

Malcolm Wiener Center for Social Policy

The Basis of a Nation-to-Nation Relationship

**A Report to the Oglala Sioux Tribe
and the Senate Committee on Indian Affairs**

by

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EXECUTIVE SUMMARY

Based on the implicit trade-off of tribal sovereignty for trust responsibility,¹ the current relationship between the Oglala Sioux Tribe (OST) and the United States federal government, **has never worked and should be discontinued** as the basis of a "nation-to-nation"² relationship. Neither entity is satisfied with the present state of affairs, and both are engaged in a degenerative cycle of influence.

I. Sources of Tension

Reliance on trust responsibility legally obligates the United States to ever increasing levels of federal transfers as conditions on reservations deteriorate and Tribes become ever more dependent on outside sources of economic assistance. At the same time, Congress' desire to balance the federal budget in seven years translates to a 35 percent across-the-board cut in funds to Indian tribes. On the current trajectory, the US government can and should expect intense political lobbying and unrest on the part of Native American citizens.

Conflict will intensify as OST struggles to cope with the real-life ramifications of federal budget cuts. Currently, Pine Ridge receives approximately \$100 million in federal transfers and entitlements. Put another way, nine out of every ten dollars which flows through tribal government originates as a federal transfer. And of the Oglala Lakota who are employed, 55 percent work in the public sector.³ All of this means that US budget cuts will directly and severely impact and compromise the well-being of the Oglala Lakota people.

II. Implications for a "Nation-to-Nation" Relationship

These all too common pressures have inclined OST to define effective leadership in terms of success in "getting the United States to honor its trust responsibility." But, this is not good governance, it is dependence. In the long run, trust responsibility undermines real political independence and renders the notion of a "nation-to-nation" relationship worthless. For a "nation-to-nation" relationship to be meaningful, trust responsibility must merely be a means to the ultimate end of tribal sovereignty.

¹ Tribal sovereignty refers to the effective (as opposed to semantic) ability of the Tribe to design and implement its own policies. Trust responsibility refers to claims based on historic treaties which entitle OST to demand that the US provide the Tribe with basic services or the financial means to those services.

² A nation-to-nation relationship is characterized by recognition by the US of the primacy of the laws and influences of the Oglala Lakota within reservation boundaries.

³ US Bureau of the Census. *1990 Census of Population and Housing*. Washington, DC: US Department of Commerce, 1990.

III. Conclusion

We argue that reservation-based economic development undertaken in the context of a joint problem-solving relationship between OST and the US is the key to the realization of a "nation-to-nation" relationship. Economic independence goes hand-in-hand with political independence and the two, taken together, define tribal sovereignty.

IV. Recommendations

<i>What can the United States Do?</i>

1. Reaffirm sovereignty of OST by changing the US approach to tribal self-sufficiency.

A joint problem-solving relationship oriented towards economic development can only begin when United States policy truly recognizes Native American tribes as fully sovereign nations. Interestingly enough, during America's colonial and early republican periods, Indian tribes were recognized as fully autonomous entities. Consequently, today's articulation of a nation-to-nation relationship is merely the resurgence of what existed in the past. Over time, however, US Indian policy tended towards conquest. The articulation of a nation-to-nation orientation bodes well for the moral conscience of the United States, for their long-term fiscal status, and for their leadership on indigenous rights issues. The American challenge now is how not to repeat the mistakes of the past by dictating the terms of economic development.

2. Establish benchmarks for progress by working with OST to identify clear long- and short-term objectives for development.

Full participation of OST and US government in developing a multi-year plan for funding and goal achievement would fortify a joint planning relationship between the two entities, put in place a realistic plan for tribal self-sufficiency, ensure stable expenditures and services, underscore the need for a planning process on the reservation, and establish accountability within the Tribe.

3. Strengthen the commitment to a nation-to-nation relationship through redefining the role of BIA.

To facilitate a better understanding of the relationship of entities outside of BIA with tribes, BIA could establish a permanent commission whose role would be to coordinate the activity of all federal departments that interact with Native Americans. This commission would draw upon the specialized resources of other departments in establishing training programs for BIA personnel and solicit different viewpoints on how best to foster economic development and identify roles in which the departments themselves could directly contribute to the enterprise. Similar attempts at inter-agency coordination in the past have failed, so specific steps must be taken to ensure the greatest possibility of success. Among these are securing the support of high-level officials in other departments, addressing

problems on a case-by-case basis, and establishing specific results-based goals within definite timelines.

4. **Operationalize the commitment to a self-sustaining government in Pine Ridge through maintenance of current funding levels or flexibility in tribal spending.**

Withdrawal of federal funds at this point would be particularly impractical and harmful. New services, many of which require several years of provision to deliver any real benefit, would disappear. The lack of needed services would have severe repercussions for the Tribe and manifest itself in greater social costs both in the near- and long-term.

5. **Respect the right of OST to pursue self-determination through clarification of regulatory boundaries.**

Tribal sovereignty requires that 1) all concerns wholly contained on the reservation be under tribal jurisdiction, 2) where externalities exist (i.e. pollution) or where there are economies of scale and scope to be exploited, both the US federal government and the OST government should explore shared jurisdiction and harmonization, and 3) state administration of Indian specific programs should cease, in favor of reservation-based administration.

6. **Enhance tribal self-sufficiency through recognition of tribal taxation prerogatives.**

By taking the initiative to pay for public services from within its own resources, OST is demonstrating its desire to become more self-sufficient and less reliant upon federal and state intergovernmental transfers. The federal government should respect and encourage this authority of the Tribe.

7. **Make development assistance expertise readily available.**

The United States should extend an invitation to OST to help in their efforts, with acceptance subject to adoption of a tribal resolution welcoming the assistance.

What Can OST Do?

1. **Reform the executive and legislative bodies of tribal government.**

The two-year terms of office impede planning for any development on the reservation. This is especially true given the historically high turnover rate in individual elected positions. As a result, plans rarely progress beyond conceptualization. Furthermore, cultural and historic forces suggest that Pine Ridge would be more effective with a de-centralized form of government.

2. **Enhance good policy-making capacity by de-politicizing planning decisions and developing a professional civil service.**

Economic growth can only occur when good policies are implemented. OST might consider **patterning** the operations of its government after a "city manager" model, which

gives primary responsibility for planning to senior civil servants one step removed from political pressures. Correspondingly, a permanent civil service, based on professional standards, would ensure the continuance of good policy-making through successive elections.

3. Establish binding business codes.

OST does not have a formally enacted business code. This impedes economic development on the reservation, as investors are then uncertain of standard business practices, safeguards, and their own and tribal government's obligations.

4. Establish an independent court.

A court system separate from political pressures would act as a safeguard against corruption and uphold laws and ordinances, providing a due process avenue allowing businesses to challenge the legality of perceived unreasonable tribal regulations. An independent judiciary is necessary to make business codes meaningful, and also serves as a conflict mediator.

I. Prologue

This report was generated in cooperation with and at the request of the Oglala Sioux Tribe (OST); its goal is to develop a theoretical and empirical framework for identifying both the qualitative and quantitative impact on the Tribe and on its treaty agreements with the United States government of impending federal budget cuts. Officials from OST, Bureau of Indian Affairs (BIA), and state and local agencies in South Dakota were consulted in connection with this report.

In the fall of 1995, OST's executive committee passed a tribal resolution supporting a research project conducted by graduate students at Harvard University's John F. Kennedy School of Government which could outline the basis of a "nation-to-nation" relationship between the Tribe and the United States Government in an era of ever shrinking resources. As understood at the beginning of the project, all opinions expressed in this report are the exclusive and independent conclusions of the researcher-writers, and do not necessarily reflect the views of OST officials or the Tribe as a whole. This report is authorized as, and indeed intended to be used as, an exploratory document to be presented to the Senate Committee on Indian Affairs.

II. Current Native American-US Relations

A. The "nation-to-nation" relationship

Introduced in colonial times but only recently given real currency and substantive affirmation, a "government-to-government" relationship is the official policy of the United States federal government toward Native American tribes. Emphasizing tribal self-government and self-determination as the cornerstone of a new, less paternalistic orientation toward Indian Country, the US government enacted a series of laws designed to enhance tribal autonomy and self-sufficiency (defined as the ability of tribal leaders to independently establish and implement public agenda¹). In truth, the term "government-to-government" does not fully capture the idea that implicit in the concept of tribal sovereignty is recognition by the US of the primacy of the laws and influences of the Oglala Lakota within reservation boundaries. A more descriptive term and one which will be used throughout the rest of this report is a "nation-to-nation" relationship.

In order to even entertain the idea of a "nation-to-nation" relationship, the US had to turn from the assimilationist and termination² policies of the historical past and recognize reservations as autonomous homelands and safe havens for Indian culture rather than as training grounds for integration into "civilized society." Ties between the US and tribal governments, however, are not easily (nor always beneficially) untangled. Treaties and agreements between Tribes and the United States describe "special responsibilities" incumbent upon the latter towards the former, such as the provision of social services and financial and economic aid (See Appendix: Treaty with the Sioux, Fort Laramie, April 29, 1868). In addition, numerous court

¹ It should be acknowledged that no government is wholly immune from external influences, but independence dictates that such effects should not consistently determine internal policy.

² From the establishment of the Pine Ridge reservation in 1878 until 1934, the US government sought to "Americanize" Indians by, among other things, forbidding the practice of traditional customs and languages, by encouraging the enrollment of Indian children in off-reservation boarding schools, and by encouraging the adoption of Christianity. In the 1950's the US government sought to "terminate" reservations to "mainstream" young Indians into American society through relocation programs.

decisions, executive orders, and Acts of Congress acknowledge the US role as trustee of tribal lands and resources.

Formally known as “trust responsibility,” this series of obligations has largely defined US-Native American relations. Under trust responsibility, “The United States pledges to protect, oversee, and manage the rights and resources of Indian Tribes in a prudent manner.”³ For example, the United States holds the legal title to Indian property, but Indians hold the beneficial title. In non-property matters, the role of trust responsibility is equally important, but less clear. Practical application, however, has presumed (at the very least), a responsibility for the provision of financial assistance. Each year, billions of dollars in US grants and loans are extended to Indian tribes.⁴

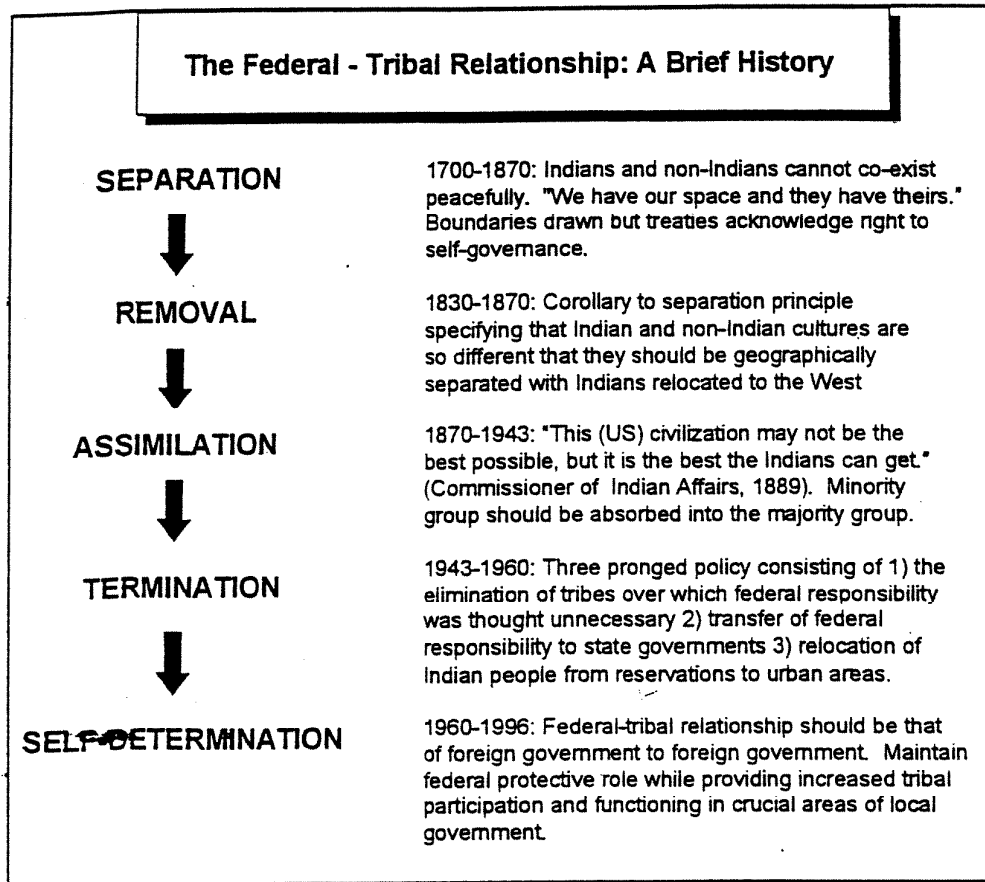
For their part, tribes have a right to and expect the fulfillment of these contract obligations agreed to in recompense for the surrender of Indian lands. Furthermore, because many tribes are poor, this “trust responsibility” takes on critical significance in the lives of these Indian nations. The Oglala Lakota depend on federal transfers to pay public sector employees, to run social services and programs, and to operate tribal government.

After decades of inconsistent Indian policy on the part of the US government, Native American “sovereignty” and continued service of federal “trust responsibility” have become professed goals of both tribal and US federal governments (see figure 1 on the following page). As currently applied to Indian Country, a “nation-to-nation” relationship has taken on a deregulatory flavor, encouraging tribal implementation of US trust responsibilities funded primarily through Congressional appropriations to the Bureau of Indian Affairs (BIA).

³Self-Governance Demonstration Project. *Self-Governance: A Tribally Driven Initiative*. Washington: Lummi Indian Business Council, 1992: p. 34.

⁴These forms of inter-governmental assistance are not to be confused with entitlements which Native Americans, as US citizens, are concurrently eligible for as residents of the states in which their reservations are located. Unless otherwise noted, the use of terms like *transfers*, *funding*, and *moneys* is intended, in this report, to designate federal financial assistance provided specifically to tribal government or other public entities.

Figure 1: ⁵



For example, the 1975 Indian Self-Determination and Education Assistance Act formally marks an important step towards an effective albeit incomplete transfer of power, giving tribes the right to take ownership of and run BIA programs. Often cited as "PL 93-638 contracting," the Act allows BIA to contract out to tribes the provision of reservation services and programs (such as the establishment of tribally controlled and supervised schools). In other words, PL-638 allows tribes to take back some measure of control over government-sponsored programs and services provided on the reservation.

⁵ O'Brien Sharon. *American Indian Tribal Governments*. Norman: University of Oklahoma, 1989: p. 258.

More recently Public Law 100-472 (the 1991 tribal self-governance demonstration project, an experimental initiative being tested by seventeen tribes) attempts to empower tribes with even more agenda-setting capacity. Under this law, program budget allocations reflect tribal priorities and community needs rather than BIA contract requirements, and there is the possibility of negotiating fund transfers between and among programs. Vice-President Gore's "Reinventing Government" project promises to reduce the bureaucratic paperwork requirements associated with securing and administering funds by forward funding programs and eliminating much of the accounting and record-keeping required by BIA. Finally, a recent Report of the Special Investigations Committee of the Senate Committee on Indian Affairs, proposes a "New Federalism" involving the mandatory transfer of US Federal Indian programs to tribal control.

