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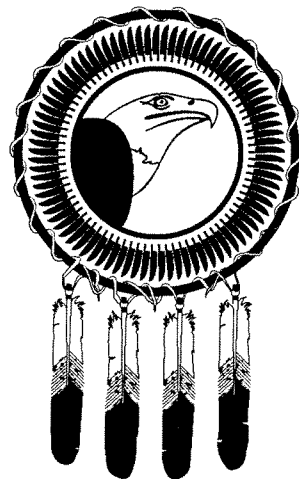
*Crow Constitutional Development:
Empowering the Crow Nation*

by

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Harvard University**

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Executive Summary

The Crow are fighting to keep their land, their water, and their identity in a world which seeks to exploit the rich resources of the Tribe. Although the Crow are working toward greater political stability and economic growth, the Tribe's "direct democracy" form of government may hinder its ability to address shared outside threats and to promote the sovereignty of the Crow nation.

Constitutional development can help the Crow create a more united and responsive government with less factional divide between parties. It can aid the Crow in retaining their lands so that Crow ranchers -- rather than non-Indian stockmen -- reap economic gains from Crow resources. Most importantly, constitutional development can help create the political stability the Crow nation craves.

The process of constitutional development is a difficult one. Bringing powerful, respected leaders together to find common ground is a difficult task for any nation. Impressively, the Crow have a strong history of adapting their government to overcome threats from the outside. This history should aid Crow leaders as they come together in the spirit of their ancestors to promote a change to improve the living conditions of their people. Additional techniques can further improve the ability of tribal leaders to resolve differences of opinion and create lasting solutions. An offsite constitutional conference, a neutral facilitator, a travel tour of other tribal governments, and delayed implementation of proposed changes are examples of techniques which might help the Crow create meaningful change beneficial to the entire Tribe.

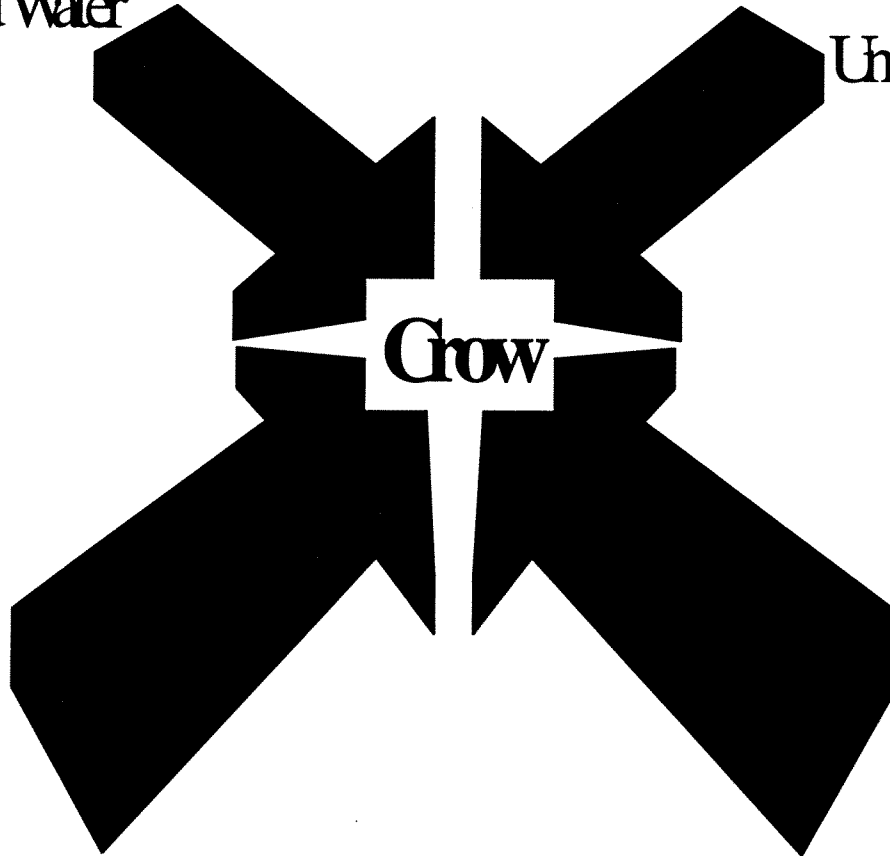
While the drive and leadership for change must come from tribal leaders, they cannot do it alone. The leaders have learned from past experience the importance of having the people involved in the process of change. This report provides guidelines for educating the Crow people about the importance of constitutional development and thereby increasing the likelihood of lasting change.

Finally, this report provides information on constitutional alternatives which Crow leaders might consider implementing. Structural variations are explained and illustrated. The choices vary from adding constitutional “freedom of information” provisions to creating a representative body with well-defined duties. In the end, Crow tribal leaders must determine which options are best for the Crow. This report simply provides information which Crow leaders may find useful as the process unfolds.

Tribal Challenges

Land and Water
Rights

Unemployment



Loss
of
Federal
Funding

Political
Instability

Constitutional Development can:

- ◆ Help Crow reach goals and objectives
- ◆ Help protect Crow land
- ◆ Promote economic development
- ◆ Promote political stability
- ◆ Help preserve Crow language and culture
- ◆ Create a united front against outside threats
- ◆ Create a more responsive government

ACTION PLAN FOR TRIBAL LEADERS

- ◆ **Build on Recent Tribal Unity Successes**
- ◆ **Build on Crow History of Adaptability to Promote Stable and Effective Government**
- ◆ **Initiate Constitutional Conference with Tribal Leaders**
- ◆ **Involve Entire Tribe in Process of Change**

Constitutional Development Alternatives

Small Changes

- **Access to Information Clauses**
- **Payroll Clause**
- **Lengthen Terms**
- **Eliminate BIA Approval**
- **Secret Ballot**
- **Increase Quorum**
- **Supermajority Provisions**

Large Changes

- **Representative Government**
 - **Party Based**
 - **District Based**
 - **Clan Based**
- **Combination of Representative Government and General Council**

Introduction

Four times each year, every adult Crow tribal member has the opportunity to participate and vote in the tribe's Tribal Council meeting. As stated in the Tribe's 1948 Constitution, the Crow Tribal Council is the "voice of the Tribe", vested with the power to "represent, act and speak for the tribe in any and all tribal members." Like ancient Athens and colonial New England town meetings, the Tribal Council meeting is an example of "direct democracy" – one person, one vote; majority rule.

The Tribal Council meetings are held in a building of circular shape – the Crow symbol for unity and strength. Yet, instead of unity and strength, for many years the Tribal Council meetings have reflected division and strife. Instead of allowing the tribe to speak with one voice, Tribal Council meetings have become a hotbed of factionalism, strife, political patronage, and inefficiency. Of the nearly 6,000 eligible voting Tribal Council members, only a small portion choose to participate in the four quarterly meetings. "South-siders", those loyal to the current administration, enter the meetings through the south side of the building. "North-siders" composed of factional opposition members enter on the opposite side. A roll call at the beginning of the meeting determines which side "has the numbers". The entire agenda of decisions affecting the Tribe is then rushed through and voted on in a matter of minutes.

Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.

--James Madison, *Federalist 10*

How did the political situation reach this level? Structural, historical and political factors all play a role. Part of the explanation lies in the inherent weakness of a "direct democracy" system as communities and nations expand in both sheer population and in the complexity of issues which must be decided. The apathy, factionalism, and disillusionment which Crow members have experienced with the Tribal Council as the Tribe has expanded from 2,000 members in 1948 to almost 10,000 members in 1998 is very similar to what New Englanders felt as their population and town meetings expanded.

The Crow's unique history presents additional problems. For a Tribe with a history of consensus-based decision making, the "majority rule" aspect of the

Tribal Council is especially divisive. Moreover, unlike relatively homogenous Puritan New England town meetings, the Council's "one person, one vote" element is complicated by differing family and clan-based loyalties. A further cultural and religious split between traditionalists and "assimilationists" adds to the strife and factionalism already present in a "direct democracy" system.

Finally, and perhaps most importantly, the effectiveness of the Tribal Council system is undermined by the fact that, despite the wording of the Constitution, it is not the only body making decisions for the Tribe. In 1990, the Tribal Chair – one of five elected officers – helped pass a resolution authorizing the tribal administration to decide all tribal matters which arise in between the four Tribal Council meetings. The Chair and her administration also have the power to reverse decisions of a judicial system which is not independent. As a result, the stakes of winning the tribal election every two years are so high that many Tribal Council meetings are simply a competition between the incumbent and factional opposition members for the votes of their constituencies. Jobs, and the promise of jobs, are used by the incumbent and opposition groups as incentives for favorable votes.

Current Elements of Crow Government:

- ◆ **Quarterly Council Meetings of All Tribal Members 18 and Over**
- ◆ **One person, One vote**
- ◆ **Majority Rule**
- ◆ **100-Person Quorum**
- ◆ **Decisions made by Chair in-between meetings**
- ◆ **Chair has review power over judiciary**

Of course, all government systems possess similar features of factionalism, apathy and disillusionment. The key is for a constitution to allow different competing factions to disagree strongly on specific issues but to agree on the merits of the governmental structure – "the rules of the game" – itself. Such agreement is usually found when the government is held accountable for its actions. Unfortunately, the Crow Constitution has established a system which the vast majority of tribal members feel is no longer accountable to society at large. The lack of a legitimate and accountable system of government not only harms the Crow's economic development opportunities. It also weakens the Tribe's ability to positively assert its sovereignty – a sovereignty threatened by large non-Crow ranching interests, state and federal court decisions, and Montana state politicians.

Amid the personal name-calling and

blame for the current state of affairs, tribal leaders recognize that the deeper problem lies in the Tribal Council system set forth in the Constitution. There is almost universal agreement among tribal leaders that some type of change is needed. Indeed, although many tribal members are attached to the only Constitution they have ever known, the tribe has engaged in several unsuccessful past attempts at constitutional reform. These attempts failed for various reasons. Some were not initiated by the Crow themselves. Others did not adequately take into account the cultural differences among the Crow. More than any singular substantive provision, however, past constitutional reform attempts have failed because they were introduced through inappropriate and ineffective *processes*. For the Crow to engage in effective constitutional reform, and thereby build capable, accountable and legitimate governing institutions, the process must be initiated by the Crow, engaged in by the Crow and accepted by the Crow. In short, all tribal members, not just its leadership, must feel ownership of any constitutional changes which take place.

This report will serve as a resource “handbook” for the Crow to refer to when -- and if -- they commit to the process of Constitutional development. It will supply information and raise questions that the Crow can refer to as the reform process takes shape. Much of the content of this report comes from conversations in which Crow political leaders expressed their opinions about the problems and potential solutions associated with the current government structure and Constitutional framework. As neutral parties, the authors were able to serve as sounding boards for such opinions. This report summarizes and presents this information, while providing additional resources and ideas for the Tribe to think about and use in its process of constitutional reform. In large part, however, this report simply reflects back to the Crow what the Crow have been feeling – but not often discussing among – themselves.

PART A

FACING TRIBAL CHALLENGES: A CASE FOR CONSTITUTIONAL DEVELOPMENT

"Now we are sitting here tonight we can get up and shake hands with one another and be altogether as one people. If we can get together as a body and be that way, if we make a demand to the government, then the government will listen to us and will consider the demand we make if we are one."

--Russell White Bear November 3, 1909¹

¹ Quoted in Fred Hoxie, Parading Through History, p. 251.

Why Engage in Constitutional Development?

In unprecedented numbers, dozens of countries – from Eastern Europe to Africa -- have successfully engaged in constitutional development over the past twenty years. These countries have removed constitutional frameworks imposed by colonial rulers and replaced them with governing frameworks reflecting their respective national identities.

Constitutions help nations asserting their sovereignty in several ways. Thoughtful power-structuring provisions among factions helps move political energies away from destabilizing turf disputes and toward the constructive pursuit of economic development programs. The division and separation of power among different instruments of government help remove the obstacles of patronage and politicized management. It also makes nations more appealing to productive outside investment. In short, a successful Constitution aids stability and efficiency by creating legitimate and enforceable “rules of the game”.

A recent landmark cross-country study of industrializing nations confirmed that countries which have been successful in creating institutions capable of preserving the sanctity of contracts, minimizing political corruption, and fostering the general “rule of law” have achieved statistically significant higher levels of growth than countries which have not.² The same connection between the limitation and allocation of government power and economic growth is also found in Indian country:

“Comparative research into more and less successful reservations thus far suggests the paramount importance of tribes’ institutions of self-governance as causal factors [of economic growth]”.³

All Crow leaders recognize the importance of stable government and economic growth in helping achieve their shared goal of successfully confronting the Tribe’s most pressing outside threats. For instance, increased political stability would diminish the power of non-Indian ranchers to acquire ever-expanding tracts of Crow land by exploiting divisions within the Crow membership. Stability and transparency in managing tribal funds would also give the Crow government the option of establishing business loans for Crows engaged in business development. Finally, a stable and economically strong government would create a more united Crow better able to oppose interference in Crow internal governance by outside entities such as the BIA and Congress.

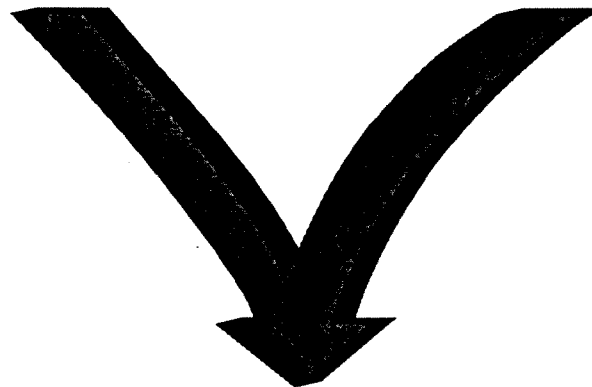
² Barro, Robert. Determinants of Economic Growth: A Cross-Country Empirical Study. MIT Press; Cambridge Massachusetts; 1997; pp. 26-29.

³ Cornell, Stephen and Joseph P. Kalt. Where is the Glue? Institutional Bases of American Economic Development, Harvard Project on American Indian Economic Development, Working Paper No. 91-1, J.F.K School of Government, Harvard University, 1991, p. 8.

Constitutional Development



Helps Promote Stability and
Opportunity for Economic Growth



Helps Crow Achieve
Common Goals and Address
Shared Challenges

Is Now the Time for Constitutional Development?

Every Crisis...

Like the early United States and many nations which have recently initiated constitutional change, the Crow nation similarly faces numerous threats to its existence. Following a long history of self-preservation, the Crow struggle to prevent the loss of tribal land, culture, and tradition from the scavenging of other governments and private interests.

Despite the valiant efforts of the Crow, land rights and holdings have continued to erode. Non-Indian cattle ranchers have acquired plots of land in excess of the legal limit established by the Crow Act of 1920. Two such ranchers own 13% of the entire Crow reservation⁴.



⁴ Interview with Tyrone Ten Bear, December 8, 1998.

At the same time, the Tribe faces increased efforts by outside sources to interfere in Crow internal affairs. The efforts of state and federal courts to increase their jurisdiction over Crow affairs threaten the jurisdiction of the tribal court system. If the Crow do not create a separate judiciary, they face the very real possibility of losing legal jurisdiction over their affairs—especially those interconnected with outside businesses and governments. This legal coup would be the equivalent of a defeat on the battlefield, destroying any real power the Crow have to conduct their affairs. At the same time, the BIA continues to threaten to assume authority over the Tribe's financial and legal matters.

On the economic front, the Crow continue to face pressures related to business development and jobs. Because powerful non-Indian stockmen have strong influence over loan approvals at area banks, many Crow have difficulty securing loans to expand land ownership or ranching operations

Finally, the Tribe faces the possible loss of its very essence – its culture and language. In an age of increasing pressures to conform to outside cultures and languages, many leaders are concerned about the long-term survival of a distinct Crow way of life.

... Is an Opportunity for Constitutional Development

It is not coincidental that the Crow are now exploring the possibility of constitutional development. Most countries which have undertaken constitutional development have done so at times of crises.⁵ The movement for a United States Constitution, for instance, arose in part from a concern about the ability of the numerous and separate colonies to compete with other world powers in the international trade arena and to stave off attempts by world powers to assume sovereignty over the newly formed United States.⁶ Other countries have also found crises to be critical for mobilizing citizens behind change.

⁵ See Jon Elster, *Forces and Mechanisms in the Constitution-Making Process*, 45 Duke L.J. 364, 370 (1995) (“The fact is that new constitutions almost always are written in the wake of a crisis or exceptional circumstance of some sort.”).

⁶ See Robert N. Clinton, *A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891, 897 (1990) (“Thus, the moving force behind the Constitutional Convention was the enlargement of national power to deal with the worsening trade and economic problems.”).

Why “Direct Democracy” Governments Are Often Unstable and Not Conducive to Long-term Economic Development

Stability Dissolves as Population Increases and Diversifies

The apathy, disillusionment and factionalism which many Crow ascribe to their system of government are not unique to the Tribe. Although often idealized as “pure” democracy, direct democracy governments often results in undemocratic and destabilizing practices. From Athens to New England, participants in direct democracies have recognized its shortcomings. As the size of the population in direct democracies increases, meetings grow too large for all voices to be heard in a productive manner. Arguments replace reasoned discussion. The vast majority of people are often not heard at all. Citizens, once active in local government, begin to feel that their voice does not count. Attendance at town meetings falls as apathy takes over and people feel detached from the political process. A smaller, less representative group allows for decisions to be made in an unaccountable manner. This begins a new cycle of apathy, disillusionment, and decreased attendance.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction.

