. The peculiar organization of the tribal government (peculiar in the context of community and governmental organization in the United States), which has great legitimacy within the Pueblo itself,

Of course both efficacy and cultural fit are matters of degree. The following propositions attempt to capture the relationships. (1) The more the institutions of governance match the cultural conceptions of their constituent communities, the greater the legitimacy they are likely to enjoy. (2) Over the long run, the more effective those institutions are in the pursuit of community objectives, the more legitimacy they are likely to enjoy (and, notably, vice-versa: the greater their legitimacy the more likely they are to be effective).[13]

The Twentieth-Century Record

The difference between accountability and legitimacy is well illustrated by the recent history of tribal government in the United States. While there were earlier examples, we can think of the period of modern tribal government as having its beginnings with the passage of the Indian Reorganization Act (IRA) of 1934.[14] This legislation marked a significant change in the orientation of United States Indian policy, away from an emphasis on individual assimilation and the break-up of tribal communities toward support for the tribe as a corporate body. Specifically, the legislation recognized the right of any tribal

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might well have problems establishing legitimacy with the surrounding society, which emphasizes, among other things, a separation of church and state, "rational" organization, and in some cases the equality of men and women (only men may be appointed as tribal officers at Cochiti). The development corporation, on the other hand, which is the primary vehicle for a great deal of collective Cochiti interaction with the surrounding society, presents that society with a well-known and trusted model: an efficient, rationally-organized, dependable business enterprise. This enhances outsider confidence and strengthens Cochiti's ability to pursue its own economic objectives.

13. Meyer and Rowan (1992) also appear to see legitimacy as dependent on a combination of efficacy and cultural fit; see especially p. 35. They suggest, however (p. 36), that not all organizations survive on the same combination of the two. Some organizations are strong on efficiency and less dependent on the cultural account of their activities; others depend more for their support on cultural fit and less on the efficiency of their operations.

14. Most Indian groups had governments of some sort — i.e., more or less stable, enduring mechanisms by which group action was coordinated — but those governments were exceedingly diverse in scope, structure, and authority. For summary discussions of aboriginal political organization, see Driver (1968, chapter 17), Lowie (1951, pp. 11-24), and the volumes of the *Handbook of North American Indians* (Smithsonian Institution, various dates). By "modern tribal government" I refer to the emergence of the formally-organized, constitutionally (in most cases, but not all) -based tribal governments of the twentieth century. On the IRA, see Deloria and Lytle (1984) and Taylor (1980).

community to establish a constitutional government and assured that government of certain limited powers. The IRA offered tribes throughout the United States the opportunity to organize under its provisions. Many chose, via special referenda, to do so; others chose not to. One result was a flurry of constitution-writing in the 1930s and 1940s as numerous tribes set about establishing formal, constitutional, tribal governments.

Importantly, however, the constitutions established directly under the IRA or indirectly under its influence tended — and with some significant exceptions — to be written not by the tribes involved but by staff members in the U.S. Department of the Interior. Most paid little attention to indigenous models of governance or to the social organization of Indian societies, either historically or at the time. Furthermore, few of them were designed with genuinely sovereign power in mind. Those who designed them had little idea that Indian tribes would eventually be making major decisions about their own futures and carrying out high-stakes negotiations with federal and state governments and multi-national corporations over jurisdictional issues, natural resource access and management, and other topics.[15]

These governments have been afflicted with both accountability and legitimacy problems. Especially in the early years, and despite the formal constraint of election, tribal governments were more accountable to the federal government, and in particular to the Bureau of Indian Affairs (BIA), than they were to their own constituents. On the San Carlos Apache Reservation in Arizona, for example, the BIA superintendent simply excluded from the first, popularly-elected tribal council, on arbitrary grounds, a member with whom he had had an ongoing dispute (Taylor 1980, p. 99). A former tribal chairman at San Carlos tells how, soon after his own election some years later, another BIA superintendent "told us that he was still was in charge of the agency and nobody was going to tell him what to do" (Wesley et al. 1986, p. 143). Early leaders in a number of these

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15. For a critical discussion of the IRA's effects, see Cornell (1988, chapter 6).

governments found themselves trapped: While the formal structure of tribal government made them accountable to their constituents via the elective process, the lack of substantive power in tribal governments left them vulnerable to outside control. The BIA's command of nearly all financial and other resources on the reservation meant that tribal governments often had to serve the BIA's interests, and not those of tribal members. No wonder their constituents often were disgusted.