In re-conceptualizing traditional trustee-ward characterizations of US-Indian relations to include the concept of sovereignty, political, legal, academic, and lay communities have suggested that what the courts refer to as "quasi-sovereign domestic dependent nations" are, in fact, workable. The argument is made that US government's contractual agreement and treaty obligation to provide (unspecified levels of) educational and economic assistance as payment for land taken is not in opposition to the development of an Indian nation with effective control over the design and implementation of tribal policy⁶. For example, in a statement issued June 14, 1991 by George Bush, the President stated, "...the White House will continue to interact with Indian tribes on an intergovernmental basis."⁷ At the same time, Bush proclaimed, "Today we move forward toward a permanent relationship of understanding and trust, a relationship in which the tribes of the nation sit in positions of dependent sovereignty along with other governments that compose the family that is America." And, in a conference entitled *Towards a National Indian Legislative Agenda for the 1990s*, Senator Daniel K. Inouye, Chairman of the Senate Committee on Indian Affairs outlined the following:

⁶ In 1832, the United States Supreme Court in *Worcester v. Georgia* explained, "The Indian Nations had always been considered as distinct, independent, political communities...and the settled doctrine of the law is that a weaker power does not surrender its independence - its right to self-government - by associating with a stronger, and taking its protection" (Self-Governance Demonstration Project. *Self-Governance: A Tribally Driven Initiative*. Washington: Lummi Indian Business Council, 1992: p. 54).

⁷ Bush, George. "Reaffirming the nation-to-nation relationship between the federal government and the tribal government." Press release June 14, 1991.

[T]his is my seventh opportunity to participate in a forum of tribal leaders, and I'm pleased to report to you that through these forums Indian Country has now begun to speak in one voice, because you do have many problems in common. I've mentioned two: *Sovereignty* – it touches every one of you. Without sovereignty, this meeting is not important, it's not necessary. Then we have *trust responsibility* – that's what the Constitution says. That's what all the treaties tell us. That's what the laws of this land tell us.

Within the Native American community, "sovereignty" and "the federal trust" also hang in a delicate balance. At the same conference at which Senator Inouye was in attendance, William R. Rhodes, Lieutenant Governor of the Gila River Indian Community stated, "The BIA has a trust responsibility, and I don't think that they should be eliminated at this point. We have to work with them and make them do what has to be done to carry out that trust responsibility." Joe Ely, chairman of Pyramid Lake Paiute Tribal Council intoned, "Congress has to clarify the law about the jurisdictional ability and capacity of tribes. If we are going to be sovereign, then let us rule ourselves, let us have jurisdiction over ourselves and those who use our land."

These statements highlight a relevant distinction in usage. "Sovereignty" is generally used in reference to independent political institutions of governance. Indian tribes can point to native constitutions, executive councils, district leaders, and administrative centers as indices of political autonomy. The current trend toward deregulation centers around giving more formal political power to these Indian institutions.

Federal trust, however, describes a compact specifying economic dependence. The treaties brokered in the 1800s are unique in that they have the effect of establishing formal economic ties between the US and tribal governments into perpetuity. While, "the legal definition of Trust Responsibility and its application have no[t] (sic) been comprehensively defined by statute or by the Courts,"⁸ practical application of the concept has always entailed the extension of US federal grants and loans to tribes.

In speaking about sovereignty and the federal trust, US and tribal leaders suggest that there is no contradiction in pursuing political independence in the face of economic dependence. What is possible in concept may be difficult to achieve in practice. For many tribes US federal

⁸Self-Governance Demonstration Project. *Self-Governance: A Tribally Driven Initiative*. Washington: Lummi Indian Business Council, 1992: p. 34.

transfers comprise more than 50 percent of revenue inflows, a financial arrangement that has serious implications for the agenda-setting and policy implementation abilities of tribes and that hints at remaining contradictions in US-Indian policy.

While the United States and Indian tribes have been asking themselves, “What is the optimal balance between sovereignty and federal trust responsibility?”, the real issues are much more fundamental. They center on these questions: Can sovereignty and the federal trust really co-exist? Are political and economic issues separable?

B. Sovereignty and federal trust in conflict

If a “nation-to-nation” relationship (as the phrase implies) requires recognition of the need for non-dependence and respect of autonomous entities as reflected in non-interference in the statecraft of nations, then for both the United States and Indian tribes, sovereignty hangs in an uneasy balance with federal trust and US regulation. This form of dependence on the United States sabotages tribal political independence and breeds more dependence in a degenerative cycle.

To a large extent, fiscal realities prescribe the boundaries of tribal policy. Federal transfers provide an easy entree for the US to influence tribal initiatives. Under the pretext of accountability (ensuring that moneys secured by the tribe are being used for their intended purposes), the US has been able to condition the receipt of federal transfers on compliance with federal regulations. Because funding from federal sources comprise over 90 percent of the Oglala Sioux tribal budget, contributing about \$30 million to the tribal government and \$100 million to the entire economy once social programs are included, OST can ill afford to be in non-compliance with US regulations. The threat of reduced, or even eliminated funding, compels deference to US prerogatives.

What’s more US regulations have been insensitive to reservation realities and tribal preferences. For the most part, federal laws which apply to US states have been transplanted wholesale to the reservation. This represents a clear and dangerous mismatch such that policies

and values intended for an advanced, industrial nation (the US) are being applied in an economically underdeveloped setting (Pine Ridge reservation). And the effect of such a misalignment is harmful and real. For example, in order to secure federal funds with which to run its police department, OST must agree to pay its tribal police officers at a minimum (undisclosed) rate which is significantly higher than the rate which would prevail in the absence of federal regulation. Given its limited public safety budget and the number of officers needed to patrol a reservation about the size of Connecticut, the Tribe often cannot meet its payroll obligations and must compensate by giving officers more days-off. As applied to tribal police, US regulations mean fewer officers on the beat and the paralysis of tribal court proceedings because no officers are available to serve warrants and make arrests.

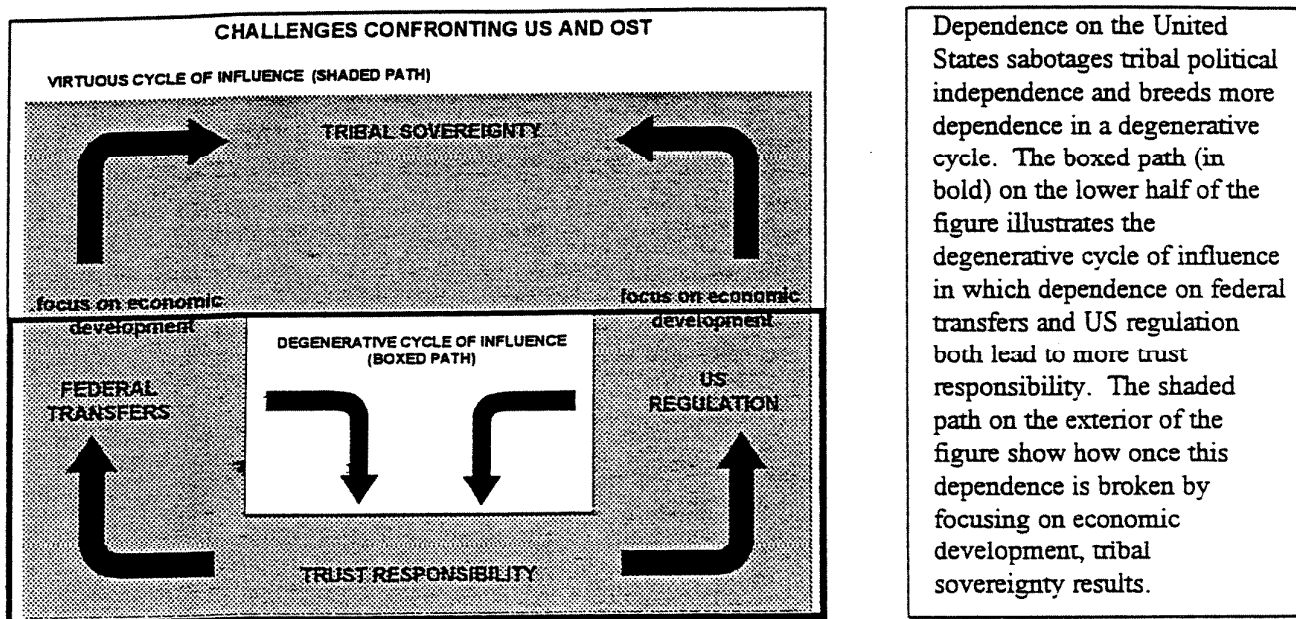
Thus, the effect of economic dependence on policy-making and agenda setting has been profound and operates in both direct and indirect ways. On the most fundamental level, many on-reservation departments and public agencies would not be able to deliver basic services like public safety or emergency medical care without the help of federal moneys. At the same time, the level of service the reservation is able to provide is restricted by federal inflows. In addition, economic dependency encourages *reactive* decision-making, in which the Tribe sets priorities depending on what the US government is willing to fund, rather than *proactive* agenda setting, where the Tribe defines for itself what measures need to be taken to improve the quality of life on the reservation. As a result, the type of service and activity is determined not by the tribe, but by the external forces in the form of the federal government.

Moral arguments in favor of increased tribal sovereignty are many and convincing, but on a more fundamental and perhaps more important level, it is often the case that societal welfare is enhanced when those most directly affected by certain decisions make and implement those policies⁹. The desire on the part of the US to hold the Tribe accountable for the "proper" use of federal funds is a legitimate concern, but the terms of accountability must be reservation-specific and focus on economic development to enable the Tribe to grow in political independence and eventually eliminate the need for federal transfers. As demonstrated in figure 2 on the following page, only when trust responsibility and regulatory measures reinforce

⁹This is certainly what international agencies like the World Bank have learned in their work with developing countries.

economic development can a virtuous cycle of influence leading to sovereignty (and improved reservation conditions) evolve.

Figure 2:



Because sovereignty and the federal trust (through economic dependence) undermine one another, neither can be fully achieved when both exist. US and tribal government rhetoric which has articulated these notions as mutual and reinforcing objectives, is mistaken. Sovereignty (in the form of freedom from undue foreign influence) defines the legitimate terminal point of OST's political and economic evolution, while reliance on federal trust reflects the current reality. Indeed, federal trust, while a necessity in the foreseeable future, must be eliminated in the distant future, if some form of real sovereignty is to be achieved.

In moving away from trust responsibility, however, efforts must be made to increase OST's sovereignty. This is best accomplished by creating a joint problem-solving partnership between the US and OST in order to promote independent tribal policy-making and regulation. For the federal government to withdraw financial support without first entering into a cooperative partnership with OST would be counterproductive and even punitive. Certainly, US influence over policy will automatically diminish as OST becomes more economically sufficient, but even in the absence of financial support the United States might still maintain an

undue level of control over tribal affairs. If not explicitly guaranteed, at least some implicit understanding must exist between the Tribe and the United States that a reduced trust responsibility can occur only in tandem with a greater degree of sovereignty for the OST, manifested in both economic independence of the Tribe and in less control over policy-making and regulation from the United States.

Especially if one is to take the US and tribal commitment to a nation-to-nation relationship seriously and discount ulterior motives (such as the United States wanting to retain some measure of control over tribes for national security or other purposes), then in the end, the need for federal trust must be eliminated altogether in favor of uncompromised tribal sovereignty. Anything less would render OST vulnerable to future US interference in tribal affairs. Indeed, it seems absurd to think of the enshrinement of trust responsibility as a long-term objective. Why would the US government want to provide Tribes with billions of dollars in transfers every year and why would Indian tribes want to subject themselves to the caprices and unpredictability of the funding process year after year?

More fundamentally, trust responsibility currently focused on the provision and delivery of goods and services in fulfillment of contract and treaty obligations undermines the sovereignty of tribes to make, and presumably implement, their own decisions in three critical ways: 1) It divides responsibility and accountability for reservation policy between US and tribal governments, 2) It diverts attention away from the creation of legitimate and effective tribal institutions, and 3) It perpetuates a paternalistic relationship, denying tribes negotiating room in diplomatic relations with the United States.

1. Divided Responsibility

Despite deregulatory efforts, tribes cannot be said to be in control of their own destinies, (though some are clearly farther along than others). The agenda-setting prerogative of tribal governments is undermined when the US Congress determines tribal budgets through appropriations in the House and Senate Committees on Indian Affairs. In many cases, projects are funded and canceled on the basis of the availability of federal grants and loans. When the locus of accountability for policies adopted and implemented by tribes is not

wholly embodied by tribal government, tribal leaders cannot be said to be fully answerable to enrolled tribal members. Accountability leaks admit foreign influence and the loss of control. Although tribal leaders may find it politically advantageous to single out the US as the cause of internal policy failures, this kind of finger pointing may cause tribal citizens to lose faith in the effectiveness of Native governance.

2. Diverted Attention

Secondly, inadequacies in the constitutional mandate of the 1934 IRA, under which OST (and dozens of other tribes) operates, have prevented the Tribe from developing the institutional capacity needed to independently produce basic services such as education, public safety, health care, etc. (all of which are public goods characterized by positive externalities). At the same time, the existence of trust responsibility and the short-term financial relief it provides encourages intensive Congressional lobbying efforts¹⁰ and misleads the Tribe into thinking of effective leadership in terms of success in "getting the United States to honor its trust responsibility." But, this is not good governance, it is dependence. While there are some problems that only money can solve (such as improved infrastructure), there are more issues which are best addressed by ensuring that once resources (financial and otherwise) are committed to an initiative, departments will be able to effectively convert those inputs into services benefiting the community. OST should focus on developing culturally appropriate and, therefore legitimate, operating procedures and checks and balances which, more often than not, achieve desired outcomes.

¹⁰These lobbying efforts are likely to fail given the fact that Congressional appropriations to the Department of the Interior have been shrinking year by year. Indian nations can expect more numerous and extensive cuts in US funded programs in the future. Recent legislative action reflects a consistent trend toward declining federal assistance. For example, in December of 1987, the Department of the Interior, without consulting affected tribes, proposed "Section 209" as an addition to the Indian Self-Determination Act amendments. "Section 209" provided for the direct transfer of funds currently contracted by tribes with a waiver of the trust responsibility of the United States for programs assumed by participating tribes. The law applied to all contracts and acceptance of section 209 tacitly meant agreement to the waiver. Tribal governments across the nation unanimously opposed this measure which could have permitted the US to suddenly and substantially decrease the magnitude of federal transfers to Indian tribes.

3. Perpetuated Paternalistic Relationship

Further, trust responsibility obscures the interest of the United States in maintaining good foreign relations with Indian tribes. Even though Indian nations do not constitute vital economic and national security interests in the vein of Mexico or Canada, the United States, due to historic injustices visited upon Native Americans, has a strong moral obligation to respect the sovereignty of tribes. Trust responsibility reinforces the perception that reservation-based Indian populations are entities to be administered to through BIA. The fact that BIA is housed within the Department of the Interior is telling of the state of US-tribal relations. So is the 907-page US Code of Federal Regulations on Indians, covering everything from grazing regulations to, “the determination of heirs and the approval of wills.” The location of reservations within US boundaries and the dual citizenship of Native Americans make the current location of BIA within a domestic agency appropriate. Yet the formal recognition of tribes as nations requires an orientation beyond that extended to states and other US citizens. Interaction between the United States government – especially the BIA – and tribes should occur within a framework that more closely resembles that between the State Department and foreign nations; a “nation-to-nation” conception of US-tribal relations would be much more appropriate to this vision.