-- James Madison, *Federalist No. 10*

As participants in New England town meetings have noted, this process also leads to heightened antagonism and factionalism among groups. Majority votes divide groups into winners and losers with little opportunity for reasoned discussion – or the possible discovery of common ground. The “all or nothing” nature in which groups with majorities control government decisions leads to a never-ending struggle for power. Those with majority control spend their energies trying to retain power while those on the outside spend theirs trying to gain it. The constant fighting between factions lessens the ability of the government to respond to the needs of the people and to address organized outside threats. Governments lose power as others prey upon the inherent weaknesses of a purely direct democracy.

The framers of the American Constitution aptly noted the destructive power of factionalism and sought to alleviate its hold on politics by constructing a system

to check the ambition of the majority. Madison wrote in Federalist 10, “Among the numerous advantages promised by a well constructed Union none deserves more accurately developed that its tendency to break down and control the violence of faction.” Describes factionalism as inherent in man’s nature, Madison notes that “the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling the *effects*.” The framers reasoned that a mechanism must be built into the system of government to prevent the tyranny of the majority and the breakdown of government due to factionalism.

When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. -- James Madison, *Federalist 10*

Pure democracies have no institutional mechanism to prevent majority rule. Because of this and the inherent nature of man to divide into factions, “such Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.”⁷

⁷ James Madison. *Federalist 10*.

Direct Democracy in New England Town Meetings

“Too much personalities involved”

– selectman at Selby, Vermont Town Meeting

“No one likes each other!”

– newcomer to Selby, Vermont Town Meeting

Participants at New England town meetings had feelings about their experience with direct democracy very similar to those expressed by the Crow. The nearly identical opinions of the two groups show that major problems reside not within individual Crow, but with the direct democracy system itself.

Factionalism

“Factions are thought to turn neighbor against neighbor in daily lives” – Jane Mansbridge, Conflict in a New England Town Meeting.

Family Influence and Personality

“Here tradition and family presence have a dominating influence. A flash or wit or a shaft of ridicule from the lips of one of the ruling class has more power to sway the popular mind than the labored argument or impassioned oratory of another. So much weight has a favored personality.” – New England Town Law, 1906

Difficulty of Large Size

“But a seemingly insurmountable obstacle to the continuance of the town meeting appears when the constituency becomes so large as to be wholly unmanageable. That condition puts an end to all deliberation and places the town under the rule of an irresponsible mob, from which there is no refuge or escape, except in the change of the form of government.” – New England Town Law, 1906

Lack of Real Debate

“This small group had gotten together first, and everyone had learned their part, what they were supposed to say, and they swept the budget through the meeting.” – Lena Thresher, on Selby, Vermont Town Meeting.

Direct Democracy Systems Are Not Conducive to Long-Range Planning

In addition to political instability, direct democracy governments find it difficult to engage in long-range planning. To retain political control, those with majority power have greater incentives to reward their constituents with short-term favors than to ensure the common good through long-range planning. The factionalism and ever-present danger of one administration overturning the measures of the previous administration provides another disincentive for engaging in long-range planning.

In many instances, decisions on long-range planning issues are never reached at all. Large groups by their very nature cannot act quickly to resolve complex issues; meetings cannot easily be assembled to address pressing concerns.

Although data concerning the effect of direct democracy systems on economic growth are sparse, the following chart highlights the increased effectiveness of alternative governmental forms on employment levels across 67 American Indian reservations. The chart shows that moving to a parliamentary system or a system with an independent chief executive results in increased employment levels of 11% and 15%, respectively⁸.

Contributions of Alternative Governmental Forms to Reservation Employment Levels⁹

General Council	Parliamentary	Independent Chief Executive
Baseline	+10.8%	+14.9%

⁸ Cornell and Kalt (1995).

⁹ This chart compares only tribes without an independent judiciary.

Putting It All Together: Benefits of Constitutional Development

Direct
Democracy → Not Conducive
To Long-Range
Growth, Unstable → Tribe Cannot
Achieve Shared
Goals, Address
Common
Crises

Constitutional
Development → Promotes
Stability,
Opportunity for
Economic Growth → Tribe Can
Achieve Shared
Goals, Address
Common Crises

PART B

DEVELOPING A PROCESS FOR CHANGE: CREATING AN ACCEPTED AND RESPECTED CROW CONSTITUTION

“Facing powerful opponents and unprecedented new conditions, Crow leaders in the years before 1920 had reinterpreted their role within their own homeland while managing to present a continuous set of objectives to outsiders. Surviving division and authoritarian rule, the community's chiefs and headmen had evolved into the "second growth" of tribal leadership Bull Robe had described a decade earlier: leaders who could articulate community interests in a new environment. Crow leaders had entered a new arena, pioneered a method of forging community consensus and devised a method for carrying the day.”¹⁰

¹⁰ *Parading Through History*, p. 265.

Obstacles to Constitutional Development

Obstacles to Change

- Mistrust
- Natural Tendency to Retain Status Quo
- Differences over Appropriate Path for Change
- Frustration

When a nation draws together its most able leaders to create change in the government structure, concerns arise which can act as obstacles to change. Leaders often have different views of how the new government should be formed, the objectives of change, and the culturally appropriate path to change. These differences can lead to a breakdown in discussion. The leaders must decide how to handle such differences to create the best reform plan for the nation's interests.

Discussion of differences is healthy and adds to the likelihood that leaders will achieve reforms in the best interest of the nation. However, creating a mechanism for consensus decision-making can be extremely difficult. The following are several obstacles to reform common to all nations:

Mistrust

Years of factionalism and lack of accountability in government lead to a situation in which parties fundamentally mistrust the motives of other parties. Each party comes to the negotiations harboring suspicion of the other parties involved. This suspicion causes problems in consensus-building.

Tendency to Retain Status Quo

When faced with the daunting challenge of creating a new governing system in an atmosphere of suspicion, it is natural for parties to revert to the system already in place. When leaders appear to have hit an impasse, the first reaction is for

participants to revert to what they are comfortable with--the current Constitution. People tend to find security and identity in that which they know. Many Crow may feel that the current Constitution is ineffectual, but resist change by saying that the Constitution is "their Constitution."

Differences over Appropriate Paths to Change

No nation is comprised of people with the same historical, religious, and cultural identity. These factors shape the beliefs about the role and structure of government. Different leaders will have different beliefs regarding the constitutional development process. Some may view the differences to be so substantial as to prevent honest discussions about governmental change. This may lead several important Crow leaders to opt not to take part in the process of change at all.

Frustration

Developing a new system of government is a substantial undertaking for any group of people. For those who come together following a sustained period of factional differences, the process can prove even more daunting. Anger and historical grievances are likely to flare up as parties enter serious discussions over issues which they have impassioned beliefs. Those who have experienced past unsuccessful attempts at reform may begin to feel that they cannot, no matter how much they work, affect governmental reform. Frustration can emerge from lack of compromise, difficult compromises, fatigue, and a feeling of futility. Unchecked, this leads to a self-defeating cycle. The process must be structured to allow for differences without allowing frustration to destroy the process altogether.

Moving Forward: Action Plan for Tribal Leadership

- ◆ **Build on Recent Tribal Unity Successes**
- ◆ **Build on Crow History of Adaptability to Promote Stable and Effective Government**
- ◆ **Initiate Constitutional Conference with Tribal Leaders**
- ◆ **Involve Entire Tribe in Process of Change**

The Crow have a strong history of adapting to changes in their political and economic environment. This spirit of adapting and uniting to promote the interests of the Crow is alive today. In mid-February the tribal leaders came together to present the federal government with a strong, united front against further infractions of the 1920 Crow Act. This follows the spirit of great Crow leaders like Plenty Coups who unified Crow leaders in negotiating the 1920 Crow Act. The Crow people have an amazing ability to meet tough challenges and promote the Crow interest when they put factional differences aside. The Crow can create a vibrant economy and a stable political body to protect the interests of the Crow if they build upon distinctly Crow attributes.

A conference which brings together the leaders of the Tribe to discuss constitutional reform will provide a forum to create a vision for the future. The conference would allow leaders to find common ground and work together to create meaningful constitutional reforms to empower

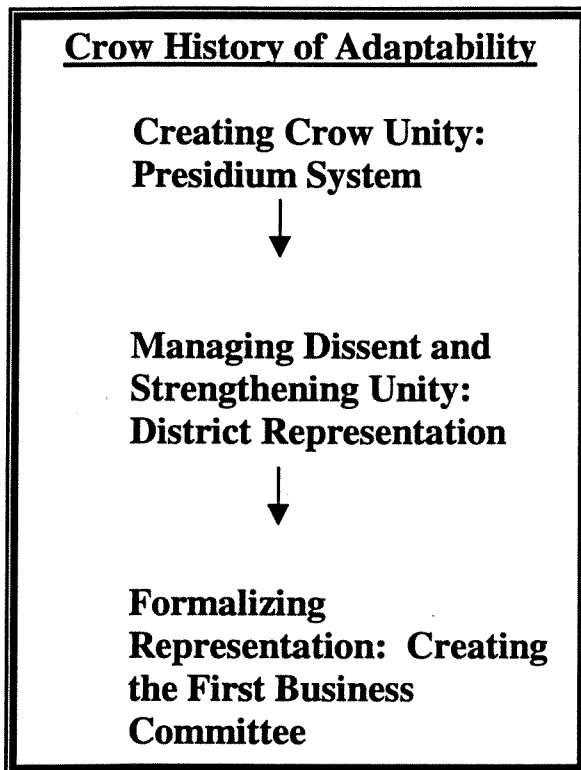
the Tribe. But the leaders must go beyond discussing change among themselves. The entire Tribe must be involved in the process of reform for the developments to finally take hold.

Build upon Recent Tribal Unity Successes

The Crow Chair and leaders of factions recently provided a united front in negotiations with the U.S. federal government in a dispute regarding the Crow Act of 1920. In mid-February, 1999, the Chair formally invited faction leaders to accompany her to Washington D.C. for meetings with the federal government. It marked the first time in recent memory that tribal leaders from different factions participated in such an event. Recognizing the damaging consequences of revealing internal differences to a foreign government, the active participation of all tribal leaders – and their willingness to put aside their differences to speak with a united Crow voice – helped affect change for the good of all Crow people.

Mistrust and suspicion disappeared as leaders found out first-hand what the federal government was communicating to the Chair. The Chair should repeat this innovation in tribal governance with other specific, concrete issues dealing with external threats such as issues related to land and water rights. The process of negotiating collectively will lower mistrust between parties in general, setting the stage for leaders to work together for constitutional development.

Build upon Crow History of Adaptability to Promote Stable and Effective Government



Throughout Crow history, tribal leaders adapted their form of government to respond to outside threats and to promote unity in the Crow Tribe. Long before the passage of the 1948 Constitution, the Crow had a tradition of representative government. The white man, seeing how powerful the united voice of the Crow could be, sought to divide the Crow people. Division of the Crow meant a substantially weakened ability to negotiate and to protect the tribe's interests. As long as the white man could keep Crow divided, he could control the actions of the Tribe.

"[T]he Indian Office and its local supporters were determined to undermine the community's indigenous leadership and replace it with 'a simple government'

representing 'the great body' of the tribe. From 1884 onward, then, agency administrators struggled to reduce the power of the local chiefs without creating undue resistance or complete chaos.¹¹

The federal government manipulated the divisions within the Crow community to get land they sought in the 1890. Because the Crow did not stand with one voice,

¹¹ Fred Hoxie. Parading Through History, p. 226

experienced negotiators for the U.S. government were able to pit Crow factions against each other to exploit the Crow.

*"The commissioners easily exploited differences within the group and weakened the leaders who might have rallied a successful resistance. In the midst of disagreements and disunity, no chief had sufficient stature to speak for the entire assembly, and there was no mechanism for establishing a tribal consensus. Without that consensus any opponent--even one so trustworthy as Plenty Coups--could be labeled a malcontent."*¹²

Creating Crow Unity: Presidium System

Learning from the 1890 experience, Crow leaders came together to form a more unified form of government when facing the federal government again over land issues. The Crow forged a presidium of chiefs to demonstrate a united front to outsiders. This system allowed the Crow to fight persuasively for the Tribe's interest in the 1899 land sale.

*"The 1899 land sale demonstrates the resourcefulness as well as the vulnerability of an emerging reservation leadership. Operating as a kind of presidium, a small group of chiefs representing the major reservation districts resolved their differences and offered outsiders a united "Crow position" on a public issue. The next crisis would demonstrate the limits of this presidium system and would force it to evolve yet again into something new."*¹³

Managing Dissent and Strengthening Unity: District Representation

In 1909, the Crow were drawn together against the federal government once again. They chose to develop ways of managing the factionalism among Crow leaders rather than to hope that the threat from the outside would provide the glue to keep the Tribe together. They presented a much strengthened and united voice against the federal government through the use of district representation.

"The solid wall of opposition facing James McLaughlin reflected the lessons Crow leaders had learned during the previous year's upheavals. They did not bring back the presidium system of the 1890s. Instead, in the aftermath of Helen Grey's investigation tribal leaders set out to construct ways of encompassing and managing dissent within the community. The principal method of accomplishing this goal was a system of district

¹² Id; p. 323.

¹³ Id; p. 238.

representation that began to appear when major issues came before the tribe."¹⁴

With more land challenges facing the Crow in the early 1900s, the Crow consciously decided to create a less vulnerable system of government. Tribal leaders realized that a system of patronage and favoritism could not serve the needs of the Crow people. Such a system had no room for the voice of all Crow and was easily manipulated by the outside. Stockmen, the federal government, and the state government could play Crow off of one another and corrupt the system through favors to those with power.

Formalizing Representation: Creating the First Business Committee

A critical point in Crow government came with a decision for unity in 1909. To protect the interests of the tribe, the leaders chose to create a new system rather than to live with the consequences of the traditional system. The tribal leaders actively put down their differences and supported a plan to unite the Crow. This momentous decision set a Crow precedent of unity to promote the good of the entire Tribe.

Building upon the pact of unity, tribal leaders began creating a formalized business committee as the base of tribal government. This business committee consisted of representatives elected from each district. The leaders used this committee as the place to air differences among leaders to come to a consensus in policy for the Tribe. Once decisions were made, the leaders acted as one voice for the Crow people. Crow leadership – through the creation of the business committee -- had created a means through which all voices could be heard to create a consensus position for the advancement of the Tribe.

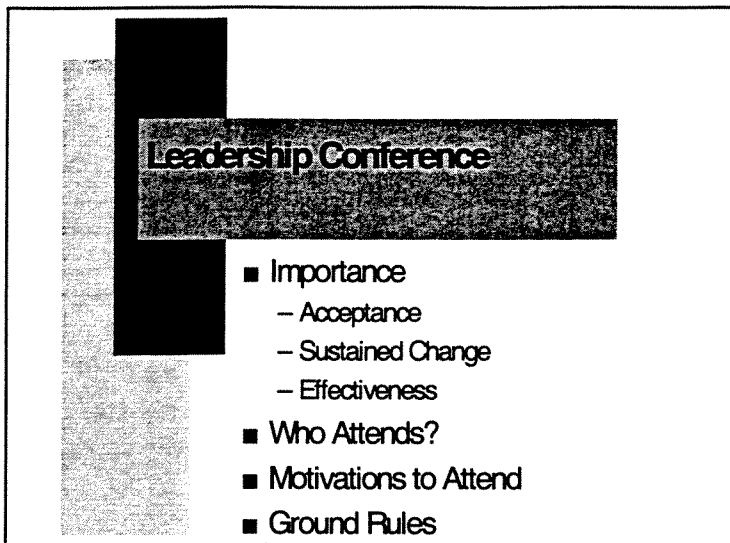
*"In September 1910, a group of Crow leaders gathered to form the first tribal business committee. While later condemned by the reservation's new agent as 'the creation and tool of the worst element of our Indians,' this group may clear than in the aftermath of the Grey affair, the Crows understood the value of a representative body as a place to air the community's differences and forge a consensus for the future."*¹⁵

The 1920 passage of the Crow Act demonstrated the tribal leaders' ability to put differences between them aside to work for the welfare of the Tribe. By presenting a united front and successfully using representative government, the Crow gained legislation for the protection of their land from outsiders. By adapting to new circumstances of reservation life, tribal leaders created a new, successful system of government.

¹⁴ Id; p. 249.

¹⁵ Id; p. 253

Initiate the Leadership Conference



Leadership Conference

- Importance
 - Acceptance
 - Sustained Change
 - Effectiveness
- Who Attends?
- Motivations to Attend
- Ground Rules

A leadership conference provides a forum for the Crow to forge a common vision for the future of the Tribe. The conference would allow the leaders to find common ground and determine tribal goals and objectives. Leaders can discuss and determine which Constitutional provisions would best help the Crow face current challenges and ensure future economic growth.

Importance of the Conference

Acceptance

Past attempts at constitutional reform have not been realized because of a lack of Tribe-wide participation. The introduction of proposed changes by a single individual can -- and has -- been rejected outright due to political mistrust. In order for proposed changes to be accepted by different factional leaders, changes must be arrived at collectively.

Sustained Change/Ownership

Constitutional reforms cannot be sustained in the long-term unless the Tribe understands and accepts the nature of the reform. Several tribes which have used outside consultants to lead the Constitutional reform process have later regretted their lack of knowledge and sense of ownership concerning how specific Constitutional provisions made their way into the final document. The best way to avoid this outcome and to achieve long-lasting change is through sustained, Tribe-led discussion and debate.

Effectiveness

The simple act of brainstorming and gaining input from a wide variety of tribal members can prevent politically troublesome, contradictory or simply ineffective provisions from entering the final document.

Who Attends?

The Crow must decide which leaders – both elected and non-elected -will attend the constitutional conference. To reap the full benefits of the conference, every effort should be made to include representatives of every political view. Specifically, the conference should include members of the current administration, members of different opposition factions and respected non-elected tribal leaders, including elders. In the short-term, the absence of any of these groups in the discussion will lead to a final product which is immediately suspect. In the long-term, the lack of Tribe-wide ownership in the reform process will result in fragile changes which cannot be sustained.