On the other hand, many of these governments had legitimacy; the question was — with whom? They tended to fit well with what the larger society assumed was appropriate for Indian tribes: they were modest organizations designed to introduce Indians to the principles of democratic governance and to give them some control over their own internal affairs (Dobyns 1968; Spicer 1962, p. 352). But many of them had only mixed legitimacy with their own constituents, to whom, supposedly, they were accountable. This mixed legitimacy is amply evident in some of the conflicts that have characterized some Indian nations over the last five decades or so, and in the often tepid interest reservation residents have shown in their tribal governments. In eastern Oklahoma, some "full-blood" or "tribal" Cherokee communities apparently have little to do with Cherokee tribal government, despite their right to vote. They were not involved in its formation and find it alien to their own way of life. Comments one study (Wahrhaftig and Lukens-Wahrhaftig 1977, p. 230): "Tribal Cherokees are neither interested nor participant in the affairs of the tribal government. On the whole, they neither support it nor oppose it, and their psychological distance from it is enormous." In 1969 less than 30 percent of eligible voters on the Pine Ridge Sioux reservation took part in tribal elections (DeMallie 1978, p. 276), although voter participation apparently has improved since then. In the late 1970s one study of the Tohono O'odham (formerly the Papago) reservation in Arizona blamed low voter turnouts in tribal elections on the fact that "the entire elective system of government, as exemplified by the tribal constitution, is foreign to traditional Papago political systems" (Manuel, Ramon, and Fontana 1978, p. 542). On the Hopi Reservation in Arizona, there

have been recurrent struggles between the secular government established under the IRA and the religious organs of governance rooted in long Hopi tradition (Clemmer 1974; Sekaquaptewa 1972). In recent years this conflict occasionally has brought Hopi tribal government to a virtual standstill.[16]

These signs of minimal legitimacy are hardly surprising. Designed largely by outsiders, lacking substantive power and, therefore, efficacy, these governments could hardly be expected to win strong support from their own communities. One striking result is that constituent support and interest in tribal government has tended in many cases to be tied to personalities: the government receives support according to who is in office. Bonds of kinship, patronage, or special interest become the glue that enables collective action, while the institutions themselves have little respect and retain little allegiance. This is not the aboriginal pattern. Kinship bonds certainly were crucial determinants of action in most aboriginal native societies, and groups we today think of as solidary tribes were often loosely-based associations of quite autonomous bands or villages. But the institutions of governance themselves — the customs and rules that shaped the organization of collective action — typically had widespread support, and repeatedly survived turnovers in leadership. The "psychological distance" from tribal government noted above for tribal Cherokees was not typical of aboriginal societies, because governing institutions were themselves embedded in community life and customary practice.

It should be noted, of course, that not all contemporary tribal governments — IRA-based or otherwise — have had difficulties of these kinds. The White Mountain Apaches in Arizona, the Mescalero Apaches in New Mexico, the Mississippi Choctaws, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, the Confederated Tribes of the Warm Springs Reservation in Oregon, Cochiti Pueblo, and

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16. For some additional examples of such conflicts over the legitimacy of tribal governing institutions, see Landsman (1985) on the Mohawks, and Clemmer (1973) on the Shoshone-Goshute.

numerous others appear to have governments that — as institutions — enjoy broad community support. In some cases, as at White Mountain Apache, this seems to be because there is at least some degree of match between the contemporary, IRA-based government and older, indigenous patterns of authority or governance; in others, such as Cochiti, it is because the tribe has managed — through a major and continuing effort — to combine long-standing, deeply-rooted governing institutions with selected, contemporary administrative structures and methods, enhancing governmental effectiveness without losing traditional Cochiti ways; in still others, such as at Flathead, it appears to be because older patterns of governance and the cultural practices in which they were embedded are no longer realistically available, and institutional arrangements drawn largely from U.S. society appear to these communities to be appropriate and effective solutions to their own governance needs (Cornell and Kalt 1992a). In these and other cases, tribes have solved both the efficacy and the cultural fit problems: they have developed relatively competent, effective tribal bureaucracies that are actually capable of "getting the job done" — whatever the job may be — and they have found a match between the formal institutions of tribal government and their own cultural predispositions.