Instead, in the present situation the US has little incentive to negotiate with tribes when, in many cases, it can dictate tribal policies through budgetary means. Trust responsibility leaves tribes susceptible to the national priorities of the United States. Treating Indians categorically under-values the individuality of each tribe, reducing feedback and interaction between reservation and non-reservation areas. It constrains the ability of tribes to enter into “real” negotiations, predicated on respect for the impact of the independent actions of one party on the domestic environment of another party. In the present environment, governments cannot cooperate to take advantage of promising opportunities for joint action, nor can they limit negative outcomes that result from the lack of cooperation.

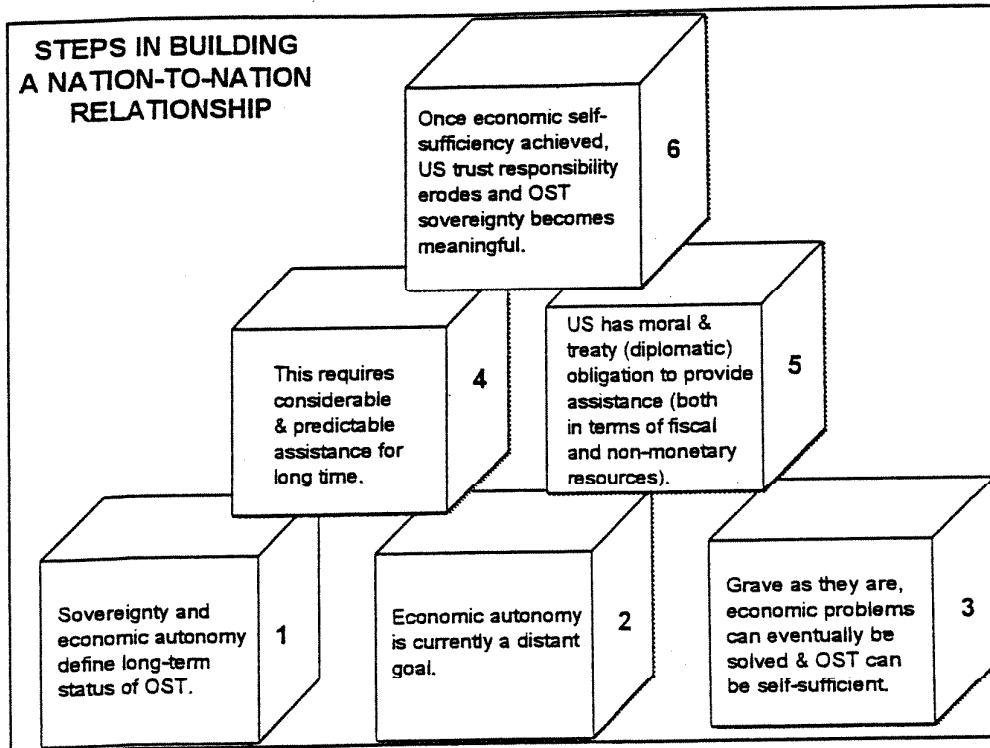
C. Towards a workable redefinition of tribal sovereignty and the federal trust

Political independence cannot exist in an environment of economic dependence. As alluded to earlier, a nation-to-nation relationship predicated on both tribal sovereignty and fulfillment of trust responsibility is possible when trust responsibility is redefined to focus on reservation-based economic development in a joint problem-solving context and partnership. Moving from a trustee-ward relationship to a full nation-to-nation relationship means that the United States must move incrementally from a structure of externally funded service provision to reservations, towards one of internally generated revenues for government administration and public service provision.

Put another way, a nation-to-nation relationship requires that sovereignty and economic autonomy define the legitimate long-term status of Indian tribes like OST. OST's current economic problems are so grave, however, that economic autonomy is a distant goal. Although the Tribe's economic problems can eventually be solved, the process of transforming OST into a self-sufficient nation will require the US government's assistance – provided on a predictable basis for quite some time. Because the economic problems are largely due to historical injuries, the US has a moral (and treaty) obligation to provide assistance at this scale and on those terms, without imposing its own goals or conditions on the purposes to which assistance is put. Trust responsibility must be redefined to focus on reservation-based economic development, planned and implemented through a joint problem-solving partnership. Once economic self-sufficiency is achieved, the obligation of the US diminishes and OST's sovereignty becomes more meaningful (see figure 3 on the next page).¹¹

¹¹Donahue, John. Memorandum on Policy Analysis Exercise March 1, 1996.

Figure 3:



Deregulation is a necessary, but insufficient first step toward this end. Transfer of control over budgetary allocation decisions to tribes does not, in and of itself, characterize sovereignty. Tribes must also be in control of revenue generating capacity so that the ability to successfully implement policy priorities will not be dependent upon, or compromised by, the approval of another government.

Institution building is also a part of the equation. Tribes need to act and to be treated as autonomous entities. Co-producing a framework for economic development based on tribal accountability, legitimacy, and effectiveness (in the provision of public goods), coupled with US assistance and reinforcement of these goals, is the key to tribal sovereignty and the fulfillment of trust responsibilities in an age of diminishing US budgetary resources.

Both the OST and US governments have a stake in reservation-based economic development. For tribes, political sovereignty is in the balance; for the United States, true fulfillment of its trust responsibility obligations is paramount. And if both entities are sincere about establishing a nation-to-nation relationship, then success is critical. The important

questions are what can the Tribe do and what can the US government do to promote economic development on reservations?

D. The World Bank and International Monetary Fund experience

In essence, these are the same questions that developing nations and development banks the world over must ask themselves. Extensive World Bank and International Monetary Fund (IMF) experience in structural adjustment and stabilization provide valuable insights into successful models of development. Some important lessons include:

1. Projects must be prompted by and be specific to the recipient country.

“Successful country programs must be homegrown and cannot be standardized or externally imposed; they should be designed and perceived as central to the countries’ own interests. The Bank plays a supplemental role, backing up and helping to implement sound policy initiatives.”¹²

2. Money is not enough.

“...The projects that the Bank helps finance are invariably changed as a result of the Bank’s close involvement in their preparation, appraisal, and implementation. Some of the Bank’s most experienced borrowers regard technical assistance provided by the Bank and the advice and counsel that it gives in the course of project work to be as important as the transfer of resources. This ‘value added’ by the Bank varies from project to project, but it is usually substantial.”¹³

¹²De Varies, Barend. *Remaking the World Bank*. Washington, DC: Seven Locks Press, 1987: pp 64, 66.

¹³Baum, Warren, and Stokes Tolbert. *Investing in Development*. New York: Oxford University Press, 1985: p. 9.

3. Sequencing is important.

Projects which are proposed or committed to by the developing country and then funded are more successful in attaining development objectives than projects which are funded first and then designed.¹⁴

4. Flexibility is key, influence is best maintained through dialogue.

For donor countries, virtuous cycles of influence (resulting in desired policy outcomes) are more easily sustained when preferences and strategies are not assumed to be fixed. In the "social learning" model of influence, "The hierarchy of goals pursued is no longer assumed to be fixed; it can change through the introduction of new information or new cognitive maps. Influence operates...through persuasion or debate."¹⁵

These guidelines are equally applicable to a nation-to-nation relationship between the US and tribal governments focused on reservation-based economic development. Noting that development efforts must be tribe-specific, this report outlines what a new nation-to-nation relationship between the US and the Oglala Sioux Tribe might look like. Because there are social, economic, historical and other circumstances unique to the Pine Ridge reservation, many of the prescriptions suggested here may not be generalizable to other tribes.

¹⁴Haggard, Stephan, and Robert Kaufman., ed. *The Politics of Economic Adjustment*. Princeton: Princeton University Press, 1992: pp 114-115.

¹⁵Haggard, Stephan, and Robert Kaufman., ed. *The Politics of Economic Adjustment*. Princeton: Princeton University Press, 1992: pp 123-124.

III. Current State of the Pine Ridge Reservation

A. Severe economic dependence within limited political independence

The present relationship between the Oglala Sioux Tribe and the federal government is a stark example of the conflict between federal trust responsibilities (defined as providing for the welfare of OST members) and tribal sovereignty. On one hand, the US national government has provided substantial support in services and resources that have enabled the Tribe to endure decades of economic deprivation. In fact, the current Pine Ridge economy is possible only with federal funds. Yet this fulfillment of obligations is incomplete, as the federal government has also failed to deliver on many of its promises and has even violated agreements with the Tribe outright. The issue of sovereignty has inherent contradictions as well. While the Tribe possesses the formal authority to manage its own affairs and provide basic necessities to the community, dependence on the influx of federal resources invites US oversight, which inevitably compromises tribal independence.

B. A profile of Pine Ridge

The March 1992 BIA *Report on Service Population and Labor Force* lists the Indian population of the Pine Ridge Reservation at 16,106, while the South Dakota State Data Center estimates the total population of the Pine Ridge metropolitan statistical areas (MSA) to be 16,398. The Pine Ridge MSA includes Shannon County – the main county of the reservation – and Bennett and Jackson counties, each of which is partly included within the reservation boundaries. The 1990 Census counted 11,356 residents on the reservation, with a median age of 19.4 years.¹⁶

¹⁶These numbers on population reflect different methodologies employed by different agencies.

The social and demographic characteristics of the reservation are consistent with those of an area that offers little economic opportunity to residents. The 1990 Census found that 62.7 percent of individuals on the reservation were poor. The poverty rate among children was 70.2 percent and 56 percent for families.¹⁷ Only 58.5 percent of the adults 25 years and older had graduated from high school, and only 9.6 percent had at least a bachelor's degree.

Selected Demographic Characteristics, Pine Ridge Reservation¹⁸

Population	16,106
Median age	19.4
Poverty rate (overall)	62.7%
Children	70.2%
Families	56.0%
Education level, adults 25 years and older	
High school graduates	58.5%
Bachelor's degree or beyond	9.6%

Health indicators at Pine Ridge are consistently worse than for the United States as a whole. The table on the following page shows that the death rates at Pine Ridge from unintentional injuries, cirrhosis, and obstetric/maternal causes are particularly high in comparison with national rates.

¹⁷Poverty rates among children are typically higher than for families. This occurs because some poor families may have more than one child, thus several children would be poor, although only one family would be poor.

¹⁸Population figure from 1992 BIA Report on Service Population. Other data from 1990 Census.

**Leading Causes of Death per 100,000:
Pine Ridge Reservation and the United States¹⁹**

	Pine Ridge	United States	Difference (%)
Coronary heart disease	245.8	148.2	65.9%
Stroke	68.8	27.7	148.4%
Pneumonia/influenza	241.3	226.8	6.4%
Chronic obstructive pulmonary disease	29.4	19.0	54.7%
Unintentional injuries	191.7	30.0	539.0%
Cancer	187.8	134.5	39.6%
Lung	63.0	39.0	61.5%
Breast	6.4	23.1	-72.3%
Cirrhosis	93.5	8.3	1026.5%
Obstetrics/maternal	70.2	8.2	756.1%
Diabetes	47.6	11.7	306.8%
Suicide	33.6	19.0	76.8%
Infant mortality	19.6	8.9	120.2%

According to the 1990 Census, of the 6,499 persons 16 years and over on the reservation, only 3,215 were in the labor force, that is, either employed or actively seeking work. Of those in the labor force, 2,312 were employed and 965 were unemployed, representing an unemployment rate of 29.4 percent. Some sources of data from the Tribe claim an unemployment rate of higher than 70 percent. If one includes all those in the labor force who are not working, the unemployment rate jumps to 65.4 percent.

Employment, Pine Ridge Reservation²⁰

Persons 16 years of age and over	6,499
In labor force	3,215
Employed	2,312
Unemployed	965
Unemployment rate	29.4%

¹⁹ Aberdeen Area Tribal Chairman's Health Board. "Aberdeen Area Progress Report: Tracking Healthy People 2000 Objectives. Aberdeen: AATCHB, October 1995.

²⁰ 1990 Census.

With a little over a third of the age-eligible persons actually working, it is not surprising that entitlements comprise a substantial proportion of income on the reservation. The 1990 Census counts 2,251 households that generated wage or salary income in 1989, resulting in \$29.5 million in earnings. The Census found 1,056 households receiving public assistance income, which resulted in \$4.1 million. This figure is somewhat conservative, as it does not include Food Stamps or Supplemental Security Income (SSI). It also is considerably lower than the figure for Aid to Dependent Children, or ADC, for the entire Pine Ridge MSA (which includes Shannon, Bennett, and Jackson counties). The South Dakota Department of Social Services says that for the Pine Ridge MSA in 1990 Aid to Dependent Children, Food Stamps and SSI totaled \$9.9 million, or \$11.2 million in 1994 dollars. The state's most current data available show that the above three programs accounted for \$13.8 million in 1994, with Shannon County receiving \$10.8 million (see Appendix: Aggregate Benefits Received).

The proportion of households and individuals who receive entitlements shows more vividly the significance of this source of income on Pine Ridge. The 1990 Census reports that 1,056 households, or 40 percent, received public assistance in 1989. This compares to 2,251 households, or 86 percent, that received wage and salary income. These percentages total more than 100 percent because some households received both public assistance and earned income during the year. More recent figures from the South Dakota Department of Social Services indicate that 21.2 percent of individuals in the Pine Ridge MSA received ADC and 39.2 percent received food stamps in 1994.

Entitlements, Pine Ridge

1990 Census (Pine Ridge Reservation)	
<i>Households</i> receiving public assistance	1,065
Percent receiving public assistance	40%
Public assistance dollars received	\$4.1 million
Wage and salary income	\$29.5 million
1994 South Dakota Department of Social Services (Pine Ridge MSA)	
<i>Persons</i> receiving ADC	3,478
Percent receiving ADC	21%
<i>Persons</i> receiving food stamps	6,429
Percent receiving food stamps	39%
Public assistance dollars received	\$13.8 million

Entitlements represent only a fraction of the federal resources that flow to Pine Ridge. Best estimates indicate that federal transfers and entitlements total approximately \$101 million in the Pine Ridge economy (See Appendix: Federal Spending on Pine Ridge). This dominance is evident in the budget of the tribal government. In 1994 federal money comprised 90 percent of the tribal government budget.

Relying heavily on support from the federal government, the reservation's public sector provides the vast majority of employment opportunities on the reservation. The 1994 Overall Economic Development Plan for the Oglala Sioux Tribe counted 1,695 persons working for the major employers on the reservation. Of this group, 1,611 were employed in the public sector. This translates to 95 percent of all persons who work for the largest employers on the reservation as being employed in government. The 1990 Census provides a less recent but more comprehensive view of the public sector employment on Pine Ridge. Of 2,312 employed persons 16 years and over, 1,272, or 55 percent, worked for some level of government.