Steps for Successful Change

Step 1: Redefine the role of government

Step 2: Research historical political behavior and the historic function of tribal government

Step 3: Assess the degree to which historical notions of governance

Step 4: Be creative

Step 5: Share information

Motivations to Attend

Before tribal leaders attend the conference, they must be persuaded that attending will be beneficial to them. In other words, leaders must know that their voices will be heard and appreciated. They must realize that change will come out of the conference and that participating in the conference is the only meaningful route to change. Tribal leaders will come to the conference if they know their opinions are valued and honored.

“Ground Rules” and Structure of Conference

It is not enough for tribal leaders to simply agree to sit in the same room and talk about common issues affecting the tribe. The leaders in attendance must also agree on the ground rules for the conference. If the

discussion is not geared toward arriving at mutually agreed upon decisions, tribal members will most probably fall back to their entrenched political opinions. As a result, no change will occur.

There is no magic formula for determining how conference discussions should be structured. Although the Crow must determine the ground rules which work best for the Tribe, an example from another Indian nation might prove useful.

The Seneca Nation of New York recently suffered a “civil war” over disagreements about the future direction of tribal government. The extreme factional in-fighting and political violence ultimately led to the death of three Senecans. In an effort to draw lessons from the Seneca Nation’s experience, Robert Porter, a member of the Seneca Nation, recommends a series of steps for tribes engaging in governmental reform¹⁶. These steps – and their applicability to the Crow – are outlined below.

Step 1: Redefine the role of government

What do tribal members believe is the purpose of tribal government? How can tribal government best help the Crow achieve its collective goals? It may be tempting to avoid such difficult questions and jump right into “easier” specific concerns such as longer elected terms and increased quorum requirements. By discussing members’ views of tribal government, however, participants might find more common ground than they imagined. Participants might quickly discover that while they disagree on specific constitutional provisions, they share larger common values about the best interests of the Tribe. Once these common values are established, members can move away from their entrenched positions on specific provisions and toward creative ways to satisfy such shared concerns.

Step 2: Research historical political behavior and the historic function of tribal government

There is a famous saying that “you must look to your past to inform your future.” The Crow have many resources which might provide insight into past tribal government practices. Oral histories from elders are a logical starting point. The Little Big Horn Library also has numerous tribal histories written by and for the Crow. Histories written by non-Crow, such as Fred Hoxie’s *Parading Through History*, also contain useful historical information about Crow tribal government.

There are several methods for providing a shared sense of Crow political history. The leaders may want to set aside a specific meeting to bring all leaders together to discuss oral histories and Crow traditions. All versions should be accepted and embraced to further leaders’ understanding of Crow culture. Alternatively, the leaders could establish a subcommittee with members from various groups to research the political history of Crow and report back to the group as a whole.

¹⁶ See Robert Porter, *Strengthening Tribal Sovereignty Through Governmental Reform: What are the Issues*, 7 *Kansas Journal of Law & Public Policy* 72 (1997).

Step 3: Assess the degree to which historical notions of governance still apply and are viable

This is a crucial step. And a delicate one. Past attempts at reform have often failed when opponents characterize change as “not the Crow way.” The truth is that there is no one singular Crow way of governing. The Crow have often changed their governing practices when necessary to face an outside threat.

As in any culture, the Crow method of governing depends on how far back in time one refers. Instead of invoking the traditional “Crow way” as a club to defeat change, tribal leaders must look to the past to help collectively rediscover what is the future “way” for the Tribe. Based on interviews with Crow leaders, examples of Crow traditional governing practices include consensus-based decision-making, leadership by respect, long discussion, and a combination of band-wide rule with strong individual leadership.

These examples should not be looked to as specific requirements which must find their way into the new Constitution. Rather, they should be used to help find common shared values related to governing.

Leaders should also discuss how and why the current Constitutional framework alters some of these traditional governing practices. For instance, traditional consensus-based decision making has been replaced with majority votes. Respect-based leadership has been replaced by a system which rewards patronage. Long discussions have been replaced by ten minute council meetings. Do these changes reflect new tribal values? Or do they represent the consequences of a system which does not reflect Crow values?

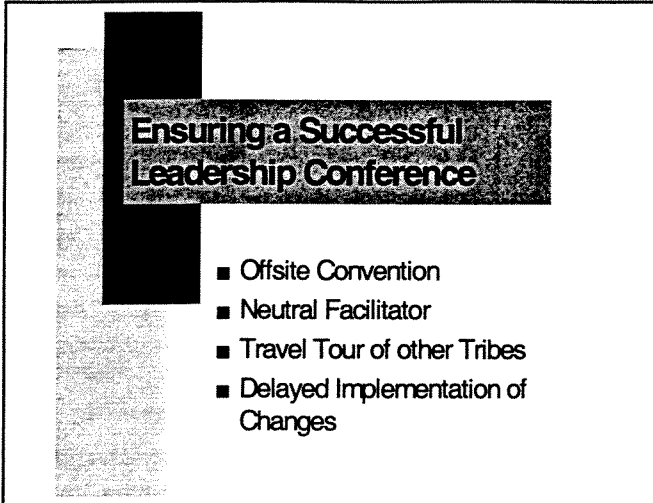
Step 4: Be creative

Being “creative” simply means using original language to reflect original Crow ideas about the role of tribal government. All of the time and effort involved in crafting a unique Crow vision for the role of government will be wasted if that vision is not reflected in original Crow language. Simply “cutting and pasting” provisions from other constitutions will result in changes that Crow members either do not accept or do not understand. Creative changes, on the other hand, will greatly increase the effectiveness of any constitutional reforms.

Step 5: Share information

Information-sharing fosters trust, facilitates creativity, and enhances understanding. When participants feel that others are harboring information they not only feel left out but also become suspicious of the entire process. The integrity of the process depends upon the open sharing of information.

Techniques for Ensuring a Successful Leadership Conference



Ensuring a Successful Leadership Conference

- Offsite Convention
- Neutral Facilitator
- Travel Tour of other Tribes
- Delayed Implementation of Changes

Even in a society in which everyone agrees that change is necessary to address the challenges of a nation, creating change can be extraordinarily difficult. In real-world societies where not everyone agrees on the benefits of change, the difficulty of bringing about meaningful and productive change can seem almost impossible. However, techniques to facilitate the discussion of options and mediate through differences will greatly improve the chances of productive change taking hold.

Tribal leaders should explore the possible advantages of different techniques for creating a forum for free and meaningful discussion among players of all factions. These techniques are geared toward providing the tribal leadership with additional information and ways to discuss what the options for constitution development can mean to the Tribe.

I. Offsite Convention

Neutral Facilitator

- **Purpose:** *To facilitate meaningful debates about the substance and process of constitutional change through the use of a neutral third party.*

An offsite convention brings leaders together in a setting free from the intrusions of home. Leaders are able to discuss the needs of the Tribe without pressures from factions. Because of this, leaders are able to speak and listen more freely to other opinions. Leaders can more easily drop the grudges of the past to focus on the matter at hand — increasing political stability and the opportunity for economic growth through an improved governance structure.

Advantages

Highlights similarities

Moving discussions about governmental reform to an offsite location promotes a feeling of collaboration by highlighting the similarities of participants. Internal differences between members of a nation are amplified in isolation. Moving discussions into the setting of another culture highlights the great similarities of values within the Crow culture rather than the relatively narrow issues over which participants vary.

By highlighting similarities, Crow leaders can more easily find common values or objectives from which to proceed. Historically, part of the problem with Crow constitutional reform has been the inability to overcome factional differences to create a better future for the entire Tribe. Working from similarities will increase the chances of successful constitutional reform.

Neutral

Ownership of place can give an advantage to one faction or another. Whether or not the place actually gives an advantage to one side, the perception that one side has a more favorable relationship with a site can prevent change from taking place. For example, if the discussions were to be held in the Tribal Government offices, the talks might appear to be controlled by the Chair and her party. Holding discussions about constitutional development in an off-reservation site allows each party to come to the discussions on a playing ground perceived as level.

Off-Site Constitutional Conference

Advantages

- Highlights Similarities
- Neutral
- No Distractions

Concerns

- More Expensive than Onsite
- Choices May Signal Favoritism

Places also harbor the memories and emotions of past encounters. Places with hostile histories can set a negative tone for discussion. A neutral, off-reservation site allows the discussion of governmental reform to begin without the potentially destructive memories of past hostilities.

No distractions

Conducting conferences off-site prevents distractions such as phone calls, other government business, and personal business. In an environment away from such distractions, leaders find it easier to focus on the difficult questions regarding constitutional development.

Smaller nations have difficulty with rumors spreading regarding the process of conventions. An off-site convention also allows the leadership freedom from criticism or backlash from other Tribe members about working with opposing faction leaders. Removing the leadership from the proximity of tribal members can lessen the stress and difficulties presented by such criticisms.

The leadership will have heated disagreements to work through. In moments of anger participants may wish to walk out on the proceedings. If the discussions are held on the reservation, these members can easily leave--sacrificing the entire process. However, this is less likely to occur at an off-site convention. Participants may leave the room in a moment of anger, but return later after tempers have cooled.

Concerns

More expensive than onsite convention

Finding an offsite conference site to accommodate all parties can be expensive. The costs of such a convention would include hotel, transportation, and food expenses for each participant. Also, substitutes may have to be paid to fulfill the tribal duties of each participant while at the conference.

Choices may signal favoritism

Choices of location and participants may signal favoritism of one faction over another. Careful consideration must go into how the site for the convention is chosen, how the participants are chosen, and how acceptable these methods are to those involved in the governmental change process.

Options of Sites for Offsite Convention

**Harvard Project on
American Indian Economic Development
Cambridge, Massachusetts
(617) 495-1480**

**Native American Rights Fund (NARF)
Boulder, Colorado
(303) 447-8760**

**University of Montana
Missoula, Montana
(406) 243-7875**

**Montana State University
Bozeman, Montana
(406) 994-3333**

**University of Colorado
Boulder, Colorado
(303) 492-1635**

II. Neutral facilitator

Neutral Facilitator

- **Purpose:** *To facilitate meaningful debates about the substance and process of constitutional development*

Tribal leaders may decide to call in a neutral facilitator to navigate discussion beyond factional division. A neutral facilitator helps place parties on equal ground and reassure leaders of minority factions that their opinions are valued. A facilitator can also prevent one party from monopolizing discussions and wearing down other leaders. Finally, a facilitator can help prevent leaders from inadvertently overlooking important issues.

Advantages

Prevents Breakdown of Discussions

Using a third party facilitator can prevent the breakdown of discussion by moving the debate beyond entrenched hostilities. Without a facilitator, leaders may get caught in old hostilities, personal disputes, or angry disagreement which threaten the viability of the entire conference. Facilitators specialize in moving disputes beyond these critical points so that parties can come to a mutually beneficial resolution.

Neutral

A third party facilitator will allow each faction leader to enter into the discussion on equal ground. The facilitator will have no pre-conceived ideas of which leaders should be heard. The neutrality of a facilitator promotes the level of discussion and the respect accorded to each participant. The facilitator can give

equal merit to various suggestions and expedite understanding between opposing factions.

The facilitator also acts to depersonalize arguments. This mediation reduces the potential for explosive personal attacks, while increasing the likelihood of constructive discussion around points of disagreement.

By removing the bias from the person running the meeting, the leaders can help ensure the usefulness of the results of the conference.

No one tribal leader controls discussions

Tribal members have expressed concern that not all points of view are being heard at General Council meetings. Using a neutral facilitator ensures that no one faction controls the discussions. Each person will have his or her say and be heard by the group. The establishment of a neutral facilitator lets each participant know that his or her opinion will be valued. This will encourage participation by those who otherwise would not attend the conference. Because no one faction can control the conversation, consensus can be reached as all parties work toward the most beneficial solutions for the Tribe.

Concerns

Perception that discussions not controlled by Tribe

A neutral, third-party facilitator would not be a member of the Tribe. Because of this, the participants may feel that the facilitator does not understand the unique problems that the Tribe faces. The facilitator will also likely not know the history of constitutional reform attempts. If participants have these perceptions, they may have feelings of mistrust toward the facilitator. This mistrust could prevent a successful outcome when added to the mistrust the leaders may already feel toward other factions' objectives.

Neutral Facilitator

Advantages

- Prevents Breakdowns of Discussion
- No One Tribal Leader Controls Discussions

Concerns

- Perception that Discussions Not Controlled by Tribe
- Facilitator Not Familiar with History of Disputes
- May Stunt Creativity

Facilitator not familiar with history of disputes

The facilitator may not be able to effectively negotiate through difficult areas of dispute because he or she does not have a solid understanding of past attempts at change. Without this knowledge, the facilitator may create confusion as he or she attempts to facilitate discussions around these areas.

The facilitator may also detract from the proceedings by introducing unconscious cultural biases. Because the facilitator will not be Crow, he or she may have preconceived ideas of the Crow culture. These ideas may cloud the facilitator's manner of working with the Tribe. The facilitator may also inadvertently impose frameworks for discussion which are culturally appropriate to his or her own social background but not to Crow political discussions.

Options for Facilitators

Private

Carter Center
453 Freedom Parkway
Atlanta, Georgia 30307
(404) 331-9300

JAMS/Endispute
Denver Office
410 17th Street
Suite 1600
Denver, CO 80202
(303) 534-1254
(800) 352-5267
FAX: 303-534-1255

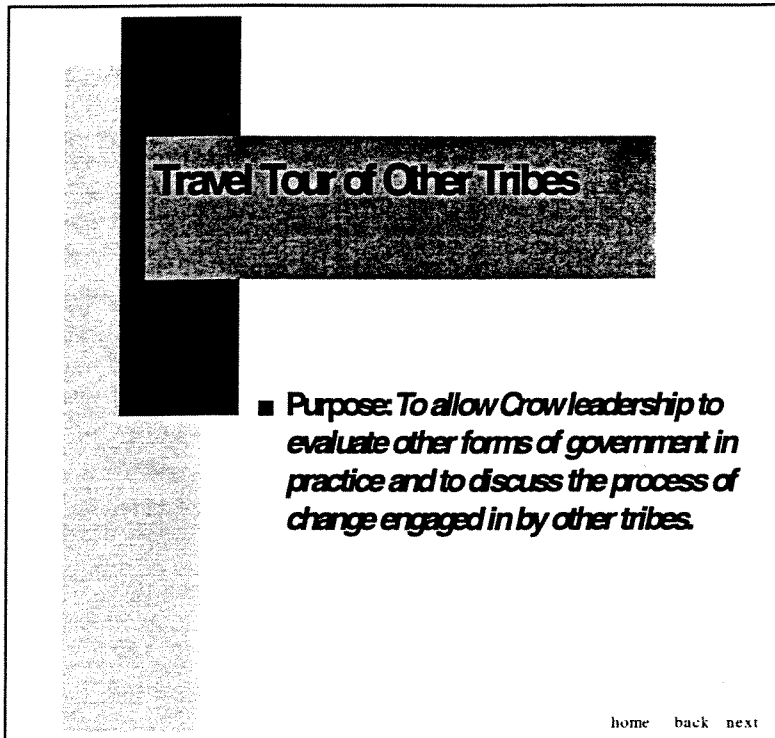
Aspen Institute
1333 New Hampshire Ave., N.W.
Suite 1070
Washington, D.C. 20036
(202) 736-5800

University-Based

University of Montana - Missoula
Business, Industry and Government
Center for Continuing Education
Missoula, MT. 59812
(406) 243-7875
Fax: (406) 243-7899

Harvard University Law School
Program On Negotiation
513 Pound Hall
Cambridge, MA 02138
(617) 495-1684
Fax: 617-495-7818
PON@law.harvard.edu

III. Travel Tour of Other Tribes



Travel Tour of Other Tribes

- ***Purpose: To allow Crow leadership to evaluate other forms of government in practice and to discuss the process of change engaged in by other tribes.***

home back next

A travel tour of other tribes entails a planned trip to visit other tribes which have recently undergone major constitutional reform. Travel tours allow tribal leaders to come into direct contact with leaders of change in other nations. Visiting other nations can help the leadership visualize different options and how these options can impact the Crow's economic and political stability. Visits also provide contacts with other tribal visionaries who can become valuable resources as the constitutional development process continues.

Advantages

Participants see Options

Visiting other tribal governments will allow tribal leaders to see various forms of government in practice. They can exchange ideas about the process and substance of constitutional change with leaders of other Indian nations. By viewing a variety of governmental forms and processes of constitutional development, the Crow can make better decisions in their own reform process.

Highlights Similarities

Foreign settings will help bring Crow leaders together. By moving away from familiar turf, faction leaders will see more similarities in each other than differences. A new and different setting will help move faction leaders away from comfortable, entrenched views as they view new possibilities for improving the tribe's governmental structure.

Contact with Experts

The travel tour will bring the leaders of the Tribe into contact with other tribal leaders who have experienced the challenge of changing their nations' constitution. These leaders will prove to be excellent sources of information at the time of the tour and later as the tribal leaders sit down to craft the substance of Crow governmental reform. The national leaders will also be able to put the Crow into contact with consultants, academics, facilitators, and others who may have provided assistance during their process of constitutional development.

Travel Tour of Other Tribes

Advantages

- Participants See Options
- Highlights Similarities
- Contact with Experts

Concerns

- Difficult to Coordinate
- Travel Costs

Drawbacks

Difficult to Coordinate

It may be difficult to coordinate visits to other national governments at a time when all Crow tribal leaders can attend.

Travel Costs

The Tribe must make it a priority to fund the trip for all necessary participants. Costs will include transportation, gasoline, food, and hotel accommodations for all participants.