Building Legitimate and Accountable Institutions

If institutional legitimacy involves a congruence between people's conceptions of appropriate and just forms of organization and behavior, on the one hand, and the organization and behavior of institutions on the other, then there appear to be two alternative ways of fostering legitimacy: alter people's conceptions, or alter institutions to fit those conceptions. In the former, the system — in this case, the government — can try to persuade the population that, in fact, the way it does business is appropriate, or effective, or just, or in the interests of that population, or all of the above. This is not necessarily an easy task, especially if the institutions of governance depart dramatically in organization or behavior from previously accepted ways of doing things, or serve the

interests only of the governors or of a small portion of the population. Contemporary history is full of cases of governments that tried to persuade their subjects of their own legitimacy, and failed. Some failed despite their control of both education and mass media: primary vehicles for the dissemination of ideas and interpretations.

Alternatively, instead of trying to alter conceptions, the society in question can set out to create institutions likely to be viewed as legitimate by the population. Of course this is not necessarily an easy task either, but it is a task being faced by growing numbers of Indian nations. In practice, and given the need to develop institutions that both resonate with received ideas of what is appropriate *and* are capable of dealing with the practical issues of governance in the contemporary world, some combination of these two approaches is likely to be most effective. It may well be necessary to create institutions that depart from established ways of doing things. In such cases, some effort presumably will have to be made to persuade the community that innovation is necessary and that it can be done in acceptable ways. The point is that the task of persuasion is likely to be made easier if the design of those institutions is responsive to the cultural dispositions and normative conceptions of the community.

Since the 1970s, institution-building has become increasingly important as the practical power of Indian nations has grown. The so-called "self-determination" policy of the 1970s and 1980s, in which the federal government committed itself to tribal empowerment, has led to genuine increases in Native American control over their own affairs, including control over a wide assortment of relationships and programs with major effects on reservation life and community fortunes.[17] By decreasing external controls over tribal affairs, this development in effect has increased the accountability of tribal

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17. The centerpiece of the self-determination policy was the Indian Self-Determination and Education Assistance Act of 1975. The effects of this and related legislation are diverse and not all of them are necessarily favorable to tribal interests, but the policy change did lead to a significant shift away from the federal policy of the 1950s and early sixties, which envisioned and tried to promote an end to tribalism. For some discussion see P. Deloria (1986); Barsh and Trosper (1975). For a sobering general overview of the current state of tribal sovereignty in the United States, see Singer (1991).

governments to their own constituents. As power and accountability have risen, so has the significance of the legitimacy issue.

One result of this new situation is experimentation: a number of tribes are trying new institutional arrangements in search of governing structures that can be effective vehicles of collective action on the part of newly-empowered, sovereign communities. Constitutional reform is widely talked about and in some cases well underway. The Hualapais, Tohono O'odham, Crows, and others in recent years have either proposed, begun, or in some cases completed significant constitutional revisions. Other tribes have stopped short of major constitutional change, but have put in place institutional innovations designed to enhance either accountability or legitimacy or both. Certainly the relationship between Cochiti Pueblo's community development corporation and its highly traditional tribal government belongs in this category. Another example: The Rosebud Sioux Tribe in South Dakota and the Confederated Tribes and Bands of the Yakima Nation in Washington both have instituted boards of ethics to hear grievances against tribal politicians or bureaucrats on the part of community members. The Rosebud ethics board is appointed by the tribal council. Its members are tribal elders chosen, according to the ordinance setting up the board, on the basis of their "wisdom, integrity, and knowledge of Lakota culture." Acting as an overseer of sorts, the board hears cases in confidence and reports its recommendations to the tribal council. Its carefully-guarded reputation for honesty and impartiality gives the board a high degree of moral authority. While the tribal council could ignore the board, it could do so only at high cost to the council's own reputation in the community. As a consequence, the board's recommendations have been critical in the outcomes of a number of grievance cases.[18]

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18. This information comes largely from an interview with Rose Bordeaux, ethics board member, by the author and Joseph P. Kalt, Rosebud Reservation, summer 1988.

By establishing such a board as a recourse for those who feel they have been wronged, Rosebud has enhanced tribal government accountability to the people. By filling that board with highly respected elders, chosen according to their reputations for honesty and cultural knowledge, they have rooted it in Rosebud traditions and thereby given to tribal government an enhanced degree of legitimacy as well.[19]

But what works at Rosebud or Yakima may not work elsewhere. Innovation that establishes and maintains institutional legitimacy is not an easy task. There are a number of reasons for this. Three in particular deserve attention here.