Federal Impact on Pine Ridge Economy

Total federal transfers and entitlements to Pine Ridge	\$101 million
Federal money to Oglala Sioux Tribal government	\$30 million
Percent of tribal government budget	90%
<i>1994 Overall Economic Development Plan</i>	
Workforce of 11 major Pine Ridge employers	1,695
In public sector	1,611
Percent in public sector	95%
Number of private businesses	52
<i>1990 Census</i>	
Employed by government	1,272
Percent employed by government	55%

The private sector contributes much less to the private economy. The 1994 Overall Economic Development Plan counts only 52 businesses on the reservation. Only three of the largest employers were private enterprises, employing 84 persons.

C. Drawbacks of federal funding

While a source of badly needed income, federal funding presents several complications that impede the development of the Oglala Sioux Tribe. These include the following:

1. Inadequacy of resources

The Tribe faces significant deficiencies in health care, public safety, economic development, housing, nutrition, and infrastructure that prohibit economic and social progress. Shannon County, completely contained within the reservation, is the poorest county in the United States.

For the Tribe to progress, massive inflows of resources are required. Yet the resources provided to date have been inadequate, and in fact, the United States has even taken resources (especially land) from the Tribe on several occasions. In 1879, when the US government unilaterally reduced the land provided through negotiations with the Sioux, it took from the Tribe the Black Hills, rich in minerals. A later seizure in 1889 left the Oglala Sioux with the parcel of land farthest from what would emerge as the largest population center in the region, Rapid City. The Pine Ridge reservation still represents 5,000 square miles, but this is just a fraction of the land recognized as belonging to the Sioux in the Fort Laramie Treaty of 1868. The original land area covered much of Montana, North Dakota, South Dakota, Nebraska, and Wyoming. Such removal of land from the Tribe has been devastating on two fronts. First, the reduction in land base forced the Oglala Sioux to abandon the familiar lifestyle that incorporated migration and hunting on which the Tribe prospered for centuries. Second, the taking of land removed from the Tribe the resources contained on the land.

2. Vulnerability to reduction in funding

With little revenue from other sources, the Tribe is vulnerable to funding decisions in Washington, DC, and the political dynamics that drive these choices. This vulnerability has developed as a result of the Tribe's dependence on high levels of federal support. For

instance, the Tribe has seen its federal funding increase steadily since 1990. Longitudinal data were only available for the tribal government, entitlements, and the housing authority. Federal funding of these areas increased in real terms from \$26.9 million in 1990 to \$46.0 million in 1994 (See Appendix: Tribal Government, Entitlements, and Housing Authority, 1990-1994). Other entities on the reservation, including the hospital, tribal college, elementary and secondary schools, and law enforcement also rely primarily on federal dollars. If one includes Social Security, some 94 percent of all money supporting the above entities and programs comes from the federal government.

Current budgetary pressures regarding balancing the federal budget over the next seven years will have an enormous impact upon the Oglala Sioux Tribe. Reduced spending in related agencies like the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Education will limit the ability of the Tribe to provide basic services. For example, the Oglala Sioux Housing Authority projects it will lay off up to 211 full-time and contract employees and reduce services, including the renovation of 50 homes. The Dakota Legal Services already operates on a part-day basis, and cuts of 30 percent would result in fewer services.

3. Restrictions on tribal priorities

The Tribe's reliance on the federal government limits tribal priority-setting as grants are often categorical and cannot be directed toward projects at the Tribe's discretion. For instance, revenues for fiscal 1996 include \$35 million in categorical federal grants and contracts, another \$22 million in federal construction funds for a water system, and \$4 million in indirect cost funds for the administration of the federal funds. This leaves just \$6.5 million in unrestricted general funds, and between \$7 million and \$8 million in enterprise fund revenues that could be used by the tribal government. Thus, some areas considered vital to self-sufficiency remain neglected.

4. Constraints on tribal activity through regulations

A second type of restriction is the regulations that accompany any project funded with federal dollars. When federal money reaches the Tribe, not only must the Tribe spend the

resources on certain projects, but the Tribe must also adhere to regulations regarding the projects for which the funds will be used. For example, as mentioned previously, the Public Safety Commission must spend an additional \$400,000 in police officer salaries to comply with the Law Enforcement Pay Refund Format (25 CFR chapter 1: section 12.103j).

5. Intermingling of economic activity with political activity

Perhaps the most ironic outcome of federal dominance of local economic activity is that economic activity inescapably becomes tied to local politics. Since the entities through which the majority of resources flow are public and political organizations, decisions regarding hiring, contracting, and economic development are often driven by political considerations. In such an environment, it becomes crucial to establish safeguards to ensure that the personal preferences and interests of those in power do not take precedence over collective tribal goals.

The negative aspects of the politicization of economic activity have been well-documented and are affirmed by those on the reservation. The 1994 OEDP states that "...it is important for the tribal government to recognize its limitations. One such limitation is in trying to directly operate profitable businesses." As discussed in more detail later in the paper, every government-based business on Pine Ridge has failed. Indeed, decades of tribally sponsored business activity, including planning and managing commercial enterprises, have yielded few productive results.

When related to specific business enterprises that have been unsuccessfully launched on the reservation, this entanglement of political and economic activity is often cited as a primary cause of failure. When applied to the public sector, the economic influence of government spending can result in cronyism and a lack of professional standards in hiring and performance.

The public sector, by its dominance of the local economy, provides the opportunity for the job market to be politicized. Of course, the prominence of the public sector results from the lack of a private economy. Individuals on the reservation have little choice but to turn to the government for employment. Nevertheless, persons on the reservation commented that hiring decisions were often based upon family membership and friendship, and some even

went as far as saying that some organizations protected additional layers of administration in order to provide jobs for friends and family.

There is also great potential for 638 contract programs to become politicized. For example, the reservation has 36 Head Start centers, all of which need propane. The only local supplier claims to have submitted the lowest bid, but was passed over in favor of outside vendors. Regardless of the reasons for choosing the winning bid, an environment in which public officials are perceived to wield significant power is also an environment full of suspicion and distrust. In this atmosphere, even the few existing local businesses that seek government contracts may become disillusioned.

Economic development is also subject to the same perception of favoritism toward entrepreneurs from outside the reservation. For instance, in 1990 two local entrepreneurs opened a 24-hour convenience store on the reservation. While motorists needed a place to buy gasoline any time of day, the venture raised considerable opposition from existing businesses, particularly those owned by interests outside the reservation. The new store's proprietors feel that the Tribal Council, perhaps reacting to pressure from the outside interests, did not adequately support the convenience store. While other factors may have presented obstacles to the opening of the new store, the prominence of political influence on the reservation makes it a prime target for blame when controversy arises.

D. Impact of federal budget cuts

The problems accompanying federal spending do not mean that less federal funding will benefit Pine Ridge. Reductions in funding will have noticeable impacts on public services and the Pine Ridge economy. Questions regarding reduced funding include: "How will fewer resources impact the reservation?" and, "How can the Tribe and federal government work in concert to increase the self-sufficiency of the reservation?" The argument here is that federal funding flows should occur on a different basis than they did before. The threat to realign US national spending priorities should be taken as an opportunity to ask these even more important

questions: "How should federal money be deployed differently?" and, "How should federal money be used to foster economic growth?"

Reduced federal spending affects employment, government spending, services, and private commercial activity that depends upon a customer base whose income is from the public sector. Further, private enterprise on the reservation would be negatively affected by a reduction in public expenditures. For instance, the Lakota Fund has gained widespread recognition for its ability to provide small loans and training to entrepreneurs on the reservation for small business startups and expansion. The Fund has loaned a total of \$900,000 since its inception in 1986. Yet this entrepreneurial activity depends mostly on the reservation for sales, so reductions in public spending would result in reduced sales among these entrepreneurs, possibly leading to default on the loans as a result of the inability of businesses to service their debt. Moreover, the successful 24-hour convenience store has delayed its plans for expansion due to the uncertainty of federal funding.

Public service provision would decline as well. The police department reports that the funding cuts along with the new requirements for federal pay rates will reduce the budget from \$2.55 million to \$1.75 million, plus require an additional \$400,000 expense in higher salaries. The new budget would cause the police force to reduce the number of officers by more than 50 percent. In the cases where service quantity will not decrease, the quality of services provided will nonetheless decline. For example, one responsibility of the tribal court system is to enforce and implement the Indian Child Welfare Act, which permits tribes to have jurisdiction over Indian children in state courts, particularly in cases involving child abuse and neglect, foster care, and adoption. Reduced funds would cause tribal employees to attend fewer court cases, so that the interests of the Tribe and children would not be represented as effectively.

E. The need for greater sovereignty

In these and many other respects, neither sovereignty nor trust responsibility are realities. The Tribe does not have effective agenda-setting or decision-making power and the US

government is unable to provide for the Tribe's welfare. The situation can only worsen, as the US Congress is anticipating a 35 percent across the board cut in federal funds to Indian tribes. This means that Pine Ridge will be more dependent than ever on federal funds and the United States will be even further away from satisfying trust responsibility. In addition, the state of the reservation's economy has consequences for the surrounding off-reservation economies in Nebraska and South Dakota. A 1988 study found that tribal members spent 91 percent of their income off the reservation. This translated into \$75 million spent around Pine Ridge.²¹

In a sense, Pine Ridge is more underdeveloped than many developing countries. The reservation generates only 10 percent of its own budget. Even the most aid-dependent nations provide a much higher percent of resources domestically than does Pine Ridge. Either Pine Ridge will have to continue to survive on declining federal resources, or generate more on its own.

From a historical perspective, the opportunity and urgency for change perhaps has never been greater. Internally, the Tribe has demonstrated progress in managing its own affairs, as evidenced in its involvement in the National Performance Review program, improved accounting methods, and other initiatives. Furthermore, particular social problems are on the decline, showing either that conditions on the reservation are stable, or that institutions are effective. For instance, the number of homicides on the reservation has declined from 26 in 1986 to one in each of the last three years. This reflects well on the safety within the reservation, as well as local law enforcement efforts. Such progress should encourage the federal government to deal with the Tribe more as an equal partner rather than through a supervisory role.

The motive force for change, of course, is the anticipated decline in federal support. The Tribe has no choice but to seek a new relationship with the federal government or continue to cope with fewer resources. The push for a balanced budget will place even more pressure on US-funded programs, which provide much of the support to the Tribe. If the needs of the Tribe

²¹Sherman, Richard. *A Study of Traditional and Informal Sector Micro-Enterprise Activity and Its Impact on the Pine Ridge Indian Reservation Economy*. Washington, DC: Aspen Institute, 1988: p. 21.

increase through a growing population while support to the reservation declines, the Tribe will have less flexibility in determining its priorities and managing its affairs.

Such autonomy is in the interests of OST and the United States. For OST to survive in the absence of federal support, it must obviously be able to support its own economy and design and implement its own rules of order. While OST is making progress toward these goals, the Tribe is not at the point where it can effectively operate without substantial external assistance. Achieving this level of independence will require a new approach to planning and decision-making, and the financial support to sustain the Tribe through this transition. The ultimate goal of the United States and OST should be the creation of a "capable" state in Pine Ridge.

IV. A New Relationship

A. The case for a "capable state" approach at Pine Ridge

In general, prior major attempts at economic development at Pine Ridge have been tribal government-led initiatives predicated on the premise that, "...tribal government should logically be the developer and owner of major reservation industries, particularly those that received financial assistance from federal programs."²² However, this "strong state" approach to development has led to disappointing results. In fact, without exception and for more than thirty years, tribally-owned manufacturing ventures at Pine Ridge have failed. These industries included, among others, a footwear manufacturing plant, a plastics plant, a beef slaughter/meat processing plant, an archery manufacturing operation, and an electronics assembly plant.

Paralleling the experience of developing nations from the 1950s to the mid '70s, Pine Ridge (until very recently) conformed to theories recognizing the state as the engine for economic growth. Organized around the theory of market failure (some investments will not be priced at their true worth because of inefficiencies in information gathering and dissemination), developmentalists advocated that central governments should take a leadership role in the creation of business enterprises – even to the extent of directing the day-to-day operations of these entities. Many African and Latin American nations followed this model, setting up elaborate bureaucracies to manage state-owned enterprises. As in the case of Pine Ridge, most of these ventures failed. While it may have corrected for some market failures, the state also created its own economic distortions such as rent-seeking (the use of publicly owned assets for personal gain).²³

²² 1994 *Overall Economic Development Plan (OEDP)*, Oglala Sioux Tribe, p. 3. This statement does not include particular micro-enterprise efforts, like the Lakota Fund, which has over time provided a major economic boost to Pine Ridge through numerous loans and business start-ups to small entrepreneurs.

²³ Even more devastating for tribes, including OST, the development of a strong state approach was more of an afterthought than an actual blueprint. As a result, Native American tribes were burdened with an ineffective economic system by default, so that no coherent plans were made for working within this unwieldy framework. This contrasts with developing nations, where a

Partly in reaction to the failed policies of the developmentalists, the mid 1970s-late 1980s saw the rise of a “minimalist state” orientation to development. Minimalists saw the state as a barrier to economic development and encouraged decentralization and the institution of market forces. Again the solution was not so simple: chaos reigned as entrepreneurs, unchecked by regulations, colluded and schemed, gouging customers and other competitors. Market forces did not prevail in an unstructured environment.

These large scale and very costly real world experiments in development have led to the realization that states are a necessary, though insufficient, ingredient in economic development. There are coordinating functions which only the state can perform, such as the establishment of business codes and corresponding mechanisms of enforcement, the specification of macroeconomic policy, and the negotiation of international treaties. And when true market failures or externalities exist, it is the responsibility of the state to make the necessary investments that no one else will make. This includes investment in physical, human, and intellectual capital, or more precisely, in infrastructure, education, health, and public safety, among other goals. In effect, it is the job of the state to create an environment conducive to entrepreneurship, without getting into the business of creating businesses.

Capable states are characterized by four qualities.²⁴ They have 1) *institutional capacity* to regulate economic and political interactions and implement authoritative and effective ground rules, 2) *technical capacity* characterized by a cadre of well-trained analysts and managers to depoliticize the decision-making process, 3) *administrative capacity* to perform and deliver basic services to members of society, and 4) *political capacity* to allow for effective and legitimate channels of societal decision-making, representation and conflict resolution.

The success stories of the newly industrialized East Asian countries, support the usefulness of the “capable state” in informing scholarly and practical approaches to economic development. Irrespective of regime type, Korea, Singapore, and Taiwan can all attribute their

strong state approach was deliberately adopted and thus policies were designed to operate in the system. While the strong state doctrine is generally discredited, the implementation of it on Indian reservations was arguably even more harmful than in most developing nations.

²⁴Grindle, Merilee. *Challenging the State: Crisis and Innovation in Latin America and Africa*. Cambridge: Cambridge University Press, 1996: p. 8.

success to the creation of a well-defined and predicable framework for business activity, which established, among other things, the "rules of the game" by which all entrepreneurs must abide.

The same is true in Indian country. Based upon extensive field work with Indian tribes, Professors Stephen Cornell and Joseph Kalt write in *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations* (p. 13),

...many tribes pursue development backwards, concentrating on picking the next winning project at the expense of attention to political and economic institutions and overall development strategies. Generally speaking, only when sound political and economic institutions and overall development strategies are in place do projects – public or private – become sustainable on reservations. Much of the development success we have seen has occurred when tribes have paid prior and on-going attention to the structure and powers of their political and economic systems.