Examples of Governments to Visit

Hualapai Nation --- Arizona

Ho Chunk Nation - Wisconsin

Tohono O'odom Nation -- Arizona

Yakama Nation -- Washington

IV. Delayed Implementation of Changes

Delayed Implementation

- *Purpose: To minimize incentives for self-serving proposals.*

To reduce the possibility of self-serving reform suggestions, the Crow may want to agree upon the delayed implementation of change before they begin discussions. This delay could be until a specific date chosen by tribal leaders (e.g. Jan. 1, 2001) or could be a specified time from the adoption of a reform proposal. For example, the Crow may decide to lengthen the term of office for elected officials to four years. Under delayed implementation, the actual change would not take effect until a year or two following the decision to lengthen terms.

Advantages

Less room for self-interested motives

Delaying change lessens the ability for individual parties to receive short-term benefits from changes in the Constitution. Decreasing the opportunity for short-term gain will allow less room for self-interested motives. Rather than focusing on changing the government for personal gain, each party can more objectively consider designing a constitution that benefits the Crow people as a whole.

Trust

Delaying change can also promote a feeling of trust between parties. By decreasing the ability of each participant to see direct gains from specific reforms, delayed implementation can decrease suspicion between parties. Delayed implementation can relieve tensions between faction leaders by lowering the level of suspicion about other leaders' motives.

Allows leaders time to educate the Tribe about constitutional development

Crow leaders have pointed to lack of acceptance by the Crow people as one obstacle to constitutional change in the past. Leaders have put countless hours of hard work into improving the Constitution over the past few decades. This hard work did not pay off in change because of tribal members' fear of change and the unknown. To overcome this obstacle to change, the Crow leaders must educate the Tribe in a clear manner about what change would entail and how constitutional development can promote stability and provide the opportunity for enhanced economic development to take place.

Concern

Lack of sense of urgency

Delaying implementation may lead leaders and tribal members alike to lose a sense of urgency about changing the Constitution. Excitement, enthusiasm, and involvement may be lost. To maximize the benefits of delayed implementation without sacrificing the momentum behind constitutional development, leaders should be wary of extending the date of implementation too far into the future.

Delayed Implementation

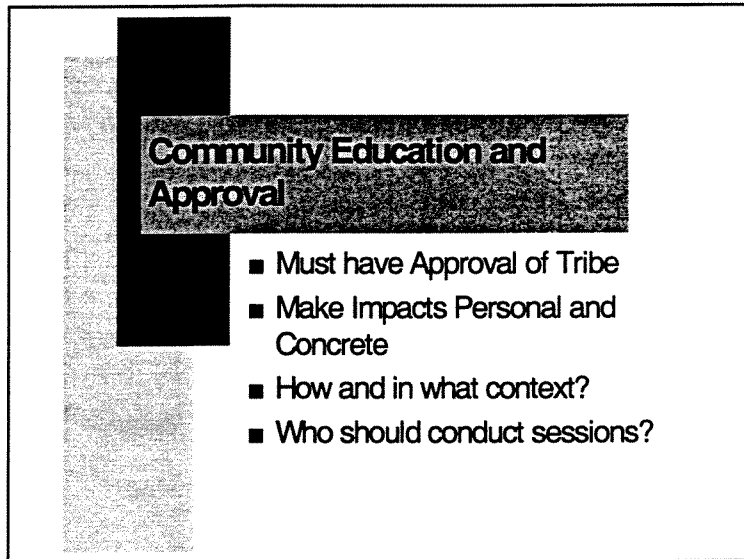
Advantages

- Less Room for Self-Interested Proposals
- Promotes Trust
- Allows Leaders Time to Educate the Tribe about Constitutional Development

Concern

- Lack of Sense of Urgency

Involvement of the Entire Tribe in Constitutional Development Process



Community Education and Approval

- Must have Approval of Tribe
- Make Impacts Personal and Concrete
- How and in what context?
- Who should conduct sessions?

Tribal members will neither accept nor apply any changes which they do not understand. They also will not accept changes emerging from a process from which they feel alienated. To increase tribal understanding and acceptance of proposals for reform, the entire Tribe must be included in the process of constitutional reform.

Currently, much of the Tribe is not aware of how a constitution can improve a nation's welfare. Tying specific, concrete programs to abstract concepts like sovereignty is a difficult but necessary task.

Must have approval of Tribe to proceed with changes

A well-run, clear education process is a means of ensuring the approval of change at the General Council. Tribal members will not have been thinking about the need for change and the benefits of a more stable government. Educational meetings and workshops are one way to excite the Tribe about the impacts of constitutional development. The leaders should present impassioned speeches about why change is important to them and to the Tribe. Emotional and vivid stories are powerful tools in persuasion.

Make impacts seem personal and concrete

Benefits from constitutional development such as stability and economic growth will seem very vague to tribal members. The possibility of protecting and increasing ranching operations, on the other hand, resonates with tribal members. So too does the possibility of increased jobs and businesses. Tying constitutional development to specific and concrete improvements in the lives of tribal members

will result in increased support from tribal members – and a better chance of Tribe-wide approval of such changes.

Need to make education efforts interesting and integrate into daily tribal life

Crow leaders recognize the importance of incorporating a social component into public meetings about governmental reform. Support for resolutions related to the Crow Commercial Code, for instance, was increased by combining a meeting and vote with tribal social activities. The same thought of integrating information sessions with traditional cultural events should go into planning education efforts regarding governmental and Constitutional reform. The following represent some events which can be combined with informational meetings:

- Rodeo
- Basketball games
- Cultural events

Who should conduct education sessions?

Tribal leaders will have to choose which individuals will conduct the education sessions. A group that represents individuals from both the Chair's party and minority factions should conduct the sessions. This will signal the unity of purpose behind the changes. A visible commitment of opposing factions will give the people trust in the change process.

Comanche Constitutional Development: A Successful Participatory Approach

Background

“No matter how good a proposal might be on its merits, people who hadn’t been involved in developing it didn’t trust it, leading to factional feuding and gridlock”

- Infighting and gridlock since adoption of IRA Constitution.
- Adversarial process of electing leaders conflicted with traditional, consensus-based approach.
- Tribal members felt alienated and left out of political process.
- Less than a quarter of eligible population voted for last election of tribal chair.

Solution

- In February 1990, tribe initiated process of building tribal harmony and consensus according to traditional values within a contemporary, culturally-specific government reform planning process.
- Combined outside facilitator, tribal leadership and elders to find mutually acceptable consensus in defining problems and choosing course of action

Process

- First meeting in February, 1990 was called by Business Committee, tribe’s leading political body. The meeting included representatives of all identifiable groups in community. For two and a half days, the tribe engaged in the following four-step process:
 1. Defined problem;
 2. Developed clearer vision for future;
 3. Defined activities to bridge gap between current reality and desired future;
 4. Assigned roles and responsibilities for carrying out activities;
- February meeting led to a series of tribal level sessions and the development of local-level consensus decision-making sessions in the four Comanche communities.

Techniques Used for Building Trust and Strength

- Sat in a circle.
- Opened meetings with blessings and other traditional ceremonies.
- Each person called on to track kinship ties to rest of group.

Successful Result

Spring of 1996 – long series of discussions led to final draft of revised Comanche Constitution.

PART C

CREATING AN EFFECTIVE CONSTITUTION

“...They would have to build a following among people who represented all the interests and points of view contained within the boundaries of the reservation. To continue an older system based on personal prestige and influence was to leave themselves open to the manipulation by outsiders; to construct a new method of leadership, rooted in the support of every district within their territory would be the price of defending their homeland.”¹⁷

¹⁷ *Parading Through History*, p. 249.

What is an Effective Constitution?

An Effective Crow Constitution

- Creates a Government which Matches Crow Culture
- Provides a FUNCTIONAL Framework for Government Decision-Making
- Promotes Crow Tribal Goal of Stable Government

Effective Constitution Creates a Government which Matches Crow Culture

Effective governments incorporate a nation's shared cultural norms regarding the legitimate realm and scope of authority.¹⁸ How does a constitution's "cultural match" help promote effective self-government and the opportunity for economic growth? In short, constitutions which create formal institutions and relationships that match a culture's norms concerning the structure, scope, location, and source of political authority provide a stable environment in which legitimate decisions can be made.¹⁹ Constitutional structures which conflict with such norms lead to unstable governments hindered in their ability to achieve economic growth.

The boilerplate constitution proposed by the Indian Reorganization Act and adopted by many tribes in the 1930's highlights the issue. Tribes such as the White Mountain Apache whose cultural norms are consistent with the IRA's use of strong chief executives, hierarchical and centralized decision-making have met with economic success under IRA constitutions.²⁰ Conversely, tribes whose cultural norms conflict with such structures, such as the Oglala Sioux, have fared much worse.²¹

In the Indian context, both our quantitative research and extensive fieldwork with tribes repeatedly turn up the conclusion that ineffective tribal government is a sufficient condition for the stark economic underdevelopment found on most reservations and that a match between extra-constitutional cultural norms and formal institutions is a necessary condition for existence of an economy based on real production.²²

For the Crow, the simple process of engaging in collective Tribe-wide discussion and decision-making regarding constitutional development will go a long way toward assuring a healthy constitutional match. Admittedly, the Crow's cultural norms may not be easily determined -- nor shared -- by all members of the Tribe. Yet, engaging in a collective discussion process as outlined in Part B is the best way to assure that any agreed-upon constitutional reforms reflect Crow cultural norms.

¹⁸ Stephen Cornell and Joseph P. Kalt, *Where Does Economic Development Really Come From: Constitutional Rule Among the Contemporary Sioux and Apache*, *Economic Inquiry*, Vol. 33, pp. 402-426, July 1995.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 406.

Effective Constitution Provides A Functional Framework For Governmental Decision-Making.

Constitutions codify the culture, the traditions, and the social code of law and order of a nation. Not only are constitutions a written order of how the laws of a society will be enacted, they are also a written contract between the government and the people. Constitutions are an agreement among members of a nation to live by certain truths and rules in order to improve everyone's lives within that nation.

In short, Constitutions map out the governing structure of a nation – the “rules of the game” in which governance takes place. They establish membership and voting eligibility, define the structure of government (e.g., direct democracy, representative government), and determine the responsibilities of and relationships among different political bodies.

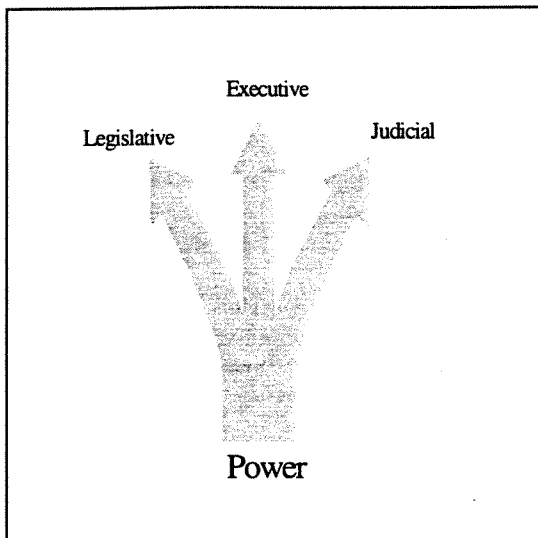
Effective constitutions create clear rules and provide clear lines of responsibilities. At their most basic level, effective constitutions provide a structure within which decisions can be reached efficiently and fairly. While constitutions cannot create good policies, they can help foster an environment in which they can grow. A functional constitutional framework is one in which constitutional provisions are:

- **Clear and understandable;**
- **Do not contradict one another;**
- **Provide clear lines of responsibility to political actors;**
- **Allow decisions to be made efficiently and fairly.**

Distribution and Separation of Powers – A Device for Providing a Functional Framework for Government Action

Separation of powers limits the power of centralized government by distributing powers among branches of government. This distribution creates a strong government by having each branch works in conjunction with the other branches while preventing any one branch from becoming so powerful that it can oppress the people.

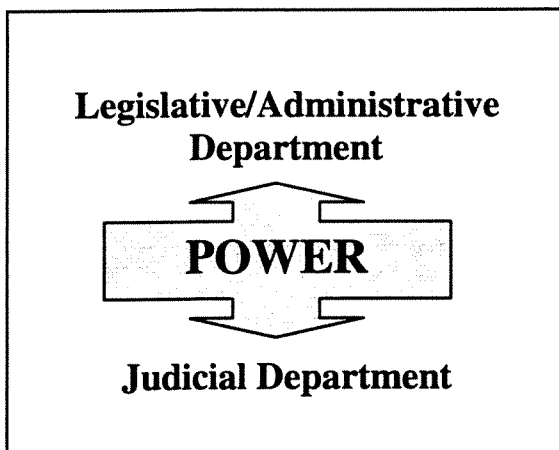
For example, in the United States Constitution, powers to make, to enforce and to interpret laws are distributed among the legislative, executive, and judicial branches. This separation of power within the government to make laws, to enforce laws, and to interpret laws, prevents any person or branch of government from having enough power to become oppressive.



Example of “Three Branch” Government: Cherokee Nation of Oklahoma

Article IV. Distribution of Powers

The powers of the government of the Cherokee Nation shall be divided into three (3) separate departments: Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct and neither shall exercise the powers properly belonging to either of the others.



Example of “Two Branch” Government: Hualapai Nation of Arizona

Article III Organization of the Government

The Hualapai tribal government shall be divided into two separate and independent branches of government: the Legislative Department, consisting of the Tribal Council and the Tribal Administration, and the Judicial Department. The Tribal administration shall be subordinate to the Tribal Council and shall operate in accordance with Article VI.

Effective Constitution Promotes Crow Tribal Goal of Stable Government

Tools for Promoting Stability

- **Accountability**
- **Transparency**
- **Increased Voice To Different Factions**

All tribal leaders are concerned about the ill effects which come from a lack of political stability. Political instability has prevented the Crow from attaining full self-sufficiency. It has also helped create an environment in which outside businesses remain uncommitted to investment on the reservation. As a result, economic growth has not been optimal.

Changes to the Constitution which add transparency and accountability to government decision-making will aid political stability. Likewise, provisions which give a political voice to different political factions will also promote political stability.

Accountability

Many leaders express concern about the current system's lack of accountability.²³ Plans for development are made but never carried out. Information regarding decisions that are implemented often does not find its way to the entire Tribe at Council meetings. A weak judiciary is not capable of enforcing its decisions or overruling the actions of the incumbent administration. As a result, mistrust and suspicion increase, weakening political stability.

Constitutional change should seek ways to monitor and to hold accountable the actions of the government. This will make for a better government and increase trust in politics.

Transparency

Crow tribal members are suspicious of government actions simply because they are not aware of the process and substance of political decisions. By increasing public access to governmental information, tribal leaders can reduce some of the inherent mistrust of government and increase political stability.

Increased Voice to Different Factions

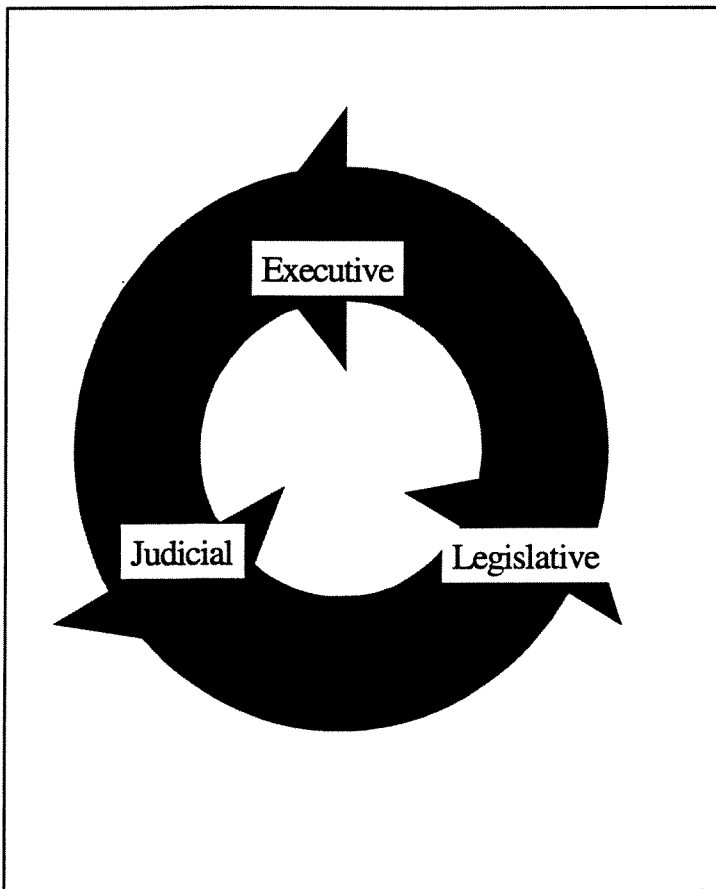
Crow leaders are all concerned about the destabilizing effects of factionalism. Because of the "all or nothing" nature of direct democracy and short terms of

²³ Interviews with various Crow leaders, December 7-10, 1998.

office, those successful at election time expend a disproportionate amount of effort on short-term efforts to retain their positions. Those unsuccessful at winning elected office or obtaining positions with the ruling administration often abandon the public realm altogether or spend their energies trying to regain office. As a result, Crow stability and unity are undermined as political energies are directed toward seeking or retaining office rather than engaging in ways to promote the good of the entire Tribe. Constitutional changes which give differing faction leaders an increased voice in Crow government will help reverse this trend and promote the tribal goal of increased stability.

“Checks and Balances” – A Device for Promoting Political Stability

To further prevent one branch from becoming too powerful, constitutions often include a system of checks and balances. Such a system allows oversight of government agents by other government agents with equal power. In this way, a



constitution can protect the people by using the tendency toward factionalism which is inherent in human nature. Without a provision of separation of powers, a branch of the government could gain tyrannical control through legal channels.