(1) There may be a conflict between efficacy and cultural fit. The Crow Tribe of Montana, for example, rejected the IRA legislation of the 1930s. Instead of a typical IRA government, with its centralized power structure and strong chief executive, the Crows retained and formalized the government they had gradually been developing during the reservation years, which was a "general council" form of government with a weak chief executive and a powerful legislature — the general council. The general council was composed of all the voting-age members of the tribe, giving it a membership potentially in the thousands, although business could be conducted by a quorum of 100. While this system, which continues today, had little fit with pre-reservation Crow traditions of governance, it was in part a product of Crow experience and design (Hoxie 1992). It appeared to be congruent with at least some of their then-current conceptions of what ought to be done and how, and therefore carried a legitimacy which outsider-designed governments have had difficulty achieving.[20]

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19. The Yakima Code of Ethics board also appears to be effective and wields considerable power. In 1992, it suspended one elected official without pay, and recommended to the General Council that she be removed from office (*Yakima Nation Review* 1992).

20. On traditional Crow tribal governance, see Lowie (1956) and Voget (1980); on reservation developments, see Hoxie (1992); and for information on contemporary Crow governance see Voget (1980) and Champagne (1989, chapter 4).

The trouble is, it doesn't work. The weak executive branch lacks the power to enforce decisions, while as few as a hundred people often can exert control over a quarterly general council meeting and use that power to command virtually all the resources of the tribe, to reverse past executive decisions, or even to throw current office-holders out of office. While this places great power in the hands of "the people," it leads to a "winner-take-all" factional politics that has produced dramatic and continuing instability in tribal government and an inability to effectively sustain long-term strategic planning of almost any sort. This is accountability run amuck. The form of empowerment has effectively crippled Crow efforts to exert control over their own affairs and future, while the continuing ineffectiveness of the government has gradually undermined its legitimacy with the Crow community.

Of course there are additional reasons for governance and development difficulties at Crow; the specific design of Crow tribal government is only one of them. The lesson here is that efficacy and cultural fit may not always work hand-in-hand. The task of institutional innovation is to find a balance.[21]

(2) Cultural fit can be difficult to determine. What the Crow case also illustrates is the difficulty, in some cases, of discovering just what "cultural fit" means. Cultures are not static. They change over time. The general council form of government departed significantly from pre-reservation Crow practice, but it fit with at least some Crow conceptions developed during the reservation years from 1880 or so into the 1930s (Hoxie 1992). Part of the effort on the part of Crow would-be reformers today is to search for the long-term continuities in underlying cultural and organizational themes in Crow life that might be used as legitimacy-building bases of governmental innovation. The still-surviving and important system of clans and a powerful emphasis on individual performance and

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21. Finding this balance is complicated by the fact that innovation itself sometimes has costs in legitimacy. In departing from accepted ways of doing things, institutional entrepreneurs risk losing culturally-founded support (Meyer and Rowan 1992, p. 34). This, for example, has been one of the problems facing constitutional reform on the Crow Reservation.

achievement offer two such themes, and some recent Crow proposals for constitutional reform have sought to reintroduce these themes into governmental organization, perhaps via clan-representation in a smaller council. The point is that it is not enough simply to try to replicate older models, few of which survive in detail and many of which could not cope with the needs and complexities of sovereign government in the contemporary period. The task is to identify enduring community conceptions of how people should relate to each other and of what kinds of power are acceptable and appropriate for whom, and then to build on those with the practical demands of contemporary governance in mind. Again, Meyer and Scott (1992, p. 200): "Actors engage in cultural innovation, but such changes are easier and more likely to have influence when they are linked to patterns of cultural authority that are already available and institutionalized."

This leads to the third, related point.

(3) Legitimacy requires a relatively solidary community on which to build. If institutional legitimacy refers to the congruence between community conceptions and institutional form and behavior, then it will be much easier to achieve where fundamental conceptions regarding relationships of power and authority are widely shared — in other words, where the community governed by those institutions is, in fact, a cultural community. Implicit in the IRA legislation was the assumption that the reservations of the 1930s were homes to relatively solidary cultural communities (Taylor 1980, p. 135). In fact, however, many of these communities were much less solidary than they appeared, or than federal bureaucrats, many of whom had little reservation experience, assumed (Cornell 1988, chapters 5 and 6). Some were composites, circumstantial associations of distinct groups or tribes forced together through the treaty-making process or administrative fiat. Others comprised groups who had long seen themselves as single peoples, but who practiced very high degrees of internal local autonomy. This diversity increased in subsequent decades. Today many reservations embrace multiple communities with different self-concepts and different ideas of how things ought to be done. The Pine