There are early indications that given the right environment, entrepreneurs will emerge at Pine Ridge. Currently, the most successful businesses with the least capital flight off the reservation²⁵ are small start-ups, and there is a thriving informal sector economy characterized by barter.²⁶ For example, tribal members are quick to take advantage of seasonal business opportunities such as during the summer months when European tourists seek Indian handicrafts and lodging. But, these enterprises are few and mostly underground. Creating a stable and supportive environment for entrepreneurship will accelerate economic development by strengthening the reservation's formal sector economy, which, on the production side, will make intermediate product inputs and other needed business resources more generally accessible. And on the consumption side, development of a formal private business sector will help curb the outflow of dollars from the reservation into neighboring Nebraskan and South Dakotan communities.

When business owners live on the reservation, there are also ancillary benefits to be gained in the form of what Robert Putnam calls social capital (referring to "features of social organization such as networks, norms, and trust, that facilitate coordination and cooperation for

²⁵ Some franchises such as Pizza Hut and Sioux Nations shopping mall are profitable, but a majority of their revenues is returned to outsiders.

²⁶ Sherman, Richard. *A Study of Traditional and Informal Sector Micro-Enterprise Activity and Its Impact on the Pine Ridge Indian Reservation Economy*. Washington, DC: Aspen Institute, 1988.

mutual benefit”).²⁷ For example, the owner of Pinky’s in Manderson, uses her store as a base to connect buyers and sellers of handicrafts and to perform charitable activities (such as collecting infant clothes for expectant mothers). Her store is a place for children to “hang out” and for the community to “come together.”

Pinky’s exemplifies other benefits of home-grown businesses. The fact that she owns a store on Pine Ridge when she has other opportunities off the reservation demonstrates her commitment to her community. Pinky’s proprietor shows concern for her community and employees. She seeks to develop her employees, both professionally and personally, and serves as a role model to the community. She also has an understanding and sensitivity to the community that an off-reservation investor would not. For example, she knows that children steal candy and other small items in spite of her best efforts to limit theft; nevertheless, she has an informal national network that sends her toys which she will give to those same children as presents on their birthdays. For many children, this may be the only gift they will receive.

While such successes show the viability of economic enterprises, entrepreneurs will not succeed on a larger scale without inflows of federal money. As mentioned, the reservation economy, so dominated by federal programs, will be severely affected by a decline in support from Washington, DC. The key to future federal support may be to find a way to emphasize its economic development aspects so that the reservation will continue to benefit from entrepreneurship and over time become less dependent upon federal money.

B. Harnessing the potential of Pine Ridge

With approximately 16,000 tribal members, Pine Ridge holds tremendous potential to develop a thriving, on reservation business center given the appropriate raw materials and incentives. Economic development via joint problem-solving efforts on the part of both the US

²⁷Putnam, Robert. “The Prosperous Community: Social Capital and Public Life.” *The American Prospect* (Spring 1993): pp 35-36.

and OST governments must, at the very least, encourage entrepreneurship by addressing and enhancing attributes of capable states.

Further, apart from the long-term goal of phasing out trust responsibility altogether and initiating an era of truly sovereign tribal governance, funding realities compel the creation of a new nation-to-nation relationship based on the "capable state" model. Increased federal funds over the last five years have two implications. First, more funding has made the Tribe dependent upon the federal government and less able to sustain or improve economic and social conditions on the reservation. Realistically, this dependency means that if the United States were suddenly and substantially to reduce its support of the Tribe, the economic basis of the reservation would significantly deteriorate. Secondly, in light of the US debt and political reality in Washington, the Tribe cannot reasonably expect this trend of increased funding to continue.

For the US and OST governments to co-produce a framework for indigenous economic development would abrogate the need for future increases in federal funds. Such a framework would require a substantial change in attitude by OST and the United States, as well as governmental reform within the OST. The US government must see OST as a partner in the true sense of the word, and OST needs to redefine sovereignty as greater autonomy *and* responsibility, not just as increasing the flow of federal funds to the reservation. This transition will require substantial commitment and effort on the part of the Tribe and United States, and progress must be made on several fronts.

While the most obvious outcomes of the present relationship are severe economic and social dysfunction, reform of US and tribal political institutions is a necessary precursor to economic and social advancement. As a first cut, both entities must concentrate on governmental reform. Taking into account the current budgetary uncertainty, the remainder of this report will specify an interim strategy based on political reform for effectively confronting the changes that lie ahead and establishing a more sovereign and independent state at Pine Ridge. This emphasis on political reform, however, is not meant to ignore the significant social, educational, and health reforms which must follow governmental institutional revitalization.

For example, having lived in a desperately impoverished state for so long, many tribal members have come to believe in hopelessness. The exigencies of getting by on a day-to-day

basis foster a short-term mentality, geared towards numbing out the present pain and providing for current needs. This breeds a host of social problems such as alcoholism and suicide²⁸. It also precludes the long-range planning needed to successfully run a business. Consequently, (and especially with its short terms of office), the tribal government has difficulty developing and following medium- and long-term plans. Would-be entrepreneurs' pressures, although different, also dissuade them from starting or expanding businesses. Clearly, the obstacles to development are not strictly economic and political in nature.

One vignette makes this point even more persuasively. Alcoholism is the most pervasive health problem on the reservation, extending to whole families and involving children as young as 13 years of age. Before the proprietors of Big Bat's, a convenience super store complete with eatery and gas station, were even able to contemplate starting their own business, they, themselves, had to recover from alcoholism. For a long time, Big Bat's did not have a core morning crew because many staff simply did not show up for work; employees were either unable to work because of alcohol-related conditions or incidents, or did not understand the concept of responsibility because they had grown up without role-models who demonstrated a strong work ethic.

These problems must be dealt with as a precondition to the development of a truly thriving entrepreneurial economy. Children need to be taught about saving, planning, responsibility, and the dangers of alcohol starting in kindergarten, and the lessons must be repeated every year. New generations must be given greater hope than was possible in the past. OST needs to make alcoholism the target of an extensive public information campaign and undertake serious efforts at rehabilitation. OST may also consider establishing a residential alcohol treatment facility on the reservation and an environment free of alcohol on the reservation would also help. Presently, the reservation is supposed to be dry (that is alcohol free), but this regulation is not enforced and alcohol, particularly beer, is purchased in near-by communities and then brought onto the reservation. Alcoholism saps the human and intellectual

²⁸Establishing programs and centers to deal with such serious social issues as alcoholism and suicide are a necessary part of a successful economic development effort, but detailing the elements of such an endeavor is beyond the scope of this report and should be more fully addressed in subsequent studies.

capital needed for economic development. The social problems at Pine Ridge are serious ones and should not be taken lightly simply because they are not addressed within the context of this report.

C. What the US can do

Formal ties between the United States and OST exist on both the federal and state levels. In fact, US administration of the affairs of Indian tribes are by far more extensive and more complex than with any other US-affiliated territories (Micronesia, Puerto Rico, or the Marshall Islands). This is probably due to the role of trust responsibility and the contiguous geographic location of reservations in relation to US states.

The organizational and jurisdictional layers that dictate and implement Native American policy present several contradictions and complications. From Washington DC, the Bureau of Indian Affairs is generally charged with the responsibility of implementing Indian specific and non-Indian specific programs and ensuring that regulations are enforced on the reservation. However, some programs are implemented by state officials and conform to state standards. All other actions not specified by Congress remain within the purview of tribal governments. Powers delegated to federal, state, and tribal authorities are *ad hoc* in nature, with few clearly discernible boundaries. For example, while OST police have jurisdiction over what laws will be enforced on the reservation, the department must comply with Congressionally mandated salary levels and prison conditions in order to receive funding from BIA. While such division of jurisdiction is not much different than that experienced by state and local governments, the situation in Pine Ridge is exacerbated by the level of federal aid that OST receives.

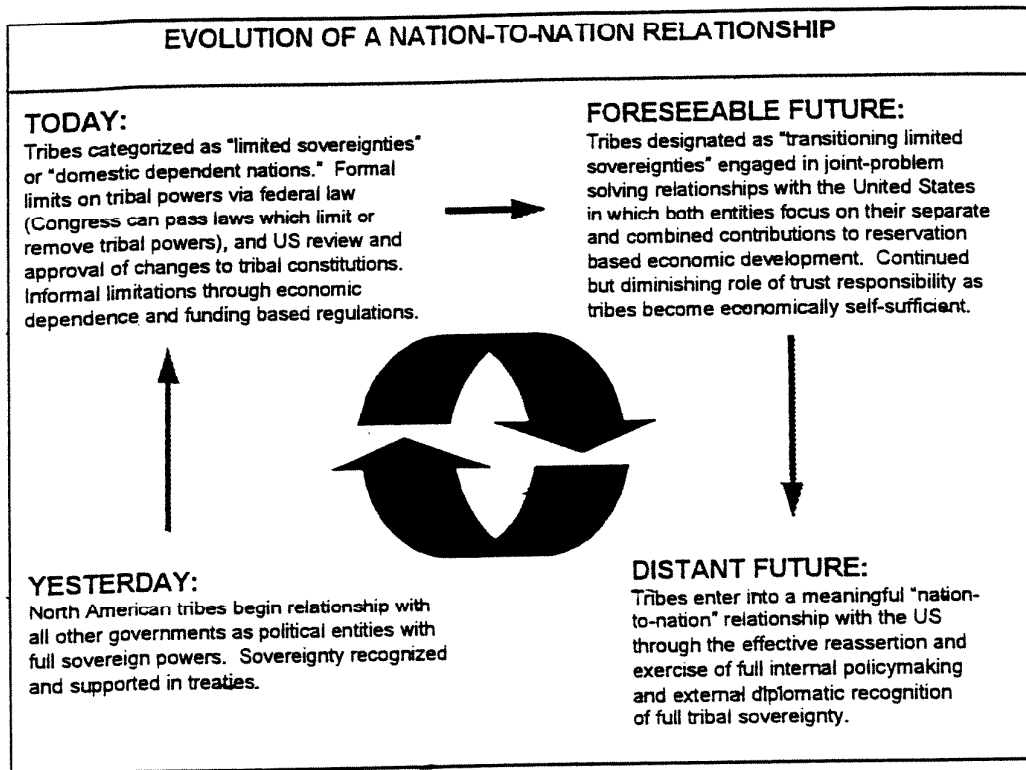
These characteristics of the US/tribal government relationship undermine the creation of a "capable" state and suggest reforms on the part of the US government to help improve the situation. Unlike the association with US territories, there is strong desire to change the relationship between the Tribe and the US government. This cannot occur instantaneously, yet the US government must view its relationship with the Tribe as one in transition. Changing the

relationship calls for a new understanding of the future of the Pine Ridge reservation, and steps that might make real the transformation from dependence to partnership. A partnership requires parties to interact with each other as equals, acting in an environment of mutual trust while respecting and taking advantage of the specific expertise and capacity of particular parties. This interaction should include the setting of priorities, identification of mutually satisfying goals, and working together toward those goals. Thus achieving a nation-to-nation relationship requires first establishing a partnership, and then continuing with further steps to implement tribal sovereignty, the raw material needed for the United States and the Tribe to interact as one nation to another. These measures include the following:

1. Reaffirm sovereignty of OST by changing the US approach to tribal self-sufficiency.

A joint problem solving relationship oriented towards economic development can only begin when the United States views Native American tribes as sovereign nations. Interestingly enough, during America's colonial period and even into the early days of the republic, Indian tribes were recognized as fully autonomous entities. Consequently, today's articulation of a nation-to-nation relationship is closely related to what existed in the past, with one key difference: In colonial times, a nation-to-nation relationship implied the domination of one entity over another. Over time, US Indian policy became even more oriented towards conquest. Using today as a starting point, the evolution of a nation-to-nation relationship should emphasize respect between sovereign entities instead of jockeying for influence. As Indian tribes are increasingly seen and treated as "real" sovereign political entities, the United States will grow in its recognition of vital tribal economic and national security interests. Figure 4 on the next page shows how the US-Native American relationship should evolve from its historical past to a true nation-to-nation relationship. This is where development needs to begin, on an equal footing, recognizing that OST qualifies for particular forms of assistance, but that economic dependence compromises the productivity and well-being of both the Tribe and the United States. So both sides must work together to exploit synergies in trade and in the harmonization of standards.

Figure 4:



Allegations have been made that in the past, the United States tried to "control" Indian tribes by rendering them dependent on federal funding. However, influence by this means is becoming more costly as declining reservation conditions call for ever greater cash infusions – a situation which cannot be supported given recent concerns over the budget deficit. In its foreign policy, the United States has time and again acknowledged the importance of stable economic and political regimes around the world as fundamental to US interests at home. Mostly through international financial institutions and direct foreign aid, the United States has often and generously contributed funds for stabilization and structural adjustment purposes. The same orientation must be extended to Indian tribes. Further, conditions tied to US foreign aid can help keep the Tribe on the road to development by imposing external discipline. But the terms of the aid must be negotiated and supported by both parties, not unilaterally dictated by the United States.

2. Establish benchmarks for progress by working with OST to identify clear short-term and long-term objectives for development.

Many public entities, such as municipalities, transportation authorities, and universities, have medium-range financial plans that set goals for the coming years in terms of expenditures, service delivery, and infrastructure improvement. Full participation of OST and the US government in developing such a plan would be necessary to establish realistic expectations of US funding commitments and set realistic measures of progress for the Oglala Sioux Tribe. This planning process would provide numerous benefits to OST and the United States, including:

- *Fortifying a joint planning relationship between the Tribe and the US government:*
Creating and annually updating such a plan would develop stronger relations and better understanding between OST and the United States. The United States would gain better appreciation of the critical issues facing the reservation, and the Tribe would gain an understanding of the federal funding realities that drive Indian policy.
- *Underscoring the need for a planning process on the reservation:*
As noted earlier, the Tribe has no effective and sustainable planning process. In some respects the Tribe is not entirely to blame, as the uncertainty of its revenue source precluded accurate forecasting and planning. Regardless, if the United States initiated a planning process with the Oglala Sioux, the Tribe would be more likely to understand the need for a vision beyond the immediate. Furthermore, the participation of the United States could provide the support to make such a plan viable.
- *Ensuring stable expenditures and services through structurally balanced financial plan:*
Planning on the reservation must address both policy and financial issues. The two are interdependent, as policy decisions must be financially feasible to result in any benefit. Financial planning can take many forms, but perhaps “structural balance” most strongly combines financial and policy planning. Structural balance calls for increased spending

and new initiatives to occur only if they can be sustained for several years. In some cases, structural balance requires the delay of attractive new programs, which may be cut if revenues decline in the near future. On the other hand, structural balance would also emphasize to the United States that important programs will require additional spending in coming years. For example, a new public hospital was recently built in Pine Ridge. This facility will require additional operational expenditures in order to fully contribute to the health of the reservation. Thus, reducing funds in public health even slightly would be a counterproductive action that would adversely affect not only the health on the reservation, but devalue a significant investment in health infrastructure.