In the Constitution of the United States, a bill which the legislative branch approves can be vetoed, or blocked from becoming law, by the executive branch. In turn, the legislative branch then has the option to override (or nullify) the veto with a two-thirds majority vote. The judicial system can also check the power of legislative branch by declaring a law unconstitutional.

A government based on the principles of checks and balances has built in mechanisms for breaking deadlocks while forcing the separate branches to work

toward consensus. Such a system also increases voter trust of elected officials.

Please see Part D for textual examples of “checks and balances”.

PART D

ALTERNATIVES FOR CHANGE: SMALL SCALE CHANGES

*"In a world where the pathway to leadership could no longer include success in raiding, hunting and horse capturing, reservation residents succeeded in creating and sustaining an indigenous political system."*²⁴

²⁴ *Parading Through History*, p. 237.

Small-Scale Changes

Alternatives

- ◆ **Introduce Access to Financial Information Clause**
- ◆ **Introduce Freedom of Information Clause**
- ◆ **Introduce Pay Schedule Clause**
- ◆ **Introduce Supermajority Provision**
- ◆ **Eliminate BIA Approval**
- ◆ **Lengthen Terms**
- ◆ **Increase Quorum**
- ◆ **Secret Ballot**
- ◆ **Change Election Day**
- ◆ **Veto Power to General Council**
- ◆ **Primaries of Election of Chair**

Building small modifications into the current system may make change more attractive to the Tribe. Because people tend to be afraid of new things, changing something which people are used to by small amounts may be less threatening than wholesale change. The tribal leaders may find it easier to get the people behind small changes rather than large-scale changes. For this reason, tribal leaders may find it more politically desirable to move slowly and amend, rather than restructure, the current Crow Constitution.

On the other hand, the Tribe may find that slightly amending the current Constitution fails to create the possibility for more beneficial and lasting change. Small adjustments to the current system may not provide the opportunity for the types of changes needed to improve the welfare of the Crow nation.

If the Tribe decides to pursue small-scale, rather than wholesale constitutional change, the following provide a listing of possible alternatives:

Access to Financial Information Clause

Many members of the Tribe are concerned about the amount of information elected representatives can withhold from the Crow people.²⁵ The tribal budget for fiscal year 1998 was approximately \$60 million²⁶. However, most tribal members have no access to information about how this \$60 million was dispersed. Increasing the transparency of the

²⁵ Interviews with various Crow leaders, December 7-10, 1998.

²⁶ Interview with 107 Committee.

budget system could prevent misuse of tribal funds. It also would make tribal officials having access to funds more accountable to the Tribe.

A financial freedom of information clause – such as those found in several tribes' constitutions -- would increase transparency and accountability by permitting access to non-confidential governmental information to anyone who requests it. This increased accountability would help increase trust between the opposing factions and the majority party.

Freedom of Information Clause

Another serious problem at Crow is the lack of access to official tribal documents. Members of opposition factions complained of not being allowed to see reports, bills, laws, and the Crow budget.²⁷ Members are often not given access to law to which they are beholden. To prevent this problem, the Crow may consider passing an amendment to the Constitution which protects members' rights to information.

Example: From the Constitution of the Wampanoag Tribe of gay Head (Aquinnah)

ARTICLE XXI

FREEDOM OF INFORMATION

Section 1. Members' Right to Information: Members of the tribe have an absolute right to review the financial or other business related activities of the tribe. Business records, financial balance sheets and documents relating to the administration of tribal programs shall be made available for review by tribal members. Copies of documents shall be made available at the expense of the requesting tribal member. Exceptions may be made for information concerning personnel matters, application for tribal membership, health information or business financial information which is of such a sensitive matter that release of the information would jeopardize the financial stability of a tribal enterprise.

Section 2. Freedom of Information Act Procedures. The Tribal Council may adopt a freedom of information ordinance within one year of the effective date of this constitution which fully provides for the procedures that a tribal member must follow in order to obtain financial or other types of program documents or information which concern tribal governmental or business activities.

²⁷ Interview with various tribal leaders, December 7-10, 1998.

Pay Schedule Clause

The Tribe faces difficulties with the tribal government paying the same salary to all employees regardless of length of employment, type of job, or job performance. This system lacks any incentive for employees to show up for work much less improve performance on the job. Including an incorruptible pay schedule for tribal employment in the constitution would present the workforce with opportunities for advancement while increasing accountability.

Introduce Supermajority Provisions

Majority provisions for voting create additional divisiveness in council meetings which are already emotionally charged. Requiring that measures passed at council meetings pass by more than a simply majority vote places a higher value on consensus and forces factions to work together. In this way, supermajority provisions further the Crow goal of stable government.

Eliminate BIA Approval

The current Crow Constitution contains numerous provisions requiring BIA approval for Crow governmental action. These references are not required by law. Removing such references bolsters the Crow's assertion of sovereign status.

Lengthen Terms of Elected Officials

Current two year terms for elected officials increase incentives for political patronage due to constant elections. At the same time, these short terms undermine administrative consistency and hinder long-range planning. By lengthening terms, the Crow can increase political stability and promote economic growth.

Increase Quorum

Although the Crow has almost 10,000 members, the quorum for council meetings is only 100 people. Because of majority rule provisions, it is possible for a mere 51 people to make decisions binding on the entire Tribe. Recognizing this, factions can – and have – assembled a 100 person quorum to pass measures which are not in the best interest of the Tribe. Raising the quorum size will increase political stability by removing the threat of such actions.

Secret Ballot Voting

Introducing secret balloting will help increase attendance and reduce factionalism at council meetings by reducing the public pressures associated with the current “voice vote” system.

Primaries for Chair election

Introducing primaries for the election of the Chair reduces the number of candidates. This helps ensure that the Chair wins by a majority of those voting rather than a plurality. This will increase the accountability of the Chair to a greater number of constituents.

Veto Power To General Council

Granting veto power to the Tribe over the Chair would increase the administration’s accountability to the Crow people by allowing the General Council to check the power of the Chair. This increases communication between the people and the Chair by forcing the Chair to keep members informed of actions and decisions.

Election on Same Day as National Election

Holding tribal elections on the same day as United States national elections will increase voter turnout. This, in turn, will raise the number of constituents to which elected officials are held accountable.

Evaluation of Effectiveness of Small-Scale Reform Options

	Accountability	Transparency	Reduces Negative Effects of Factionalism	Provides Functional Framework for Governing
Financial Information	x	x	x	x
Freedom of Information	x	x	x	x
Pay Schedule	x			
Supermajority	x		x	x
Eliminate BIA			x	
Lengthen Terms			x	
Increased Quorum	x	x		x
Secret Ballot			x	x
Primaries	x		x	
Council Veto Power	x		x	x
Change Election Day	x			

PART E

ALTERNATIVES FOR CHANGE: LARGE SCALE CHANGES

“The passage of the Crow Act reflected the sophistication and durability of leaders who, since the founding of Crow Agency, had been working to develop a system for making decisions and sustaining a consensus in a settled and fixed environment. Crow leaders adapted to the emergence of district communities within the reservation, responded to events which threatened to undermine and divide them and mastered the art of finding new allies and capturing new strategies. All of these innovations were essential features of the tribe's long struggle to avoid the seizure of their lands.”²⁸

²⁸ *Parading Through History*, p. 263.

Large Scale Change - Overview

Alternatives

- **Introduce Representative Government**
 1. **District-Based**
 2. **Clan-Based**
 3. **Party-Based**

- **Combine Representative Government With General Council**

The most difficult aspect of the constitutional reform process will be getting tribal leaders together to meet and honestly debate the relevant issues. Once this has been accomplished, tribal leaders may decide that more than simple modifications to the General Council system are required to achieve beneficial and lasting change. This section will provide some potential structural alternatives in the event the Crow consider replacing or transforming their General Council form of government.

One alternative is for the Crow to adopt a representative-based form of government. Representative government provides legislators accountable to constituents and gives a political voice to different factions. Although many Crow recognize the advantages of representative government, there are substantial disagreements over how representation should be apportioned and how the representative body would share power with the tribal Chair. This section will address both of these concerns.

A second alternative is for the Crow to combine a representative form of government with the existing General Council. This might provide the Crow with the best of both worlds – an efficient, stable, and accountable representative government checked by the will of the entire Tribe.

Alternative 1 -Introduce Representative Government

Advantages of Representative Government

- **Improves Accountability**

- **Reduces Factionalism**

- **Provides Functional Framework for Governing**

Tribal leaders have mixed views about moving to representative government. Some feel it would be too large of a change from the General Council system of the last 50 years. Others feel tribal members would be reluctant to give too much power to a small group of representatives.²⁹

On the other hand, several leaders interviewed stated that the Crow political structure needed “wholesale change”.³⁰ And at least one leader connected to the current administration supported the idea of representative government as long as the relationship between the “legislature” and the Chair could be adequately resolved by all parties. The Crow leadership must decide on the best course for change. After discussing the advantages of representative government, this section provides several alternatives for determining representation.

Advantages of Representative Government

Several Crow leaders stated that the General Council is much less effective in 1998 with 10,000 tribal members than it was in 1948, when the Tribe had only 2,000 members. A mere 51 people in a 100 person General Council meeting can make decisions binding on 10,000 Crow. For a large and diverse Crow population, there are several reasons supporting a move from this current system of “informal representation”³¹ to a more formalized and fair system of representative government:

- **Improves Accountability.** Representative government gives a voice – through accountable representatives – to the vast majority of Crow who are unable or unwilling to attend General Council meetings.

²⁹ This leader did acknowledge that the system currently in place gives power to a small number of unelected officials

³⁰ Interviews with tribal leaders, December 7-10, 1998.

³¹ Interview with Professor Jane Mansbridge, February 1999.

- **Reduces Factionalism.** Representative government gives a voice to different political factions which are mostly excluded from the political decision-making process in between the quarterly Council meetings.

Representative government removes the current “all or nothing” nature of Crow elections and helps enhance tribal unity and political stability.

- **Provides Functional Framework for Governing.** Representative government allows decisions to be made more efficiently and fairly than under the current system of direct democracy.

How big should a legislating body be?

There is no ideal number of members which should comprise the legislating body. Although many tribes have a legislative body of 10 to 20 members, the Navajo Nation uses over 80 legislators to represent its 170,000 members. The legislative body should be big enough so that committees can be formed but not so big as to run into the same problems experienced in the General Council meetings.

How should representation be apportioned?

A representative government system can be apportioned in many different ways. Examples include clan-based, district-based, or even party/faction-based. The following provides a short analysis of each option.

Party-Based

The easiest way to ensure that each political party/faction has its voice heard in the political process is to actually apportion representation based on parties. This, of course, would entail the potentially complicated process of formally recognizing parties – a process the Tribe may not yet desire.

District-Based

This is a relatively straight-forward system in which each district would elect a specified number of representatives to the legislative body. Since districts already exist and have been used to elect Executive Committee members, this system would be easily implementable. Also, since political factions are not related to certain geographic areas, a district-based system would provide the opportunity for different factional interests to be represented.

Clan-Based

This system would entail having each clan elect a specified number of representatives to sit on the legislative body. This system builds on the Crow's identification with clans. However, some Crow are opposed to clan-based representation and feel it is more of a social, rather than a political, structure. Finally, because political factions/parties cut across clan lines, there is little assurance that a clan-based system would solve the current factional disputes and infighting.

<u>Evaluation of Options for Structuring Representative Government</u>				
	Assures Representation of Different Factions	Promotes Tribal Goals: Political Stability and Economic Planning	Political Support	Difficulty of Implementation
District-Based	Lower	Yes	Lower	Less Difficult
Clan-Based	Lower	Yes	Lower	More Difficult
Party-Based	Higher	Yes	Unknown	More Difficult

Alternative 2 - Combine Representative Government with General Council

Crow leaders consistently express an underlying tension of the Tribe. Many tribal members are attached to – and want to retain – a General Council system which they feel gives a voice to the people. At the same time, tribal members are often frustrated with the governing efficiency of the General Council system and desire change. One option for helping to resolve this tension is for the Tribe to *combine* representative government with a revised general council.

Overview of the Ho-Chunk Experience

The Ho Chunk Nation provides an illustration of this “combination” government in practice. Pursuant to the Ho Chunk Constitution, there are four branches of government – the Legislature, the Judiciary, the Executive, and the General Council itself. *Please see Appendix D for the full text of the Ho-Chunk Constitution.*

Powers of the General Council

The Constitution vests “all inherent sovereign powers” in the General Council. The General Council retains the “power to set policy for the Nation”. Importantly, the General Council “retains to power to review and reverse actions of the Legislature” (with the exception of personnel decisions) and the power to “return such reversals to the Legislature for reconsideration consistent with the action of the General Council”. The General Council also retains the power to remove Legislators, members of the Judiciary, and the President for wrongdoing and the power to call special recall elections.

The General Council meets at least once a year. However, special meetings can be called upon petition by 20% of the eligible voters, or upon written request of a majority of the Legislature, or by the President. A quorum for General Council meetings is 20% of eligible voters. Once a quorum is obtained, the General Council shall elect either the President or another person to conduct the meeting.

Powers of Other Branches

The Legislature consists of 11 representatives elected from four districts. The Constitution vests power in the Legislature to perform most day-to-day functions, including: making laws, establishing Executive departments, authorizing expenditures and appropriating funds, raising revenue, and setting salaries for government personnel.

The Executive branch consists of any administrative departments created by the Legislature. The President has numerous powers, including the power to execute and administer the Nation’s laws, propose legislation and an annual budget to the Legislature, administer all Executive departments, select and hire personnel,

preside over meetings of the Legislature, and call Annual and Special meetings of the General Council.

The Judiciary has the power to interpret and apply the Constitution and laws of the Ho Chunk Nation.

Possible Division of Responsibilities Between General Council and Legislative/Executive Branches	
<p>General Council</p> <p>Jurisdiction over Matters of Great Importance</p> <p>Review and Reversal Power over Legislative/Executive Decisions</p> <p>Recall Power</p> <p>Power to Call Special Elections</p>	<p>Legislature/Executive</p> <p>Power over Day-to-Day Law-Making And Administrative Responsibilities</p>

Suggestions for Combining Representative Government and General Council³²

Clearly Define Responsibilities

Because this form of “combination” government gives similar law and policy-making responsibilities to the General Council, the Legislature and the Executive, the Constitution should clearly define the powers of each. For instance, at least one tribe has stated in its Constitution that the General Council retains jurisdiction over “matters of great importance” – including natural resources, per capita payments, the sale and purchase of land, fishing, fuel, food and shelter. A Committee of the General Council of this tribe was selected to define specifically what the “matters” would be. Most-day-to day running of the government remained with the Executive branch.

Create Clear Procedures for Inter-Branch Communication

Because of the review and reversal power of the General Council, clear procedures should be established for communicating such decisions to other branches. Clear procedures should also be established for conducting the business of the General Council when it is not in session (e.g., collecting draft resolutions, setting the agenda, etc.).

³² The suggestions in this section were taken from a 1994 memorandum from Jonathan Taylor, Manley Begay and Stephen Cornell to a tribe possessing a “combination” governing structure of representative government and general council.

Representative Government and Tribal Chair

Representative Government and Tribal Chair

- Who elects the Tribal Chair?
 - Direct Election by the People
 - Election by Representatives
- Executive Veto Power?
- Who, if anyone, can override the Veto?

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Changing to a representative form of government will have effects on the duties of the Chair. Tribal leaders must consider important questions in the balance of power between the people, the Chair, and the legislature. Crow leaders must decide—based on the Crow's unique history as well as the current climate of political mistrust -- - which constitutional provisions will best govern executive-legislative relations.

Who Should Elect Chair?

Two basic methods of electing the Chair are through a direct vote of the entire Tribe and through a vote of the elected representatives.

Direct Election of Chair

Benefits: Consistent with the current political system;
Retains direct voting power of individual tribal members;
More direct accountability of Chair's actions to the people.

Drawbacks: Promotes system of patronage;
Promotes factionalism.

“Parliamentary” System – Representatives Elect Chair

Benefits - Helps decrease incentive for patronage;
Increases accountability of Chair to elected representatives;
Draws upon current *de facto* use of parties

Drawbacks- Removes election of Chair from tribal membership

Should Chair Have Veto Power?

One method of increasing accountability for the representatives is to allow the Chair veto power over laws passed by the representative body. This balances power between the Chair and the representative body and creates a structural need for consensus.

Who, if Anyone, Can Override the Chair’s Veto?

If the Chair does have veto power, tribal leaders must decide who, if anyone, can override that veto by a supermajority vote: the General Council or the Legislature. For example, if the representatives vote to increase funding for cultural events, the Chair may decide that this is not a good use of the money and veto the measure. The Legislature could then vote on the measure again; if it voted by a two-thirds majority to override the veto, then the increased funding for cultural events would stand. However, if a two-thirds majority is not reached, the veto would stand and the funds would not go to cultural events.

Tribal leaders must determine which method would be more appropriate for Crow:

- No override
- General Council override
- Legislature can override

This decision indicates the power balance in the government structure. Do the Crow want the people, the Chair or the representatives to have final say in legislation?

What are the Roles and Responsibilities of the Executive?