Ridge Sioux reservation, for example, includes some Oglalas who are deeply involved in highly traditional networks of kinship and ceremonial life, some whose connections to traditional cultural patterns and activities are tenuous at best or even non-existent, and others who fall somewhere in between. Sometimes coincidental with these cleavages, sometimes cutting across them, are other divisions between local communities themselves, reflecting long-standing band divisions and a tradition of local autonomy. Establishing accountability with these various groups is itself likely to be problematic; building institutions that have legitimacy with all of them will be even more difficult.

This doesn't mean it can't be done. At Pine Ridge, for example, the local autonomy issue is largely organizational, and might well be resolved through a federal system of some sort in which at least some power is transferred from the central tribal government, which has never enjoyed widespread Oglala support, to local communities (Cornell and Kalt 1992a). This may also have some positive effect on the trickier problem posed by the diversity of cultural conceptions at Pine Ridge. One thing is certain: solutions developed within the community are more likely to enjoy widespread support than those imposed from outside.

Implications

The preceding discussions have certain implications for governmental design, presented here as a set of definitions and propositions.

(1) Accountability is a matter of relationships (who is accountable to whom?). In matters of tribal governance, the task is to make governments accountable to their communities. These governments may also be accountable to others; accountability is not necessarily zero-sum. As long as Indian nations in the United States, for example, are at all dependent on federal support, they also will be accountable, to one degree or another,

to the federal government.[22] The issue is: to what degree? Governments controlled by outsiders will be accountable to outsiders.

(2) Accountability is also a matter of procedures or mechanisms (how are those relationships of accountability expressed and maintained?). Formal institutions are the mechanisms by which that accountability is expressed and maintained.

(3) To be effective, accountable institutions must also be legitimate. Institutions that are not perceived as legitimate instruments of governance will find little support within their communities, and therefore will be ineffective as vehicles of collective action. They may well be effective as instruments of elite interests (the interests of dictators, for example, are often well served by the institutions they control), but not as vehicles of community self-determination.

(4) Institutional legitimacy requires both efficacy and cultural fit. In order to maintain legitimacy, formal institutions (1) have to be effective in the long run, and (2) have to have some fit with the normative order, that is, with the informal cultural conceptions that are embedded in community life.

(5) Institutional legitimacy will be easier to build where the constituent community is more or less culturally homogeneous. It is important to note that what matters here is not the specific cultural form (traditional, non-traditional, indigenous, imported, etc.) but the degree of agreement within the community over what is important and appropriate in systems of community governance. On the other hand, there is no reason to believe that culturally heterogeneous communities cannot achieve institutional legitimacy (for example, the United States).

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22. This leaves aside the different but important question of accountability to the laws of the United States, shared not only by Indian citizens but by their governments.

(6) Institutional legitimacy will be easier to build where the institutions in question have genuine power.[23] The claims of powerless institutions will have little legitimacy with their constituents. The policy imperative here is to place maximum feasible power in the hands of native communities themselves, and then support their efforts to build legitimate institutions capable of exercising that power and answerable to their peoples.

(7) Finally, neither accountability nor legitimacy can ignore outsiders. Much of this paper has concentrated on accountability to and legitimacy with the tribal community. There is considerable peril, however, in concentrating only on this. Contemporary native peoples have to deal on a daily basis with the outside world. In the United States, owing partly to federal funding cutbacks, partly to tribes' own objectives, self-determined economic development has moved to the top of many reservation agendas. This has presented tribal governments with the task of creating institutional environments in which outside investors of various kinds — from banks making loans to companies engaged in joint ventures to individuals bringing needed human capital onto the reservation — feel secure (for an extensive discussion, see Cornell and Kalt 1992a). In such situations tribal government inevitably will have to be accountable, not only to its own community but, to some degree at least, to those outsiders. Otherwise, they won't invest. In addition, this means that those tribal institutions that deal regularly with outsiders will have to pay some attention to those outsiders' views of their legitimacy as well (see note 12 above on Cochiti Pueblo). Tribal governments are vehicles of collective action — instruments of community welfare and assertion. But the designers of those governments and related institutions cannot completely ignore the external environments in which tribes have to operate and survive.

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23. For a modest empirical test of this and the preceding proposition, see Cornell and Gil-Swedberg (1992).

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