- *Establishing accountability, especially for progress toward self sufficiency:*
Tribal governance currently emphasizes obtaining as many financial resources as possible, and then ensuring the fiscal health of the Tribe by spending within available means. Benchmarks in areas of performance and achievement beyond how much money was secured would emphasize the ends toward which tribal institutions should work and resources should be dedicated. Benchmarks could be set in governmental reform, economic development, educational achievement, health indicators, and infrastructure, just to name a few. Once a sequence of benchmarks is established, smaller objectives in early years can be noted as logical steps toward major goals in the long term. Laying out the steps that can and should be taken for improvement on the reservation would reduce the frustration of long-term stagnation in several areas, both political and economic.
- *Enable OST and United States to recognize progress or areas that need to be changed:*
A long-term perspective helps diagnose areas that deserve additional priority. Once benchmarks have been identified in specific areas, the Tribe and United States can track outcomes for incremental progress. Furthermore, once performance consistently does not reach the benchmarks, planners can make adjustments that might facilitate improvement.

3. Strengthen the commitment to a nation-to-nation relationship through redefining the role of BIA.

The history of US-tribal relations is littered with the empty pledges of US Presidents to respect and support Indian sovereignty and home rule. More often than not, actions contradicted rhetoric. For example, on January 24, 1983, President Ronald Reagan issued a policy statement calling for efforts to create a "favorable environment" to make reservations more self-sufficient. In the same breath, he slashed federal assistance to Native Americans by more than one-third (from \$3.5 billion to \$2 billion), urged greater involvement by the private sector (which on a reservation like Pine Ridge is virtually non-existent and/or dominated by non-Indians), and pocket-vetoed a bill which would have provided \$100 million for an Indian Development Finance Commission to make loans to Indian businesses. The relative ease with which US executive administrations have brushed aside Native American interests stems from the lack of tribal economic and political influence. As a consequence, BIA is able to treat tribes as economically dependent entities, served by BIA. For its part, BIA can no more help tribes become capable states than the master can tear down his own house.

Organizationally, BIA is what one might call an "orthodox paradox," meaning that its mission its very existence. As tribes become more self-sufficient, BIA decreases in power and influence. It is little wonder that BIA has been cited as the most inefficient and mismanaged of all federal agencies. For example, a 1989 special Senate investigative committee on BIA found that the agency had used a \$200 million-a-year minority preference program to fund companies set up by non-Indian contractor. The committee recommended the dismantling of BIA and transfer of funds directly to tribal governments, but no legislative action was taken.

If BIA is to reinforce the philosophical shift toward a nation-to-nation relationship, it must develop specific competencies in providing technical assistance to promote economic development. This means that even more BIA officials need to acquire expertise in economic development. While there may be coordination problems, this could be done by working collaboratively with agencies such as the Economic Development Administration within the Department of Commerce (an organization which has already developed these

skills). This eliminates the threat to organizational survival faced by BIA and makes economic development a priority. It facilitates two-way communication by prescribing negotiation rather than court settlement of disputes, and it locates responsibility for the success/failure of development projects wholly in the hands of the Tribe (because US officials would become policy advisors rather than dictators).

Specific examples of what BIA could do include:

- *Place staff with proven expertise in economic development on reservations.*
- *Emphasize technical assistance, instead of program allocation and oversight.*
- *Ascertain the opportunities for economic growth within each reservation:*
For instance, Pine Ridge, with its numerous historic, natural and cultural amenities, offers several options for a thriving tourist industry. Several examples illustrate the untapped economic potential of tourism. Pine Ridge attracts substantial international visitors interested in the culture and history of the Sioux. The natural setting of the reservation provide opportunities for hunting, fishing, camping and other outdoor recreation. Yet the Tribe has never been able to leverage its historical attractions very well for the tourist market.
- *Facilitate the implementation of economic development:*
BIA could help close the gaps in expertise and networks that would create the infrastructure and understanding needed to take advantage of Pine Ridge's economic assets while respecting the culture of the Tribe.

4. Enhance interaction between other federal agencies and OST by emphasizing the reality that not just BIA has a vital role to play in the support of Pine Ridge.

Other federal agencies could strengthen their ties with the Tribe, understanding that trust responsibility is not within the exclusive domain of BIA. In 1991, Department of Interior Secretary Manuel Lujan, Jr. said, "I thought it was pretty well understood at Interior – that

all of the bureaus, not just the Bureau of Indian Affairs or the Secretary of Interior, had that responsibility, the trust responsibility. So we gathered about the top fifty people – the heads of the bureaus, the assistant secretaries, deputy secretaries, [etc.] – to discuss the question of the trust responsibility, of going beyond the department – that the Department of Agriculture has just as much of that responsibility as does Interior, and so does the Department of Defense and every other department. Well, to my surprise, our own bureau heads did not understand it. They thought it is the Bureau of Indian Affairs that has that trust responsibility – that the Bureau of Reclamation doesn't, nor the Bureau of Land Management.”

To facilitate a better understanding of the relationship of entities outside of BIA with tribes, BIA could establish a permanent commission whose role would be to coordinate the activity of departments regarding Native Americans. This commission would be charged with two functions: 1) to draw upon the specialized resources of other departments in establish training programs for BIA personnel and to solicit different viewpoints on how best to foster economic development, and 2) to identify roles in which the departments themselves could directly contribute to the development enterprise. Equally important, it should be noted that this commission would include members of the Native American community to provide a “reality check” on the initiatives being proposed.

Similar attempts at inter-agency task forces have not delivered substantial results. For this reason, it is important that the commission have the resources and political mandate to implement the policies that will emerge. The commission would need the support of high-ranking officials in departments that deal with Indian programs. If possible, support from the President of the United States would lend credibility to this new cooperative approach.

Further, the commission will likely be more successful if it is directed to focus on specific problems on a case-by-case basis. The commission should be results-driven setting tangible goals within prescribed timelines. For example, one area that could be addressed is the housing pattern on the Pine Ridge reservation. Houses dot the reservation in no particular order, making it hard to centralize business activity and making it difficult to develop much-needed infrastructure (such as paved roads connecting major population centers). While cultural and religious factors contribute to the settlement pattern, regulations

from the US Department of Housing and Urban Development further constrain the location of houses, contributing to the lack of order. The commission could examine the use of such rules, given their impact on the larger economy.

5. Operationalize the commitment to a self-sustaining government in Pine Ridge through maintenance of current funding levels or greater flexibility in tribal spending.

As previously discussed, reductions in federal funding levels would destroy the economic and social fabric of the reservation, which in and of itself, is a tragedy. Every aspect of daily life would be affected from education to health care, and from public safety to housing. Human, intellectual, and physical capital – all important inputs to productivity – would deteriorate. Equally important, decreased levels of federal funding invite political instability in tribal government, further undermining efforts to establish a framework for development.

In recent years, the Oglala Sioux Tribe has secured steadily increasing sums of money from the federal government. These resources have expanded a number of programs and established new initiatives needed on the reservation. Improvements in services and infrastructure have benefited the Tribe in health care, education, sanitation, and other areas.

Concurrently, the Tribe has substantially improved its financial position and accounting methods. More stringent accounting controls, automation, and prudent long-term financial planning have elevated the Tribe's ability to manage resources and increased the service capacity of the tribal government. Yet none of these programs are full-fledged, and others remain undeveloped.

Withdrawal of federal funds at this point would be particularly impractical and harmful. New services, many of which require several years of provision to deliver any real benefit, would disappear. The lack of needed services would have severe repercussions for the Tribe and manifest itself in greater social costs in the near and long-term future. In classic example of public choice theory (where political rationality leads to seemingly non-rational outcomes),²⁹ tribal leaders, facing declining monetary resources, would concentrate their energies on maintaining regime legitimacy by lobbying Congress for more funds in order to

²⁹Bates, Robert. *Markets and States in Tropical Africa*. Berkeley: University of California Press, 1981.

preserve their own political power and satisfy the electorate's expectation that the government provide basic services. Unfortunately, this response breeds more dependence and less self-sufficiency, requiring future tribal administrations to campaign on behalf of even more federal dollars.

Another important reason to, at the very least, maintain current funding levels is to sustain a predictable environment for investment. For example, one business entrepreneur must base her decision on whether or not to expand her business this year on the federal dollars the Tribe will receive in FY '96. This is because if funding levels decline significantly, so does all tribal income, in which case business would likely drop off.

Realistically, however, present levels of funding may not continue. In this instance, the best that the Tribe could hope for would be cuts targeted at areas of least priority. Determining which areas to cut could occur in at least two ways. First, the Tribe could present to the US government funding levels for different areas. Since spending is based on programs and not areas of need, however, such a system might be cumbersome. Another solution would be for the federal government to provide funds in less categorical forms, so that the Tribe could allocate resources to areas that it felt were most crucial. This would give OST government latitude to express tribal priorities and to design projects sensitive to the particular cultural and historic context of Pine Ridge.

6. Respect the right of OST to pursue self-determination through clarification of regulatory boundaries.

Regulations dictated from above by the US government compromise the institutional capacity of OST tribal government to set authoritative, internally consistent "rules of the game." Clear divisions must be set between federal, state, and tribal authority. Tribal sovereignty requires that 1) all concerns wholly contained on the reservation with no spillovers to surrounding communities be under tribal jurisdiction, 2) where externalities exist (i.e. pollution) or where there are economies of scale and scope to be exploited, the US federal government and OST should explore shared jurisdiction and harmonization of efforts, and 3) state administration of Indian specific programs should cease, in favor of reservation-based administration.

Rather than designating all concerns not regulated by Congress as areas of tribal primacy, the United States needs to make tribal primacy the rule rather than the exception. Deregulatory efforts have gone a long way towards this end, but many reforms are still needed. For example, federal regulations prohibiting the sale of Indian lands held in trust prevents entrepreneurs from raising seed money by using land as collateral.³⁰

7. Enhance tribal self-sufficiency through recognition of tribal taxation prerogatives.

Earlier efforts by OST to impose a small tribal tax were met with resistance on the part of both state and federal officials. Although the tax was eventually allowed to take effect, the US cannot circumscribe this essential prerogative of all governments.

This is perhaps even more vital to the Oglala Sioux Tribe, which generates a minimal level of own-source funds. By taking the initiative to pay for public services from within its own resources, OST is demonstrating its desire to become more self-sufficient and less reliant upon federal and state intergovernmental transfers. The United States must respect the taxation prerogatives of OST, allowing the Tribe to set its own policies without having to first attain approval from BIA or the state of South Dakota.

8. Make development assistance and expertise readily available.

US agencies and individuals have a lot to offer in terms of transforming economies, particularly in the area of small business development. The United States should extend an offer to OST to help in their efforts, with OST acceptance subject to adoption of a tribal resolution welcoming the assistance. It is important that the Tribe "own" reform initiatives since it is tribal members who will implement them.

³⁰ A similar financing mechanism was attempted through the Dawes Act, which resulted in millions of acres of land being lost or stolen. While the security of lands used as collateral cannot be guaranteed for the borrower, perhaps more stringent lending criteria could better ensure that approved loans would be less likely to default, so that the land would remain within the Tribe.

Figure 5:

What the US can do.

- Reaffirm sovereignty of OST by changing the US approach to tribal self-sufficiency
- Establish benchmarks for progress by working with OST to identify clear long- and short-term objectives for development
- Strengthen the commitment to a nation-to-nation relationship through redefining the role of BIA
- Enhance interaction between other federal agencies and OST by emphasizing the reality that not just BIA has a vital role to play in the support of Pine Ridge
- Operationalize the commitment to a self-sustaining government in Pine Ridge through maintenance of current funding levels or greater flexibility in tribal spending
- Respect the right of OST to pursue self-determination through clarification of regulatory boundaries
- Enhance tribal self-sufficiency through recognition of tribal taxation prerogatives
- Make development assistance and expertise readily available

D. What OST can do

Heretofore, the Tribe and the US government have been sidetracked from development issues because both have concentrated on a very narrow definition of sovereignty and focused on trust responsibility instead of joint problem-solving approaches to economic development. It is easy to understand why trust responsibility is an important issue. In light of the historical legacy and current state of many reservation economies, tribes have a legitimate claim on the US government and a right to petition for financial assistance. In the past, Pine Ridge has been very active and successful relative to other Indian nations in lobbying Congress for large federal transfers. Yet while trust responsibility is important, it cannot be the basis of tribal sovereignty. A sovereignty defined in terms of the Tribe's success at compelling the US government to consistently adhere to high levels of financial assistance comes closer to dependence than independence. OST is at a critical juncture in its statehood. The Tribe is justified in exhorting the United States to live up to its trust responsibility, but as an independent nation, it cannot continue to sacrifice its statehood in order to be a pipeline for grants.

Political reality advocates for change. According to a memo directed to the Senate Committee on Indian Affairs on Indian Related Federal Spending Trends, FY 1975-1996, the overall Indian budget (including BIA and non-BIA outlays) has been decreasing by \$18.6 million per year in constant 1993 dollars. BIA funding has decreased by an average \$12 million per year from 1975-1996.

The situation at Pine Ridge is anomalous, since most tribes have been receiving decreased levels of federal funding, while funding to the Pine Ridge tribal government³¹ and overall individual entitlements³² have increased (even when adjusted for growth in population). In constant 1994 dollars, transfers to OST tribal government have increased from \$13.6 million to \$30.2 million in the four year period from 1990-1994. Entitlements increased from

³¹ Tribal government moneys are generally used to fund the administration (including employee salaries) of the departments which tribal government oversees (including judiciary, land, health and human services, finance, education, and economic and business development). Specific program funds come from grants unrelated to tribal government.

³² Including aid to dependent children, food stamps, and supplementary social security.

approximately \$11.2 million to \$13.8 million. On the other hand, transfers to housing authority (used to construct homes on the reservation) declined from \$2.1 million in 1990 to \$1.9 million in 1994.

Overall, the Tribe has fared relatively well in the face of massive budget cuts within US federal agencies which fund Indian programs. (At the same time, it should be noted that the problems at Pine Ridge are often much more severe than at other reservations.) The sentiment in Washington, DC, however, indicates that OST should not and cannot count on ever increasing funding levels in the coming years. In fact, Pine Ridge must brace itself for severe cutbacks. The 1995 federal government shutdowns and the 104th Congress' program slashing tendencies prove that the US government is willing to impose politically unpopular and painful austerity measures to move towards a balanced budget. Not only does OST have little room for political maneuver in this Republican-dominated Congress (which seems more concerned about "getting its own house in order" than negotiating with other nations, external or internal), but it has significantly diminished prospects before all future Congresses; the American public has made its desire for smaller US national budgets clear. In an environment such as this, hard lobbying tactics, reminding the US government of its trust responsibility and detailing the plight of OST families will not be enough.

The debate in this Congress and presumably in future Congresses, will not focus on *whether* to cut funding to Indian programs in the coming years, but *how* to cut funding. In light of the current political reality, OST must concentrate on non-financial reforms to promote economic development. After interviewing government officials, business entrepreneurs, and lay people at Pine Ridge, some key themes emerged. In answer to the question, "Why is there so little evidence of economic development on the reservation?", tribal members often cited inadequate federal resources. There are, indeed, some problems which only money can fix (such as better roads). But, respondents also pointed to tribal government. These are challenges where the Tribe, itself, must take the lead. Some important political reforms follow. Although our recommendations for OST are fewer in number than for the US, these tribal initiatives are most likely more challenging because they address fundamental issues of governance.