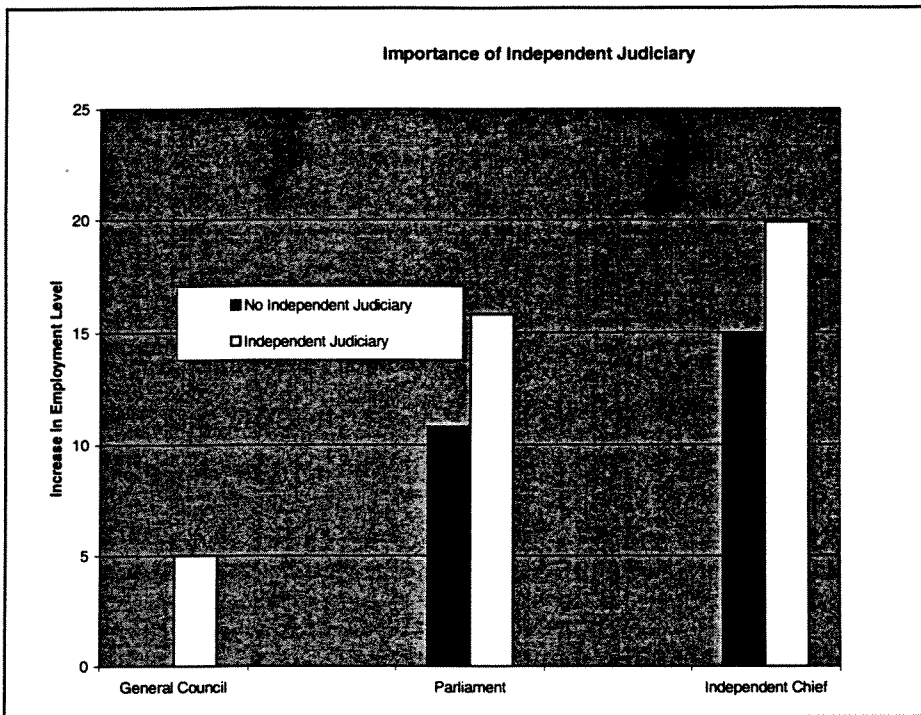
Deciding upon the roles and responsibilities of the Chair and writing those within the Constitution will help define the duties of the executive in the government. The express enumeration of powers acts as a safeguard against tyranny of the Chair over the people as well as against tyranny of the representative body over the Chair. Explicitly stating the roles and responsibilities of the Chair in the Constitution helps prevent future disputes over the power of the Chair. In this way, the Constitution acts a safeguard to future Crow. The level of power can be specified through a constitutional clause of Executive roles and responsibilities.

Example: From the Constitution of the Wampanoag Tribe of gay Head (Aquinnah)

Section 3. Chairperson:

- a.) Duty to Preside: The Chairperson shall preside over all meetings of the Tribal Council and the general tribal membership meetings.
- b.) Duty to Report: The Chairperson shall report annually to the tribal membership as to the state of the tribe.
- c.) Duty to Supervise: The Chairperson shall be responsible for the general supervision of all tribal employees.
- d.) Duty to Implement Council Policy: The Chairperson shall implement and carry out all directives and policies of the Tribal. Council.
- e.) Duty to Inform the Council: The Chairperson shall ensure that the Tribal Council is fully informed as to-all aspects of tribal business and programs.
- f.) Duty to Seek Guidance: The Chairperson shall seek guidance from the Tribal Council as to future policy and conduct of tribal business and programs.

Judicial Options



Many Crow desire reform of the Tribe's judicial system. The most important issue to be resolved is whether the judiciary will enjoy independence in its decision-making. The feeling by many Crow that an "independent" judiciary would aid economic growth is confirmed by studies which show a clear relationship between independent judiciaries and employment levels across reservations. See chart³³.

Choosing to pursue an independent judiciary raises numerous additional questions, such as:

- How will the judiciary be structured?
- How many judges?
- How are judges chosen?
- What are the qualifications for judges?
- Should both traditional and business courts be established?
- What are the procedures for appeals?

The sheer diversity and complexity of issues raised by judicial reform are outside the scope of this report. For a full discussion and analysis of judicial reform issues, the Crow should review the attached report by Joe Flies Away and Carrie Garrow.

³³ Cornell and Kalt, (1995).

PART E

ANATOMY OF A CONSTITUTION

While each constitution is unique to a specific culture, there are several customary components. The inclusion of a given component signifies the importance the nation places upon that aspect of the constitution. This section summarizes the major components of a constitution and provides textual examples from the constitutions of different tribes. The Crow may find it useful to refer to them for “brainstorming” purposes as they engage in the process of constitutional development. Of course, these examples represent only a small sample of possible alternatives and should not be viewed as better or more desirable than the provisions found in other constitutions.

What are the Customary Components of a Constitution?

Components of a Constitution

- **Membership**
- **Governing Body**
- **Voting and Elections**
- **Jurisdiction**
- **Legislature**
- **Duties of the Legislature**
- **Judiciary**
- **Duties of the Judiciary**
- **Executive**
- **Duties of the Executive**
- **Impeachment**
- **Referendum**

Membership

The membership article describes who is officially enrolled in the nation. It explicitly details what makes a person eligible for official standing, including the qualifications of residence or heritage. This clause also describes what power the government has over loss of membership and enrollment of new members.

**EXAMPLE: From the Constitution of the White Apache
ARTICLE II - MEMBERSHIP**

Section 1.Requirements. The membership of the White Mountain Apache Tribe shall consist of:

- (a) All persons who were qualified for and were accepted into membership in the White Mountain Apache Tribe under the membership requirements as of the date of enactment of this constitution.
- (b) All persons of one-half (1/2) degree or more Indian blood, of a federally recognized Indian tribe or tribes, Provided, That the person is at least one fourth (1/4) degree White Mountain Apache blood.

Section 2.Enrollment Ordinance. The Council shall have the power to pass ordinances which are consistent with and pursuant to this constitution governing future membership, loss of membership, and all other necessary procedures of enrollment.

Section 3.Membership Roll. The membership roll of the White Mountain Apache Tribe shall be kept current by adding thereto the names of persons who qualify for membership and by deleting therefrom the names of persons who have relinquished in writing their membership in the Tribe. Upon receipt of death certificates of deceased members or other evidence of death satisfactory to the Tribal Council, the names of these deceased members shall be removed from the roll.

Voting and Elections

The voting eligibility requirement clearly describes those who are legally able to vote in elections. The elections clause clearly details how elections will take place for the nation. In writing this section, the framers determine the frequency and timing of elections, the nomination process, the method of voting, and registration requirements for voting.

Key questions to consider include:

- When will elections be held?
- What are the requirements for registering to vote?
- What type of vote is required: secret ballot, voice, etc.?
- How are candidates nominated?
- Who will count the votes?

**EXAMPLE: From the Constitution of the Miami
ARTICLE IX ELECTIONS**

Section 1. Regular elections of officers and elected committee members shall be held on the first day of the Annual Meeting of the General Council, as provided for in Article III of the By-Laws, after the ratification of the Constitution revision. The first such election shall be held at the first Annual Meeting following ratification hereof. For the purpose of providing for staggered terms of office, Officers to be elected at the first meeting shall include the Secretary/Treasurer and two (2) members of the Grievance Committee, at the second Annual Meeting following ratification, the Second Chief, one (1) member of the Grievance Committee and one (1) Council person shall be elected. The Chief, a second Council person and the remaining two (2) members of the Grievance Committee shall be elected at the third Annual Meeting. Thereafter each officer shall be elected upon completion of stated term.

Section 2. The term of office for elected officials shall be three (3) years, provided that present officers shall serve until their successors have been elected as provided in Section 1 above.

Section 3. Nominations shall be made from the floor. Elections shall be by written secret ballot. Where there are more than two candidates for the same office and no one receives a majority of the vote, the low candidate shall be eliminated and the voting shall proceed until one candidate receives a majority of votes being cast. The newly elected officers shall be installed immediately thereon.

Section 4. The Miami Business Committee shall enact an ordinance to govern on going voter registration, majority vote, secret ballot, absentee voting as well as procedures for settling election disputes and appeal procedures.

Governing Body or Division of Powers

This section sets out in detail the structure of the government. This section states what type of governing system the nation has and what components make up that system.

Key questions to consider:

- What are the branches of government?
- How many branches of government are there?
- How many members will make up each branch of government?
- How are the members chosen: elected or appointed?
- How long are the terms of office?

EXAMPLE: Hualapai Indian Tribe

B. Article III Organization of the Government

The Hualapai tribal government shall be divided into two separate and independent branches of government: the Legislative Department, consisting of the Tribal Council and the Tribal Administration, and the Judicial Department. The Tribal Administration shall be subordinate to the Tribal Council and shall operate in accordance with Article VII.

EXAMPLE: The Choctaw Nation

ARTICLE V – Division of Powers of the Government

Section 1. The powers of the government of the Choctaw Nation shall be divided into three (3) distinct departments: Executive, Legislative and Judicial. No person or collection of persons, being one of those departments, shall exercise any power properly attached to either of the others; provided, that the exercise of such powers shall be subject to any limitations imposed by this Constitution and Federal Law.

Sec. 2. The officers of the Nation are to include all elective officials, Assistant Chief and members of the Judicial Department.

Jurisdiction

This section establishes the boundaries of authority over which the constitution extends. This includes defining the area, the people and the resources over which the Crow have sovereignty.

EXAMPLE: The Potawatomi Nation

ARTICLE 4 - TRIBAL JURISDICTION

Section 1. The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall, consistent with applicable Federal law, extend to all persons and to all real and personal property, including lands and natural resources, and to all waters and air space within the Indian Country, as defined in 18 U.S.C. Section 1151 or its successor, over which the Citizen Potawatomi Nation has authority.

Section 2. The jurisdiction and governmental powers of the Citizen Potawatomi Nation Indian Country shall also, consistent with applicable Federal law, extend outside the exterior boundaries of the Citizen Potawatomi Nation Indian Country to any persons or property which are, or as may hereafter be, included within the jurisdiction of the Citizen Potawatomi Nation under any laws of the Citizen Potawatomi Nation, any State, or the United States.

Section 3. The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall be exercised by appropriate legislation enacted by the Tribe, to establish or provide for a tribal judicial system, a tribal law enforcement agency, and other appropriate administrative agencies of the Tribe.

ARTICLE II...TERRITORY AND JURISDICTION

The authority and jurisdiction of the Miami Tribe of Oklahoma shall extend to all the territory within the boundaries now known as MIAMI LANDS, which include land in Northeast Oklahoma and the original Miami Reservation in Eastern Kansas, and to all lands which may be acquired for the Miami Tribe by the United States Government or which may be acquired by the Miami Tribe for its land base and to all Indian Country of the Miami Tribe and its citizens as of now or hereafter as defined by Federal law. The Miami Tribe of Oklahoma may exercise its authority and Jurisdiction outside the territory above described to the fullest extent not prohibited by Federal law.

EXAMPLE: the Kickapoo Constitution
ARTICLE I - JURISDICTION

The jurisdiction of the Kickapoo Traditional Tribe of Texas, hereinafter referred to as the Tribe, shall extend to the extent permitted by federal law, to all lands placed in trust for the Tribe pursuant to the Public Law 97-429, known as the Kickapoo Village, to all additional lands which may be acquired by the United States and held in trust for the Tribe, and to all other lands over which the Tribe may exercise jurisdiction under federal law.

Legislature

This section determines the composition of the council, or the legislative body of government. It describes whether the council will consist of every adult member or of a representative portion of the enrolled membership. If the government is representative, this section describes who is eligible to be a representative, the length of office, and how they are elected. This section describes whom the elected officials represent, whether it is tribal members of a district, a clan, or a party.

Key questions to consider:

- What type of council: Representative or General?

If Representative:

- What are the length of terms of office?
- What are the qualifications for running for office?
- What type of representation: district-based, party-based, or clan-based?
- How many representatives should make up the council?
- How many representatives will be elected from each district, party or clan?

Constitution of the Choctaw Nation

Article VIII – Legislative Department

Section 1. The legislative authority of the Choctaw Nation shall be vested in the Tribal Council.

Sec. 2. The Tribal Council shall consist of twelve (12) members, one (1) to be elected from each of the following twelve (12) districts which lie within the boundaries set forth in Article I, Section 2 of this Constitution; provided, that the Tribal Council shall have the responsibility for reapportionment based on population when necessary.

Sec. 3. Members of the Tribal Council must be members of the Nation and must have resided in their respective districts for one (1) year immediately preceding the election. They must remain residents of the district from which they were elected during the tenure of their office. Candidates for the Tribal Council must be at least one-fourth (1/4) Choctaw Indian by blood and must be twenty-one (21) years of age or older at the time they file for election.

Sec. 4. Except as provided in the following section, members of the Tribal Council shall be elected for a term of four (4) years commencing at twelve (12) o'clock noon on the first Monday in September 1983. Thereafter, terms of office for Council positions shall be for a term of four (4) years and shall commence at twelve (12) noon on the first Monday of the first September after the election for such posts.

Sec. 5. At the hour of twelve (12) noon on October 1, 1983, following the ratification of this Constitution, the successful candidates for Tribal Council shall meet with the elected Chief and the Choctaw Election Commission at the Capital at Tuskahoma at which time and place the Chairperson/Arbitrator will place twelve (12) slips of paper in a receptacle, six (6) of which will have the number four (4) on them and six (6) will have the number two (2) written on them. Each slip will be folded so that the number thereon cannot be seen. In the presence of each other and the elected Chief, each successful candidate shall draw one (1) of the slips from the receptacle and the number on the slip each of the successful candidates draws will be the number of years he shall serve during the first term.

Duties of Legislature

Once the constitution designates the composition of the council, it must list the role and responsibilities of the council. This is an opportunity for the framers to spread power across branches of government. By explicitly listing the areas over which the council has authority, the constitution can provide for clear division of power. This prevents another branch of government from taking power away from the council. This section should employ the principles of “checks and balances”, giving some powers explicitly to the legislative body which will check the power of the other branches.

Key questions to consider:

- Will the Legislature have power to override the chair’s Veto?
- What is the Legislature’s role in the budget process?
- Does the Legislature have the authority to negotiating with other governments?
- What is the jurisdiction of the Legislature?
- Is the Legislature responsible for tribal land management?

Example: From the Muscogee Constitution

Article VI

Section 7. The National Council shall have the power (subject to any restrictions contained in the Constitution and laws of the United States of America) to legislate on matters subject to limitations imposed by this Constitution as follows:

- (a) To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of The Muscogee (Creek) Nation.
- (b) To negotiate with Federal, State, and local government and others.
- (c) To manage, lease, prevent the sale of, dispose or otherwise deal with tribal lands, communal resources or other interest belonging to The Muscogee (Creek) Nation or reserved for the benefit of such Nation.
- (d) To authorize and make appropriations from available funds for tribal purposes. All expenditures of tribal funds shall be a matter of public record open to all the citizens of The Muscogee (Creek) Nation at all reasonable times.
- (e) To enter contracts in behalf of The Nation ,with any legal activity that will further the well-being of the members of The Muscogee (Creek) Nation.
- (f) To employ legal counsel.
- (g) To borrow money on the Credit of The Muscogee (Creek) Nation and pledge or assign chattels of future tribal income as security therefore.
- (h) To lay and collect taxes within the boundary of The Muscogee (Creek) Nation's jurisdiction from whatever source derived.
- (i) To create authorities with attendant powers to achieve objectives allowed within the scope of this Constitution.
- (j) To exercise any power not specifically set forth in this Article which may at some future date be exercised by The Muscogee (Creek) Nation.

EXAMPLE: the Tunica-Biloxie Indians of Louisiana

Article VIII

Section 1.

Enumerated Powers. The tribal council of the Tunica - Biloxie Indians of Louisiana, Inc., shall have the following powers, subject to any limitations imposed by the laws or the Constitution of the United States, and the State of Louisiana.

(a) To negotiate with the Federal, State and local government.

(b) To employ legal counsel, the choice of counsel and the determination of fees.

(c) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds, or other tribal assets.

(d) To appropriate any available tribal funds for the benefit of the band or any community.

(e) To supervise and manage tribal economic affairs and enterprises in accordance with this revised constitution and bylaws.

(f) To pass and enforce rules and regulations in accordance with applicable Federal or State statutes or regulations providing for the management of tribal lands, including the making and revocation of assignments, disposition of timber, and oil and mineral resources.

(g) To promote and protect health, peace, morals, education and the general welfare of the community and its members.

(h) To administer all property of the band.

(i) To do such acts of governmental and public nature as are not prohibited by applicable laws or by this revised constitution

(j) To establish and regulate subordinate organizations for social and business purposes.

(k) To borrow money from any source whatsoever without limit as to amount, and on such terms and conditions and for such consideration and periods of time as the tribal council shall determine; to use all funds thus obtained to promote the social welfare and betterment of the band and of its members; to finance tribal enterprises; to pay outstanding indebtedness of the band or tribal enterprises; or to lend money thus borrowed.

(l) To pass ordinances and resolutions necessary or incidental to the exercise of any of the foregoing powers.

Executive

This section determines the composition of the executive branch of government. It describes the qualifications of the executive offices and the how each office is filled. This section describes how the Chair will be chosen: through a general election, primary system, or elected through a representative body. This section also sets out the other offices of the executive branch and establishes the rules by which they will be filled.

Key Concerns

- **How will the Chair be elected?**
 - Direct election by all registered voters
 - Primary election system
 - Elected by representative body

- **What are the other offices of the executive branch?**
 - Vice Chair
 - Secretary
 - Treasurer

- **How will the other offices be filled?**
 - Direct election by all registered voters
 - Appointed by Chair
 - Appointed by Legislature
 - Nominated by Chair and Approved by Legislature

- **What will be the length of terms of the Chair and other officers?**
 - 2 years
 - 4 years
 - 6 years

- **When will the terms of office commence?**

**EXAMPLE: The Constitution of the Choctaw
ARTICLE VI - EXECUTIVE DEPARTMENT**

Section 1. The supreme executive power of this Nation shall be vested in a chief magistrate, who shall be styled "The Chief of the Choctaw Nation."

Sec. 2. There shall be an Assistant Chief who shall assist the Chief and perform all duties as assigned to him by the Chief.

Sec. 3. Any member of the Choctaw Nation who is at least thirty (30) years of age and who possesses no less than one-quarter (1/4) degree of Choctaw Indian blood is eligible to become a candidate for the office of Chief of Assistant Chief.

Sec. 4. The Chief and the Assistant Chief must have been residents of the Choctaw Nation for two (2) years or more immediately preceding any election for Chief and must remain residents of the Choctaw Nation during the tenure of their office.

Sec. 5. No person who has been convicted of a felony by a court of competent jurisdiction shall be eligible to hold any elective or appointive office in the Choctaw Nation.

Sec. 6. The Chief shall be elected for a term of four (4) years which shall commence at twelve (12) o'clock noon on the first Monday in September of 1983 and thereafter the terms shall commence at twelve (12) o'clock noon on the first Monday of September of every quadrennium and shall serve until his successor has been elected and installed. For the initial election of officers under this Constitution, if a runoff election for the office of Chief shall be required the installation will be on October 1, 1993.

Sec. 7. The Assistant Chief shall be appointed by the Chief with the advice and consent of the Tribal Council and may be removed at the discretion of the Chief.

Duties of the Executive

Once a constitution determines who is eligible to run for Chair and how candidates will be elected, it specifies the responsibilities and authority of the Chair. By carefully crafting a constitution, the framers can balance the power of governing between the legislative and the executive branch. By explicitly enumerating the powers of the Chair, the constitution can make the executive relatively stronger or weaker than the council.

From the Constitution of the Muscogee (Creek) Nation

Article V

Section 2. (a) The Principal Chief shall create and organize the Executive Office of the Principal Chief; and

(b) With the advice and consent of The Muscogee (Creek) National Council appoint offices of the Executive Office. The National council may, by ordinance, vest the appointment of such inferior offices as they think proper in the Principal Chief alone or in the officers.

(c) The Principal Chief shall have the power to fill vacancies by granting commissions which shall expire at the beginning of the next National Council meeting.

Section 3. The Principal Chief shall prepare the annual budget requests and supplements thereto and with the advice and consent of the National Council administer funds within the control of The Muscogee (Creek) Nation.

Section 4. The Principal Chief shall from time to time however not less than once a year give to The Muscogee (Creek) National Council information of the state of The Muscogee (Creek) Nation and recommend for their consideration such measures as he shall judge necessary and expedient. He may on extraordinary occasions convene The Muscogee (Creek) National Council.

From the Constitution of the Choctaw of Oklahoma

ARTICLE VII - PRIVILEGES, DUTIES AND POWERS OF EXECUTIVE DEPARTMENT

Section 1. The Chief shall perform all duties appertaining to the office of Chief Executive. He shall sign official papers on behalf of the Nation. He shall take care that the laws be faithfully executed.

Sec. 2. The Chief shall have power to establish and appoint committees, members and delegates to represent the Choctaw Nation with the advice and consent of the Tribal Council. All appointments requiring confirmation shall be presented to the Council within thirty (30) days of the appointment.

Sec. 3. The Chief shall fix and prescribe salaries and allances for all elected or appointed officials and employees of the Choctaw Nation except the members of the Tribal Council and Tribal Court. Compensation for elected or appointed officials shall not be increased nor diminished during the term for which they are elected or appointed.

Sec. 4. The Chief shall have the power to veto any legislative act, rule or regulation of the Tribal Council and must do so within five (5) working days after passage.

Sec. 5. The Chief shall prepare an annual tribal budget for the expenditure of all funds belonging to or administered by the Choctaw Nation from whatever source derived which shall be submitted to the Tribal Council. The annual budget for tribal trust funds shall be submitted to the Tribal Council at least thirty (30) days prior to the beginning of the tribal fiscal year.

Sec. 6. The Chief shall manage, administer and direct the operation of tribal programs, activities and services and report to the Tribal Council quarterly.

Sec. 7. The Assistant Chief shall serve in the absence of the Chief and

Judiciary

This section of the constitution describes how the judicial branch will be structured. Specific provisions include the number and length of term of judges and method for their selection -- election or appointment. An important provision concerns the "independence" of the judiciary -- whether or not other branches will or will not retain the power to overturn judicial decisions.

- How will the judiciary be structured?
 - One court for all grievances
 - Separate court for separate functions: juvenile justice court, business court, "peacemaker" court.

- How many judges?
 - 3
 - 4
 - 5

- How are judges chosen?
 - Direct election
 - Appointed by the Chair
 - Elected by the Legislature
 - Nominated by Chair and approved by Legislature
 - Nominated by Legislature and approved by Chair

- What are the qualifications for judges?
 - Language requirement
 - Education requirement
 - Age requirement

- Will other branches retain the power to overturn judicial decisions or will the judiciary remain independent?

- What are the procedures for appeals?

Example: From the Hualapai Constitution

Article VI - The Judicial Department

Section 1. The Judicial Department. The judicial power of the Hualapai Tribe shall be vested in the judiciary which shall consist of a Tribal Court and a Court of Appeals and such other lower courts as deemed necessary by the Tribal Council.

Section 2. Jurisdiction of the Court. The tribal courts shall exercise jurisdiction over all cases and controversies within the jurisdiction of the Tribe, in law and equity, whether civil or criminal in nature, that arise under this document, the laws of and customs of the Tribe, by virtue of the Tribe's inherent sovereignty, or which is vested in the tribal courts by federal law.

Section 3. Power of the Courts. The Hualapai Judiciary shall have the power to:

- a) interpret, construe and apply the laws of, or applicable to, the Hualapai Tribe;
- b) declare the laws of the Hualapai Tribe void if such laws are not in agreement with this constitution;
- c) issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus to any part of the Hualapai Tribe upon petition by, or on behalf of, any person held in actual custody;
- d) establish court procedures for the Hualapai judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

Section 4. Composition of the Court. The Hualapai Tribal Court shall be composed of one Chief Judge and such Associate Judges as may be determined necessary by the Tribal Council.

Section 5. Appointment of Judges. The Chief Judge and Associate Judges shall be appointed by the Tribal Council. Should a vacancy occur through death, resignation, or otherwise, for the position of Chief Judge or Associate Judge(s), the Tribal Council shall appoint a person or persons to fill such vacancy or vacancies.

Section 6. Term of Office. Each Judge shall hold office for a period of two (2) years unless sooner removed under section 11, or by reason of abandonment of the office: however, the Chief Judge or Associate Judge shall be eligible for reappointment.

Section 7. Court of Appeals. The Hualapai Tribal Court of Appeals shall consist of one or more Judges selected by the Tribal Council. The list of Court of Appeals Judges shall be renewed every shall be renewed every two (2) years and shall include at least three (3) names. The Court of Appeals shall always consist of an odd number of judges. No Judge shall sit on a Court of Appeals if he presided over the original proceedings or if disqualified under Article VI, Section 10.

Congo

Title IX Judicial Authority

Article 129 [Supreme Court, Independence]

(1) Judicial Authority shall be exercised by the Supreme Court and the other national jurisdictions created by law.

(2) It shall be independent of the Executive Authority and the Legislative Authority.

(3) The Supreme Court shall consist of Magistrates elected by Parliament convened in congress in conditions fixed by law.

(4) The members of the Supreme Court shall be irremovable. They shall continue in function until the age of retirement, except in the case of condemnation for crimes and misdemeanors, indignity, insanity, resignation, death, or definitive incapacity.

(5) The law shall fix the organization, the composition, and the functioning of the Supreme Court.

Article 130 [No Modification or Influence]

(1) The Legislative Authority shall neither decree upon contestations, nor modify a decision of justice.

(2) Any law of which the goal is to furnish a solution to an ongoing process shall be prohibited.

Article 131 [No Influence of Executive]

The Executive Authority shall neither decree upon contestations, nor impede the courts of justice, nor oppose the execution of a judicial decision.

Article 132 [No Intrusion Into Other Powers]

The Judicial Authority shall neither incrementally intrude upon the attributes of the Legislative Authority nor upon those of the Executive Authority.

Article 133 [Decisions, Magistrates]

(1) The Judicial Authority shall decree upon the actions born of the application of the law and regulation. Its decisions shall be rendered in the name of the Congolese People.

(2) A law shall define the status of Magistrates.

Article 134 [Elections of Magistrates]

(1) The Magistrates shall be instituted by the High Council of the Magistrate presided over by the President of the Republic.

(2) It shall consist of the President of the Supreme Court, Member by right, and the Magistrates elected by the Parliament convened in congress in conditions fixed by law.

Article 135 [High Council of the Magistrates]

(1) The High Council of the Magistrate shall be the guarantor of the independence of the Judicial Authority.

(2) On proposition of the High Council of the Magistrate, the President of the Republic shall name the Magistrates to their seats and tribunals.

(3) The law shall fix the organization, composition, and the functioning of the High Council of the Magistrate.

Article 136 [Disciplinary Authority]

(1) The High Council of the Magistrate shall decree as Disciplinary Council and as the organ of the carriers of the Magistrates.

(2) It is thus presided over by the First President of the Supreme Court.

Article 137 [Guardianship of Individual Liberties]

(1) No one shall be arbitrarily detained.

(2) The Judicial Authority, guardian of individual liberties, shall assure the respect of this principle in conditions fixed by law.

Example: From the Muscogee Constitution

Article VII

Section 1. The judicial power of The Muscogee (Creek) Nation shall be vested in one Supreme Court limited to matters of The Muscogee (Creek) Nation's jurisdiction and in such inferior courts as the National Council may from time to time ordain.

Section 2. The Supreme Court shall be composed of six (6) members appointed by the Principal Chief, subject to majority approval by the Muscogee (Creek) National Council, and whose term shall be for six (6) years beginning July 1.

Section 3. The Supreme Court shall, with the approval of the Muscogee (Creek) National Council establish procedures to insure that the appellant receives due process of law and prompt and speedy relief.

Section 4. The Supreme Court shall be presided over by a Supreme Court Justice chosen from their own number and shall be in regular, quarterly-scheduled session, coinciding with that of the fiscal year.

Section 5. The decision of the Supreme Court shall be in writing and shall be final.

Example: From the Cherokee Nation of Oklahoma Constitution

Article VII Judicial

There is hereby created a Judicial Appeals Tribunal composed of three (3) members all of whom must be admitted to practice law before the highest Court of the State of which they are residents, and -all of whom shall be members of the Cherokee Nation, appointed by the Principal Chief and approved by the Council for such terms as the Council may provide. The purpose of this Tribunal shall be to hear and resolve any disagreements arising under any provisions of this Constitution or any enactment of the Council. The Council shall provide for a procedure which shall insure that any litigant receives due process of law together with prompt and speedy relief, and shall generally follow that portion of the Oklahoma Statutes known as the Administrative Procedures Act, Title 75, Oklahoma Statutes, 301 et seq. The decision of the Judicial Appeals Tribunal shall be final insofar as the judicial process of the Cherokee Nation is concerned

Initiative and Referendum

A Referendum clause sets forth the rules and procedures for how tribal members can ratify or overturn resolutions passed by the legislature. This section specifies who shall vote on the measure and what qualifies the vote as legal and binding. Constitutions can also allow preserve the right of the people to propose legislation through an Initiative and Referendum clause.

Apache

ARTICLE VIII - REFERENDUM

Upon a petition of at least twenty percent of the eligible voters of the Tribe, or upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted to popular referendum at a special election called by the Council and the vote of the majority of the qualified voters in such referendum shall decide whether the ordinance or resolution shall thereafter be in effect, Provided, That thirty percent or more of the eligible voters shall vote in such referendum.

From the Choctaw Constitution

ARTICLE XVI - INITIATIVE AND REFERENDUM

Section 1. The members shall have the right to propose any legislative measure by a petition signed by at least thirty percent (30%) of the registered voters. Every such petition shall contain the entire text of the registered voters. Every such petition shall contain the entire text of the measure proposed. The petition shall be filed with the Chief at least sixty (60) days prior to the next election for Chief at which time it shall appear on the ballot. If such petition is filed more than one (1) year prior to the next election for Chief, a special election shall be called. If approved by a majority of those participating in the election, it shall be in full force and effect immediately.

Sec. 2. The Tribal Council, by approval of at least eight (8) members, may refer any legislative measure to the members of the Choctaw Nation by directing that said measure be placed on the ballot at the next election for Chief or by calling for a special election. Decisions to refer any matter to people shall be made at least sixty (60) days prior to the election at which it is presented.

Sec. 3. All petitions for initiative shall be submitted under a cover letter signed by at least three (3) sponsors who are qualified electors of the Choctaw Nation.

Removal from Office

Constitutions also protect the people of the nation from abuses by explicitly laying out a process for removing officials from elected or appointed positions.

**EXAMPLE: From the White Mountain Apache
ARTICLE VII - REMOVAL FROM OFFICE**

Section 1. Forfeiture or Resignation of office. If a Chairman or Vice-Chairman or any member of the Council resigns, fails or refuses to attend two regular meetings in succession unless excused due to illness or other causes for which he or she cannot be held responsible, or shall be convicted of a felony or of a misdemeanor involving moral integrity, or has been found guilty of public intoxication, or is guilty of consuming any alcoholic beverages while attending a meeting of the Council in session, or during any daytime recess period, the Council shall declare his or her position vacant.

Section 2. Vacancies. Any vacancies on the Council or any vacancy in the office of Vice-Chairman resulting from the application of the section immediately preceding shall be filled at once by a majority vote of the Council. A vacancy in the office of Chairman shall be filled by the Vice-Chairman. Persons so appointed shall serve the unexpired term of the office or member.

ARTICLE 9 - REMOVAL AND FORFEITURE

Section 1. Any elective body of the Tribe, and the Supreme Court in the case of any judicial officers, shall remove any of its members from office for misconduct in office, as defined in the Recall and Removal Ordinance, or upon conviction of such member by any court of competent jurisdiction of a felony or other offense involving dishonesty or moral turpitude, or if such member becomes ineligible to hold his office under this Constitution, by a unanimous vote of the remaining members of the body.

Section 2. Such removal action shall be taken only upon proof by clear and convincing evidence at a formal hearing during which a verbatim transcript and record of the proceeding is made, and at which the party complained of shall have the right to not less than thirty (30) days notice, the right to counsel at his own expense, the opportunity to cross examine witnesses against him, introduce any evidence in his favor, and to otherwise be accorded due process of law.

Section 3. A person removed in such a proceeding shall have the right to appeal the removal directly to the Supreme Court upon the record established at the hearing. During such appeal, which shall be expedited by the Court, the officer shall be deemed suspended but not removed from office until a final decision of the Court. For purposes of this Article, removal of an Executive Officer from the Business Committee shall also be deemed a removal from his Executive Office whether or not stated in the removal action.

Next Steps

Deciding to make changes in the government structure is a large undertaking. However, a disciplined approach to making decisions will help ensure successful implementation of change. The following is a rough guideline for making decisions regarding constitutional development.

April 6 to April 30, 1999

- Contact tribal leaders
- Distribute copies of this report to all tribal leaders

June 1 or before

- Bring tribal leaders together to discuss which techniques are most feasible and provide a fair forum for all parties. Decide which techniques shall be used.
- Establish a working group with members of all factions to set up meetings, establish agenda, and provide logistical support.

By June 20

- Have itinerary established for leadership conference.
- Determine which tribal leaders will attend.

August-September

- Leadership Conference.

October-December

- Hold educational meetings.

Appendices

APPENDIX A -- GOVERNMENT STRUCTURES OF INDIAN NATIONS

APPENDIX B -- CURRENT CROW CONSTITUTION

APPENDIX C -- 1989 PROPOSED CROW CONSTITUTION

APPENDIX D -- HO-CHUNK CONSTITUTION

APPENDIX E -- UNITED STATES CONSTITUTION (WITHOUT AMENDMENTS)

APPENDIX F -- FEDERALIST PAPER NO. 10

APPENDIX A

GOVERNMENT STRUCTURES OF INDIAN NATIONS



TRIBE	General Council	Judiciary ¹	Independent Judiciary ²	Election Of Chair ³	Chair Term ⁴
Bad River Band (Chippewa)		YES		DIRECT	2
Blackfeet Tribe		YES			2
Cheyenne River Sioux Tribe		YES		DIRECT	4
Coeur d'Alene Tribe		YES			1
Colorado River Indian Tribes		YES	YES	DIRECT	4
Colville Reservation					1
Crow Tribes of Indians	YES			DIRECT	2
Devils Lake Sioux Tribe				DIRECT	2
Shoshone-Paiute Tribes		YES		DIRECT	3
Eastern Band of Cherokee Indians				DIRECT	4
Flathead Reservation		YES			2
Fond du Lac Band					2
Fort Belknap Indian Community		YES			2
Fort Berthold Reservation		YES		DIRECT	4
Fort Hall Reservation		YES			1
Fort Peck Reservation	YES	YES		DIRECT	2
Gila River		YES	YES	DIRECT	3
Hoopla Valley Tribe		YES		DIRECT	2
Hopi Tribe		YES		DIRECT	4
Hualapai Tribe		YES		DIRECT	2
Isleta Pueblo		YES		DIRECT	2
Lac du Flambeau Band		YES		DIRECT	2

¹ This indicates whether or not the tribe has a judiciary system. A blank indicates that the tribe does not.

² YES indicates that the tribe has an independent judiciary. A blank means that the tribe does not.

³ This indicates the method the tribe uses to elect the Chair. A blank indicates that the Chair is chosen indirectly.

⁴ Numbers indicate the length of Chair's term in years.