1. Reform the Executive and Legislative Bodies of Tribal Government.

Currently, OST government is a two-tiered system with a "central" level and a "district" level of organization. At the central level, there is a five member Executive Committee consisting of a popularly elected President and Vice-President, and a Secretary, Treasurer, and a Fifth Member elected by the Tribal Council. The Tribal Council, in turn, incorporates members of the Executive Committee as well as elected representatives from each of nine districts (Medicine Root, Wounded Knee, White Clay, Porcupine, Pine Ridge, Eagle Nest, LaCreek, Pass Creek, and Wakpahni). (See Appendix: OST Organizational Chart). Tribal Council Committees on the judiciary, land, health and human services, finance, education, and economic and business development, "...are empowered by the Tribal Council to do the legislative work on matters which pertain to their committees by studying and investigating problems, to hold committee meetings and hearings, and to make recommendations on their findings to the full body of the Tribal Council.³³" Correspondingly, separate departments not as closely connected to the Tribal Council perform the daily administrative and implementation functions of government. These structures comprise the overlapping executive and legislative mechanisms of OST. The judiciary (tribal court system) is chartered by the Tribal Council and reflects their prerogatives.

The change of Administration (every two years) holds significant consequences for policy because many positions are appointive and doled out based on party favor. Turnover tends to be wholesale. Coupled with a two-year election cycle, few policies ever reach the stage of implementation. Constant Administration turnover is cited by local lending institutions as a prohibitive barrier to extending loans to tribal members, since the new President may choose not to honor a commitment made by the predecessor.

Lengthening the Presidential election cycle from two to every four or even six years would measurably increase the prospects of successful policy implementation. Equally important, this reform would enable voters to base their election-day decisions on policy effectiveness. But lengthening the election cycle, in and of itself, is not enough. Pine Ridge did switch from a two-year to a four-year election cycle in 1982. The Tribe subsequently

³³Oglala Sioux Tribe. *Overall Economic Development Plan*. Pine Ridge: OST, 1994: p 5.

switched back to a two-year cycle because the lengthened term combined with a strong chief executive form of government gave rise to the perception that politicians were unaccountable. And it is certainly the case that in the past, Pine Ridge politicians have been plagued by scandal. Therefore, not only the frequency of elections but the structure of governance needs to be changed.

In their report *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, Professors Stephen Cornell and Joseph Kalt argue that, "Of course, the downside of centralized authority is the risk of corruption, or the possibility that decisions can be turned somehow to the personal benefit of the chief executive" (p 45). In addition, "By developing institutional solutions that can effectively solve problems and that fit each tribe's cultural standards, tribes can create an environment in which development has the support of the institutions themselves and is less dependent simply on the quality of people currently in office" (p. 38). Their research shows that there is a strong and statistically significant correlation between successful economic development and culturally appropriate forms of governance.

Cornell and Kalt go on to argue that the centralized federal government imposed by the 1934 IRA (with the stress on centralized government and not on federal government characterized by shared responsibility by the division of powers to different tiers) is a culturally inconsistent and inappropriate form of governance for the Oglala Lakota. The Lakota have a long tradition of local authority and independence rooted in kinship units (*tiyospayes*) and in the original band-based settlement patterns of reservations. Today, social and economic transactions are still centered around individual communities and family units, but most policy decisions are made by tribal politicians who are not directly accountable to particular districts. District representatives have little actual power relative to the Tribal Council (and especially the President). Pine Ridge should consider changing its Constitution to allow for a more de-centralized, parliamentary form of government.³⁴

³⁴Much of the economic development success in towns like Porcupine and Manderson on the Pine Ridge reservation has occurred through strong district government leadership, another sign of the positive possibilities for strengthening this level of government.

Interviews with tribal members indicated that a majority of tribal members are unsatisfied with the current system of governance. Establishing a new government is not a matter to be taken lightly and the referendum must begin now. A promising first step might be to hold conferences and town meetings on Constitutional reform. What do the citizens think? What should be kept, what discarded? How should the transition proceed? Organizations like the Ford Foundation [phone: (212) 573-5000, address: 320 East 43rd Street, NY, NY 10017] and the Rockefeller Foundation [phone: (212) 869-8500, address: 420 Fifth Avenue, NY, NY 10018-2702] have the expertise and funds to support projects in democracy and governance.

Nevertheless, while constitutional reform can provide a framework for improved governance, reform alone is not a substitute for good leadership. Ultimately, tribal residents must demand responsible leadership, and governing elites must follow through on a commitment to place tribal interests ahead of personal interests. Laws and regulations which help leaders make this commitment credible would be helpful.

2. Enhance good policy-making capacity by de-politicizing planning decisions and developing a professional civil service.

Economic growth can occur only when *good* policies are implemented. The pervasiveness of favor-based appointments acts as a limitation on well-informed policy design. One threat to effective governance is the politicization of public policy. Elected officials may be overly responsive to interest group pressures or lack the area-specific expertise to make informed policy choices. To avoid the conflict between politics and policy, many US municipalities have switched to a "city manager" form of government where senior appointed civil servants design and implement policies with the approval of elected officials. OST might consider such a system, as it has generally proven more effective than systems that provide substantial power and influence for elected officials.

Correspondingly, better policy design is likely to accompany the development of a professional civil service corps capable of providing effective "planning support" to the Tribal Council Committees and the implementing departments. Currently, many public sector human resource management systems fail to align employee selection (recruitment,

hiring, firing), appraisal (formal performance reviews, informal feedback), rewards (money, respect), or development (education and training) to match organizational needs. For example, the economic development assistance office admits to having no formal criteria by which to evaluate the profitability of formal business proposals. While all evidence suggests that tribal government should avoid creating state-owned enterprises, it is disturbing that solid managerial skills are not valued.

Perhaps more than any other factor, merit-based employment within such a corps is a key component of professionalism. Civil service exams, emphasizing solid policy analysis skills, should be the basis of hiring and promotion decisions. The Tribe should reference US and other national civil service examinations as guides in developing their own. Most important, the Tribe should not focus on the size of its civil service, but rather the level of skill each individual brings to government. To that end, the Tribe should not set a hiring quota for the civil service corps, but should establish a plan to gradually increase department-specific expertise. This plan could include detailed skill levels and skill areas, reflecting the priorities of the Tribe.

In the interim, recruitment of these civil service professionals must extend beyond the borders of the reservation. Many highly educated Oglala Sioux Tribe members have moved off the reservation because of inadequate opportunities for them at home. Efforts should be made to attract those individuals who might already possess necessary analytic and managerial skills. At the same time, the Tribe must continue its efforts to "grow its own" professionals; the "Manager as Warrior" curriculum at the tribal college is one solid approach; other programs specifically geared towards reservation management are also possibilities.

Ultimately, the goal is to create a corps of professionals who as career civil servants would outlast changes of administrations and who could be trusted because they are hired based on merit. They would be more insulated from election politics and contribute to building institutional memory so that their respective agencies would not have to be rebuilt from the ground up every two years. Further, by building a professional civil service corps, development efforts will become increasingly proactive, rather than reactive in response to grant opportunities.

While the creation of such a service corps is extremely important, it is equally important to obtain the support of elected officials for these institutions. Leaders must make the hard choices to follow these guidelines and systems even when doing so runs counter their possibilities for personal gain. In this way, elected officials will establish meaningful systematic rules which, if followed, result in good policy.

3. Establish binding business codes.

For the most part, OST does not have a formal business code. Perhaps more than anything else, uncertainty about the prevailing business environment has prevented investment in on-reservation enterprises. Business codes subject to amendment, but protected from complete revision based on change in administration, are a necessary and urgent reform. Stronger business codes would provide insurance for commercial investment on the reservation. For example, banks would be more willing to lend to business ventures if laws existed to protect contractual agreements and structure day-to-day operations. By the same logic, banks, themselves, would be more willing to locate on the reservation, closer to the tribal population. By being nearer to the community of service and establishing a rapport with local residents, banks feel that the risk inherent in lending is mitigated and feel more secure about loaning large sums of money.

Business codes foster economic development by explicitly stating the rules of commercial activity for all participants. Perhaps the most damaging effect of the lack of business codes is that Pine Ridge tends to attract opportunistic investors who will take advantage of the lack of codes on the reservation. With regard to allowing outside businesses to locate on the reservation, the Tribe should consider whether such enterprises have explicitly contracted to invest in the long-term development of human and physical capital resources on the reservation. OST should also encourage indigenous growth of business activity by providing tax breaks and other incentives for economic development.

4. Establish an independent court system.

Protection from ever-changing regulations can be provided through an independent tribal court system set up to impartially adjudicate the claims of entrepreneurs against standards

established by Tribal Government. Without an avenue through which to challenge Tribal Government, the business environment is currently characterized by more uncertainty than it would otherwise be with an independent judiciary. Currently, the tribal court still derives its formal authority from the Tribal Council and is subject to the Council's favor. This means that even if the Tribe had well established zoning and business codes, such "rules of the game" could be re-negotiated with the Tribal Council. Without an independent judiciary, housing and business codes would be rendered meaningless. In effect, an independent court functions as insurance against "discriminatory and unfair" shifts in business policies.

An independent judiciary also acts as a check against abuses and corruption in government. It is an effective mechanism by which elected politicians and civil servants can be held accountable to tribal members. By providing a means for the peaceful and impartial adjudication of grievances against executive and legislative branch policies, an independent court system protects against violent civil unrest.

Consequently, for the reasons discussed, OST should petition the Department of the Interior to allow for the immediate and formally enumerated change of OST Tribal Constitution to reflect the establishment of an independent judiciary. In addition, federal dollars earmarked for tribal justice must flow directly to the Courts, rather than through tribal government.

Figure 6:

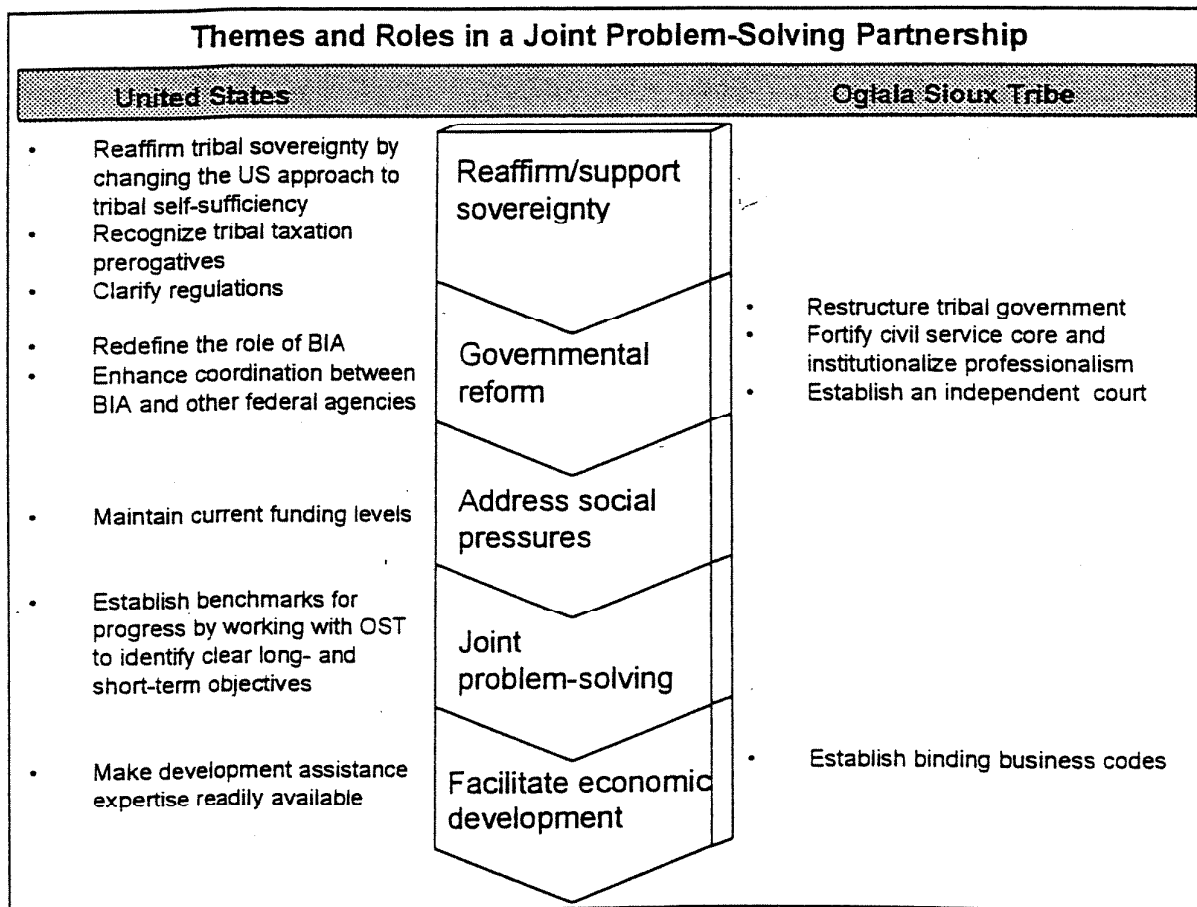
What OST can do.

- Reform the executive and legislative bodies of tribal government
- Enhance good policy-making capacity by de-politicizing planning decisions and developing a professional civil service
- Establish binding business codes
- Establish an independent court

V. Conclusion

The professed goal of a nation-to-nation relationship is best achieved through a joint problem-solving initiative on the part of the US and OST. Each party must be willing to do what it can to provide a firm foundation for economic development and promote a virtuous cycle of institutional capacity-building and business entrepreneurship. This requires a multi-step process, summarized in Figure 7 below. These areas of reform include reaffirming and supporting sovereignty, reforming governments, addressing social pressures, solving problems jointly, and facilitating economic development.

Figure 7:



Sustained and appropriate economic development depends on the existence of a capable state, one that provides the raw materials for a competitive, market-based economy. Either the United States or OST can and should be expected to take the lead on particular phases of development. Figure 8 elaborates on some of the more complex recommendations made previously in this report.

Figure 8:

IMPLEMENTATION DETAILS OF SELECTED RECOMMENDATIONS	OGLALA SIOUX TRIBE
<p style="text-align: center;">UNITED STATES</p> <p>Redefine role of BIA</p> <ul style="list-style-type: none"> • hire staff with proven expertise in economic development • devote more resources to economic development and technical assistance • ascertain the opportunities for economic growth within each reservation • facilitate implementation of economic development through external networks <p>Establish benchmarks for progress by working with OST to identify clear long- and short-term objectives</p> <ul style="list-style-type: none"> • fortify a joint planning relationship between OST and US • establish structurally balanced financial plan • underscore need for a planning process on the reservation • establish accountability within the tribe • put in place a realistic plan toward tribal self-sufficiency • enable recognition of areas of progress or areas that need to be changed 	<p>Develop a professional civil service corps</p> <ul style="list-style-type: none"> • establish group of professionals who would have tenure beyond two-year election cycles • foster opportunity for proactive rather than reactive development efforts • enact policies based on experience and analysis <p>Establish binding business codes</p> <ul style="list-style-type: none"> • create logical structure for infrastructure and economic development • discourage opportunistic investors from taking advantage of tribe <p>Restructure tribal government</p> <ul style="list-style-type: none"> • lengthen terms of office to facilitate longer-term planning • create more decentralized parliamentary form of government <p>Establish independent court system</p> <ul style="list-style-type: none"> • challenge tribal government • make housing and business codes meaningful • check against abuses and corruption

The decline of US federal resources (a reality) poses a challenge and a danger: to change is risky, but simply to cope may be deadlier, yet. If a nation-to-nation relationship is to become truly meaningful, the United States and OST must confront the challenge, welcoming the long-term elimination of trust responsibility in favor of full sovereignty.

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APPENDIX

TREATY WITH THE SIOUX
Fort Laramie, April 29, 1868

ARTICLES OF A TREATY MADE AND CONCLUDED BY AND BETWEEN LIEUTENANT GENERAL WILLIAM T. SHERMAN, GENERAL WILLIAM S. HARNEY, GENERAL ALFRED H. TERRY, GENERAL C. C. AUGER, J. B. HENDERSON, NATHANIEL G. TAYLOR, JOHN B. SANBORN, AND SAMUEL F. TAPPAN, DULY APPOINTED COMMISSIONERS ON THE PART OF THE UNITED STATES, AND THE DIFFERENT BANDS OF THE SIOUX NATION OF INDIANS, BY THEIR CHIEFS AND HEAD-MEN, WHOSE NAMES ARE HERETO SUBSCRIBED, THEY BEING DULY AUTHORIZED TO ACT IN THE PREMISES.

ARTICLE I

FROM THIS DAY forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained. If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they willfully refuse so to do, the person injured shall be re-imbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgement may be proper. But no one sustaining loss while violating the provisions of this treaty or the laws of the United States shall be re-imbursed therefor.

ARTICLE II

The United States agrees that the following district, to wit, viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river; thence west along said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the fortysixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid and except as hereinafter provided.

ARTICLE III

If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than one hundred sixty acres of tillable land for each person, who at the time, may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity of arable land, adjoining to said reservation, or as near to the same as can be obtained, as may be required to provide the necessary amount.

ARTICLE IV

The United States agrees, at its own proper expense, to construct at some place on the Missouri River, near the center of said reservation, where timber and water may be convenient, the following buildings, to wit: a warehouse, a storeroom for the use of the agent in storing goods belonging to the Indians, to cost not less than twenty-five hundred dollars; an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a schoolhouse or mission-building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding five thousand dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular-saw mill, with a grist-mill and shingle-machine attached to the same, to cost not exceeding eight thousand dollars.

ARTICLE V

The United States agrees that the agent for said Indians shall in the future make his home at the agency-building; that he shall reside among them, and keep an open office at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision, subject to the revision of the Secretary of the Interior, shall be binding on parties to this treaty.

ARTICLE VI

If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the "land-book," as herein directed, shall cease to be held in common, but the same may be occupied and held in exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in a like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded, shall have been recorded by him in a book kept in his office, subject to inspection, which said book shall be known as the "Sioux Land Book."

The President may, at any time, order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of the allotment and descent of property between Indians and their descendants as may be thought proper. And it is further stipulated that any male Indians, over eighteen years of age, of any band or tribe that is or shall hereafter become a resident or occupant of any reservation or Territory not included in the tract of country designated and described in this treaty for the permanent home of the Indians, which is not nominal land, nor reserved by the United States for special purposes other than Indian occupation, and who shall have made improvements thereon of the value of two hundred dollars or more, and continuously occupied the same as a homestead for the term of three years, shall be entitled to receive from the United States a patent for one hundred and sixty acres of land including his said improvements, the same to be in the form of legal subdivisions of the surveys of the public lands.

Upon application in writing, sustained by the proof of two disinterested witnesses, made to the register of the local land-office when land sought to be entered is within a land district, and when the tract sought to be entered is not in any land district, then upon said application and proof being made to the Commissioner of the General Land-Office, and the right of such Indian or Indians to enter such tract or tracts of land shall accrue and be perfect from the date of his first improvement thereon, and shall continue as long as he continues his residence and improvements, and no longer. And any Indian or Indians receiving a patent for land under the foregoing provisions, shall thereby and from henceforth become and be a citizen of the United States, and be entitled to all the privileges and immunities of such citizens, and shall at the same time, retain all rights to benefits accruing to Indians under this treaty.

ARTICLE VII

In order to insure the civilization of the Indians entering this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article are to continue for not less than twenty years.

ARTICLE VIII

When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid, not exceeding in value twenty-five dollars. And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.

ARTICLE IX

At any time after ten years from the making of this treaty, the United States shall have the privilege of withdrawing the physician, farmer, blacksmith, carpenter, engineer, and miller herein provided for, but in case of such withdrawal, an additional sum thereafter of ten thousand dollars per annum shall be devoted to the education of said Indians, and the Commissioner of Indians Affairs shall, upon careful inquiry into their condition, make such rules and regulations for the expenditure of said sum as will best promote the educational and moral improvement of said tribes.

ARTICLE X

In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any treaty or treaties heretofore made, the United States agrees to deliver at the agency-house on the reservation herein named, on or before the first day of August of each year, for thirty years the following articles, to wit: For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, pantaloons, flannel shirt, hat, and a pair of home-made socks.

For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate for the year can be based.

And in addition to the clothing herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years, while such persons roam and hunt, and twenty dollars for each person who engages in farming, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if within the thirty years, at any time, it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the Indians named herein, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attest the delivery of all goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery. And it is hereby expressly stipulated that each Indian over the age of four years, who shall have removed to and permanently settled upon said reservation and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated that the United States will furnish and deliver to each lodge of Indians or family of persons legally incorporated with them, who shall remove to the reservation herein described and commence farming, one good American cow, and one good well-broken pair of American Oxen within sixty days after such lodge or family shall have settled upon said reservation.

ARTICLE XI

In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside their reservation as herein defined, but yet reserve the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River, so long as the buffalo may range thereon in such numbers as to justify the chase. And they, the said Indians, further expressly agree:

1st. That they will withdraw all opposition to the construction of the railroads now being built on the plains.

2nd. That they will permit the peaceful construction of any railroad not passing over their reservation as herein defined.

3rd. That they will not attack any persons at home, travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. They will never capture, or carry off from the settlements, white women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They withdraw all pretence of opposition to the construction of the railroad now being built along the Platte River and westward to the Pacific Ocean, and they will not in the future object to the construction of railroads, wagon-roads, mail stations, or other works of utility or necessity, which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damages may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or headman of the tribe.

7th. They agree to withdraw all opposition to the military posts or roads now established south of the North Platte River, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE XII

No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without consent, any individual member of the tribe of his rights to any tract of land selected by him, as provided in article 6 of this treaty.

ARTICLE XIII

The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

ARTICLE XIV

It is agreed that the sum of five hundred dollars annually, for three years from this date, shall be expended to the ten persons of said tribe who in the judgement of the agent may grow the most valuable crops for the respective year.

ARTICLE XV

The Indians herein named agree that when the agency-house or other buildings shall be constructed on the reservation named, they will regard said reservation their permanent home, and they will make no permanent settlements elsewhere; but they shall have the right, subject to the conditions and modifications of this treaty, to hunt as stipulated in Article XI hereof.

ARTICLE XVI

The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian Territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux Nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in Territory of Montana shall be closed.

ARTICLE XVII

It is hereby expressly understood and agreed by and between the respective parties to this treaty that the execution of this treaty and its ratification by the United States Senate shall have the effect, and shall be construed as abrogating and annulling all treaties and agreements heretofore entered into between the respective parties hereto, so far as such treaties and agreements obligate the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, but no further.

In testimony of all which, we, the said commissioners, and we, the chiefs and headmen of the Brule band of the Sioux nation, have hereunto set our hands and seals at Fort Laramie, Dakota Territory, this twenty-ninth day of April, in the year one thousand eight hundred and sixty-eight.

N. G. TAYLOR,
W. T. SHERMAN,
Lieutenant-General.
WM. S. HARNEY,
Brevet Major-General U.S. Army,
JOHN B. SANBORN,
S. F. TAPPAN
C. C. AUGER
Brevet Major-General,
ALFRED H. TERRY,
Brevet Major-General U.S. Army

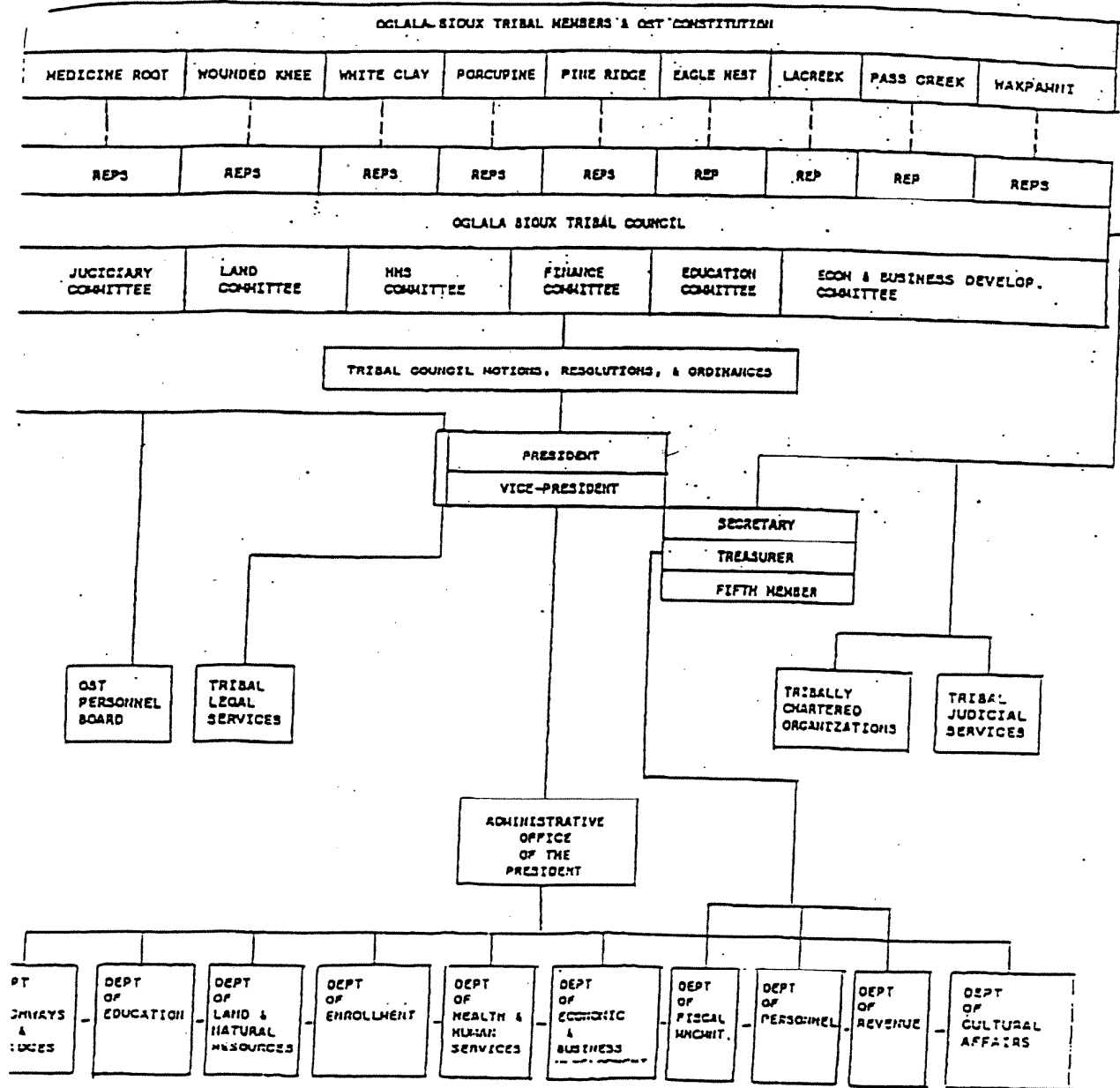
Executed on the part of the Brule band of Sioux, by the Ogallalah band of Sioux, by Minneconjou band of Sioux, by the Uncpapa band of Sioux, by the Blackfeet band of Sioux, by the Chiefs and headmen, they being thereunto duly authorized, at Fort Laramie, D. T., the twenty-ninth day of April, in the year A. D. 1868.

	Aggregate Benefits Received						Total Benefits	
	ADC	Food Stamps	SSI	Nominal \$\$	1994 \$\$			
1990								
Pine Ridge MSA	3,339,127	4,224,086	2,329,170	9,892,383	11,216,918			
Shannon Cnty.	2,595,993	3,337,414	1,930,114	7,863,521	8,916,403			
Bennett/Jackson	743,134	886,672	399,056	2,028,862	2,300,515			
1991								
Pine Ridge MSA	3,576,767	4,706,564	2,664,193	10,947,524	11,912,064			
Shannon Cnty.	2,755,996	3,757,066	2,196,808	8,709,870	9,477,259			
Bennett/Jackson	820,771	949,498	467,385	2,237,654	2,434,804			
1992								
Pine Ridge MSA	3,933,418	5,312,834	3,151,153	12,397,405	13,095,477			
Shannon Cnty.	3,129,067	4,258,113	2,557,859	9,945,039	10,505,023			
Bennett/Jackson	804,351	1,054,721	593,294	2,452,366	2,590,454			
1993								
Pine Ridge MSA	4,145,475	5,486,668	3,722,491	13,354,634	13,696,587			
Shannon Cnty.	3,149,313	4,412,783	3,041,004	10,603,100	10,874,598			
Bennett/Jackson	996,162	1,073,885	681,487	2,751,534	2,821,989			
1994								
Pine Ridge MSA	4,232,400	5,285,925	4,305,600	13,823,925	13,823,925			
Shannon Cnty.	3,222,936	3,998,650	3,544,448	10,766,034	10,766,034			
Bennett/Jackson	1,009,464	1,287,275	761,152	3,057,891	3,057,891			

Federal Spending on Pine Ridge	
Organization	Expenditure
Tribal Government (year ended September 30, 1990)	30,240,051
Tribal Hospital (FY 1996)	22,637,867
Elementary and Secondary Schools (academic year 1994-95)	18,739,262
Oglala Lakota College (FY 1996)	5,965,888
Income Transfers (1994)	13,823,925
Oglala Sioux Housing Authority (1995)	2,519,344
Public Safety (year ended September 30, 1994)	4,247,874
Social Security (1994)	2,931,372
Total	101,105,583

Federal Expenditures on Pine Ridge Reservation						
Tribal Government, Entitlements, and Housing Authority, 1990-1994						
(1994 Dollars)						
	1990	1991	1992	1993	1994	Total
Tribal Government	13,623,585	15,274,051	21,493,973	26,498,844	30,240,051	107,130,504
Entitlements*	11,216,918	11,912,064	13,095,477	13,696,587	13,823,925	63,744,971
Housing Authority	2,153,341	2,053,575	1,896,730	1,761,407	1,918,357	9,783,410
TOTAL	26,993,844	29,239,690	36,486,180	41,956,838	45,982,333	180,658,885
*For Pine Ridge MSA. Includes Aid to Dependent Children, Food Stamps, and Supplementary Security Income.						

EXHIBIT 3: OST ORGANIZATIONAL CHART



— LINE OF AUTHORITY - - - - LINE OF COMMUNICATION