Lac Courte Oreilles Band	YES				DIRECT	1
Laguna Pueblo	YES					2
Leech Lake Band						2
Lower Brule Reservation	YES					2
Lummi Tribe of Indians	YES	YES				1
Makah Indian Tribe	YES					1
Menominee	YES	YES		YES		.
Mescalero reservation	YES				DIRECT	2
Mississippi Band of Choctow Indians	YES				DIRECT	4
Muckleshoot Indian Tribe	YES	YES				1
Nez Perce Tribe of Idaho	YES	YES				1
Northern Cheyenne Tribe	YES				DIRECT	4
Omaha Tribe of Nebraska	YES			YES		3
Oneida Tribe of Indians of Wisconsin	YES	YES			DIRECT	3
Papago Tribe	YES			YES	DIRECT	4
Pine Ridge Reservation	YES				DIRECT	4
Puyallap Tribe	YES					1
Pyramid Lake Paiute Tribe of Nevada	YES				DIRECT	2
Quechan Indian Tribe	YES				DIRECT	4
Quinault Tribe of Indians	YES				DIRECT	3
Red Cliff Band+C101	YES	YES				1
Red Lake Band of Chippewa Indians	YES				DIRECT	4
Rocky Boy's Reservation	YES				DIRECT	4
Rosebud Sioux Tribe	YES				DIRECT	2
Saginaw-Chippewa						2
Salt River Pima-Maricopa	YES				DIRECT	4
San Carlos Apache Tribe	YES				DIRECT	4
Sisseton-Wahpeton Sioux Tribe	YES	YES		YES	DIRECT	2
Southern Ute Tribe	YES				DIRECT	3
Spokane Tribe	YES	YES				
Standing Rock Sioux Tribe	YES				DIRECT	2
Tulalip Tribes	YES	YES			DIRECT	1
Turtle Mountain Band	YES				DIRECT	2
Umatilla Indian Reservation	YES	YES				1

Ute Indian Tribe of Uintah and Ouray	YES	YES	DIRECT	2
Ute Mountain Ute Tribe	YES		DIRECT	3
Warm Springs Reservation of Oregon				3
White Earth				2
White Mountain Apache Tribe			DIRECT	4
Yakima Indian Nation	YES			2
Yankton Sioux Tribe of Indians	YES		DIRECT	2
Zuni Tribe		YES	DIRECT	4

APPENDIX B

CURRENT CROW CONSTITUTION



Amended
CONSTITUTION AND BYLAWS
of the
CROW TRIBAL COUNCIL

PREAMBLE

The Crow Tribe, of Indians, in an effort to enforce the respect of their basic human, constitutional and treaty rights, do hereby re-establish the Crow Tribal Council to represent, act and speak for the Crow Tribe in any and all tribal matters, and to promote the general welfare of the Crow Tribe, do adopt the following constitution and bylaws for the conduct of Crow Tribal matters in conjunction with the lawful right of the Bureau of Indian Affairs to conduct same.

Article I

The Crow Tribal Council shall be composed of the entire membership of the Crow Tribe.

Article II

The council shall elect every two (2) years, in conformity to its rules of procedure, a Chairman, Vice-Chairman, Secretary and Vice-Secretary. The Chairman shall have no vote unless there be a tie vote before the council. The election for these officers shall be held the second Saturday of May every other year after May 12, then the first election shall be held under this constitutional change. Officials are to assume their duties July 1, after election.

Article III

Any duly enrolled member of the Crow Tribe, except as herein provided, shall be entitled to engage in the deliberations and voting of the council, provided the females are 18 years old and the males 21 years.

Article IV

All nominations for officers of the council and any other tribal matter before the council shall be by voice, standing, hand-raising or secret ballot, as the council shall elect at each of its meetings.

Article V

The Crow Tribe, through its tribal council, reserves unto itself the right to remove for cause any officer of the council, for misconduct or negligence or non-diligence in connection with the protection of the rights of the Crow Tribe in its relations with the Bureau of Indian Affairs or the local employees.

See Resolution 80-26

Article VI

The Powers, Duties, and Functions of the Council:

1. The council shall establish its own rules of procedure.
2. Meetings. There shall be regular tribal council meetings held each year on the second Saturday of January, the second Saturday of April, the second Saturday of July, and the second Saturday of October, and as many additional meetings shall be held as tribal business may require. All meetings shall be called by the Chairman and the Committee.
3. Notice of meetings and agendas. It shall be the duty of the Secretary, or in his absence, the Vice-Secretary of the Crow Tribal Council to give notice of all tribal council meetings of the Crow Tribe in writing for a period of at least seven days prior to each meeting date. Notices shall be posted at one public place in each district of the reservation, and at the Agency Headquarters, and, where possible, in the local newspapers and by radio broadcast. Notices in addition to the date, time and place of the meeting, shall list in numerical order the business to come before the tribal council meeting. No business shall be transacted at the meeting unless it has been included in the public notice. Copies of proposed resolutions or other business to be considered shall be furnished to the elected district representatives by the Tribal Secretary seven (7) days prior to meeting dates.
4. Items of business. Agenda of the tribal council meeting shall include all items required by the (1) Tribal Chairman and committee, (2) Superintendent of the Crow Agency, and (3) any petition duly signed by 100 qualified voters. All requests to the Chairman and committee for a general council meeting shall be in writing and shall clearly state the nature of the business to be presented before the general council.
5. If the Commissioner of Indian Affairs desires to present any matter to the council for its action, such request shall be presented in writing to the Chairman or the committee, who shall as herein provided, advertise such request as provided, and set the date for the council sessions.
6. Except where otherwise specified in this constitution and bylaws, decisions of the council shall be by a simple majority of the vote cast.
7. The council shall perform the duties assigned to it under this constitution and bylaws and shall have such powers in addition to those expressly conferred on it thereunder as may be necessary to achieve its effective operation and to realize its objective.

8. All matters presented and coming before the Crow Tribal Council to be voted upon by the members of the Crow Tribe shall be decided and determined by a simple majority vote.

9. There shall be a committee composed of two (2) members from each of the Six Districts of the Crow Reservation and two (2) members from off-the-reservation Indians elected for a term of two (2) years, in accordance with the tribal council's rules of procedure, to act as an executive committee to work with the officers under the general direction of the council. The first election of these committee members shall be held within 30 days from and after adoption of this constitutional amendment, and all subsequent elections to be held the second Saturday of the month of May at 2-year intervals on alternate years from the tribal officials election. Each district shall select its own election judges from within said district whose expenses shall be paid from tribal funds. The results of such elections shall be final and conclusive.

10. The Crow Tribe, through the Crow Tribal Council, shall have the power to levy, assess and collect taxes and license fees upon non-members of the Crow Tribe doing business within the boundaries of the Crow Indian Reservation, subject to review by the Secretary of the Interior.

Article VII

Status and Functions of the Council:

1. The Crow Tribal Council is the voice of the Crow Tribe.
2. The Crow Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the government and the general public.
3. The Council, representing the entire Crow Tribe, shall voice the opinions, wishes, sentiment, hopes and decisions in any and all tribal matters for the Crow people to the Congress and the Interior Department, by resolutions and through tribally elected delegates who shall, under instructions of the council, proceed to Washington or elsewhere to present in person such decisions and their own arguments and appeals in support thereof as the council shall direct by majority vote.
4. Subject to existing federal law which endows the Congress with plenary powers over the Indians in their tribal state, and which in turn passes such authorities down the line to the Secretary of Interior and the Commissioner of Indian Affairs, who by regulations based upon acts of the Congress, control the management of Indian Affairs subject to constitutional limitations. The Crow Tribal Council, without legal status as such, but being the mouthpiece and the voice of the Crow people, will from time to time call to the attention of the Congress its views and wishes with respect to the administration of its rights, property and affairs by the Bureau of Indian Affairs.

5. Because of existing law governing Indian administration by the Congress herein pointed out, the Crow Council admits its limited authority in the administration of its own tribal matters, but also, understanding the constitutional limitations of the government in this same field, the Crow Tribal Council will sponsor all legislation with state, federal and local governments on behalf of the Crow Tribe, and will, through tribal council resolutions and elected delegates and representatives, consult with and otherwise deal with representatives of the department of the government of the United States on all matters affecting the interests of the Crow Tribe.

6. The Crow Tribal Council, which encompasses the entire membership of the Crow Tribe, so far as the Crow people are concerned, shall be supreme in determining by a majority vote of those attending, any course of action taken which is designed to protect Crow tribal interests.

7. The American system of "majority rule" used in the Congress of the United States shall prevail in the decisions of the Crow Tribal Council in regularly called and duly assembled conventions, and its majority decisions shall be conclusive and binding over the losing minority.

8. The Bureau of Indian Affairs, being a part of the United States Government, shall in no wise interfere directly or indirectly through its field representatives or agents with the deliberations or decisions of the Crow Tribal Council. The council, existing under the legal handicaps herein pointed out, belongs to the Crow Tribe only, and not the government, and as such will make its decisions without Indian Bureau interference or advice, inasmuch as the Indian Bureau, under the broad powers in Indian administration conferred upon the Congress and the Indian department by both the Congress and the courts, can and does nullify Indian tribal council actions the country over when same takes issue with its own views. However, the Crow Tribal Council, regardless of same, hereby reserved unto itself the right to initiate moves looking to the protection of the Crow tribal rights and interests under their treaties and under the American constitution guaranteeing all basic human rights to all who live under the American flag, and to the equal protection of the laws of our country.

9. The Crow Tribal Council in a duly called session will decide the manner of voting, whether by districts or in the council itself or whether by secret ballots in the districts or in the council, and on this issue the local Indian Bureau representatives will have no voice whatsoever - the council reserves this right unto itself.

10. Every member of the Crow Tribe, outside of the exception herein provided for, shall have equal opportunities to discuss any and every question of tribal concern before the council, and to participate, without interference, in all votes taken upon any such questions.

Article VIII

SECTION I: This Constitution and Bylaws shall be amended by a majority vote of the qualified voters of the Crow Tribe voting at an election called for that purpose by the tribal council, provided that no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs or his authorized representative.

SECTION II: All eligible tribal members may vote at such duly called elections. The enactment of rules and procedure for conducting such an election shall be the responsibility of the tribal council. The tribal council shall enact an election ordinance.

AND, BE IT FURTHER RESOLVED, that the above listed changes are those which the tribal council wishes to make in the present Crow Tribal Constitution and shall do so regardless of any or all other resolutions or provisions, and if other resolutions or constitutional changes are in conflict with the above state rules, they shall be henceforth repealed, rescinded and expunged from the records.

Article IX

Amended

12-25-66

BYLAWS

Article I

Duties of Crow Tribal Council

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of the Chairman and exercise any and all authority detailed by the Council, and shall be entitled to vote only in case of a tie.

Section 2. The Vice-Chairman shall assist the Chairman when called upon so to do; in the absence of the Chairman, shall preside and when so presiding shall have all the privileges, duties, and responsibilities of the Chairman.

Section 3. The Secretary of the Council shall forward a copy of the minutes of all the meetings to the Superintendent of the Reservation, and the Commissioner of Indian Affairs, and the Regional Director, and shall conduct all correspondence of the Council and shall keep all records and minutes of the meetings, records as to expenditures and allotment of tribal gratuitous and other funds over which the Council has sole charge.

Section 4. The duties of all appointed special committees or officer of the Council shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such committees and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review of the Council.

Section 5. Regular and emergency meetings of the Crow Council shall be held on call of the Chairman at Crow Agency, Crow Agency, Montana.

Section 6. No business shall be transacted unless a quorum of 100 is present.

Section 7. Order of business:

- (a) Call to order by Chairman
- (b) Reading of minutes of last meeting
- (c) Unfinished business
- (d) Reports
- (e) New business
- (f) Adjournment

Section 8. It shall be the duty of the Chairman of the Council to duly notice all tribal council meetings of the tribe for a period of at least seven (7) days prior to such meeting date, for decisions of the Crow Tribe affecting the sale or lease of tribal property, or of legislative matters affecting the Crow Tribe.

Section 9. A salary is to be paid to each officer or member of the Crow Tribal Council when serving as an authorized delegate as follows:

Within the State of Montana	\$10.00 per day
Outside the State of Montana, with the exception of trips to Washington, D. C.	15.00 per day
To Washington, D. C.	25.00 per day

In addition to the above scale of salaries a per diem is to be paid each officer or member of the Crow Tribal Council, computed in accordance with the U. S. Government Travel Regulations and in addition transportation via rail, air or personal car, whichever is administratively determined to be in the best interest of the Crow Tribe.

Approval

Resolution No. 31 adopted February 3, 1955, approved by letter to the Chairman of the Crow Tribal Council from Commissioner Glenn L. Emons dated March 18, 1955.

Article II

Ratification of Constitution and Bylaws

This Constitution and the attached Bylaws, when adopted by a majority of those attending District Councils called to vote on accepting a Constitution and Bylaws shall be binding upon the Crow Tribe.

CERTIFICATE OF ADOPTION

Pursuant to the Constitutional election held on June 24, 1948, this Constitution and Bylaws of the Crow Tribal Council of Montana, was adopted by a vote of 295 for and 130 against in an election in which 425 votes were cast.

(Signed)

Robert Yellowtail
Chairman, Tribal Council

(Signed)

George Hogan, Sr.
Secretary, Tribal Council

(Signed)

L. C. Lippert, Crow Agency

RESOLUTION NO. 62-11

A RESOLUTION OF THE CROW TRIBAL COUNCIL PROVIDING FOR THE AMENDMENT OF THE CONSTITUTION OF THE CROW TRIBAL COUNCIL, BY ADDING TO AND CHANGING ART. II, ART. VII, AND ART. VIII, BY MAKING CERTAIN CHANGES BY ADDING TO AND CHANGING ART. II, ART. VI, ADDING SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ART. VIII, ADDING SECTIONS 1, 2, AND FOR OTHER PURPOSES.

WHEREAS, there has been a need for certain changes in the Crow Tribal Constitution, it is deemed to be in the best interests of the Crow Tribe that Resolutions 107, 140, 145, 223, and 152, shall be, and the same are hereby rescinded, repealed and expunged from the Crow Tribal records;

AND WHEREAS, it is evident that the rescission will enable tribal members to appoint committee members and delegates more democratically in accordance with certain existing provisions of the Crow Tribal Constitution.

NOW, THEREFORE, BE IT RESOLVED, by the Crow Tribal Council in Crow Tribal Council duly called and held this 18th day of December, 1961, that the Constitution of the Crow Tribal Council be, and hereby is amended by making the following changes in the present Crow Tribal Constitution, to-wit:

ARTICLE II.

The council shall elect every two (2) years, in conformity to its rules of procedure, a Chairman, Vice-Chairman, Secretary and Vice-Secretary. The Chairman shall have no vote unless there be a tie vote before the council. The election for these officers shall be held the second Saturday of May every other year after May 12, then the first election shall be held under this constitutional change. Officials are to assume their duties July 1, after election.

ARTICLE VI.

The Powers, Duties, and Functions of the Council:

1. The Council shall establish its own rules of procedure.
2. Meetings. There shall be regular Tribal Council meetings held each year on the second Saturday of January, the second Saturday of April, the second Saturday of July, and the second Saturday of October, and as many additional meetings shall be held as tribal business may require. All meetings shall be called by the Chairman and the Committee.

APPENDIX C

1989 PROPOSED CROW CONSTITUTION



PROPOSED AMENDMENT TO THE PROPOSED CONSTITUTION
OF THE CROW NATION

- I. Remove the words "speaks the Crow language fluently and from Article V, Section 4, Paragraph 1 and from Article VI, Section 3. Also in Article VI, Section 3, change "35" to "30".
- II. Add the sentence "Any enrolled Crow Indian who is not a member of a clan may enroll in the clan of his choice for the purpose of electing representation to the Council of the Clans." to the end of Article V, Section 14(1).
- III. Add the sentence "The people may amend this constitution for any reason by initiative." to the end of Article III, Section 4(1).

THE
CONSTITUTION
OF THE
CROW NATION

PREAMBLE: We the people of the Crow Nation, grateful to God for the quiet beauty of our land and water, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life and equality of opportunity do ordain and establish this constitution.

ARTICLE I: STATEMENT OF PURPOSE AND INTENT

(1) This constitution is enacted by the people of the Crow Nation based on the recognition of the Crow Nation's inherent right of self-government by the United States through treaties, statutes and court decisions. No part of this constitution is to be construed to mean acceptance of the Indian Reorganization Act unless expressly declared so by majority vote of the Crow people by initiative.

(2) The government-to-government relationship between the Crow Nation and the United States of America is hereby confirmed in view of proprietary trust resource disposition.

(3) The Crow Nation, by this constitution, reaffirms the Crow People's authority to self-government and the Crow Nation's right to assess, levy and collect taxes and to administer said tax funds for the common good of the people of the Crow Nation.

(4) The approval of this constitution in a duly called and held election by majority vote of the qualified and present Crow Council members amends the Constitution and By Laws passed and adopted on June 24, 1948, and approved May 23, 1949, and declares said Constitution and By Laws to be null and void and held for naught.

ARTICLE II: DECLARATION OF RIGHTS

Section

1. Popular sovereignty
2. Self-government
3. Inalienable rights
4. Individual dignity
5. Freedom of religion
6. Freedom of assembly
7. Freedom of speech, expression and press
8. Right of participation
9. Right to know
10. Right of privacy
11. Searches and seizures
12. Right to bear arms
13. Right of suffrage
14. Adult rights
15. Rights of persons not adults
16. The administration of justice
17. Due process of law
18. Crow Nation subject to suit
19. Habeas corpus
20. Initiation of proceedings
21. Bail
22. Excessive sanctions
23. Detention
24. Rights of the accused
25. Self-incrimination and double jeopardy
26. Trial by jury
27. Imprisonment for debt
28. Rights of the convicted
29. Eminent domain
30. Treason
31. Ex post facto, obligation of contracts and irrevocable privileges
32. Importation of armed persons
33. Unenumerated rights
34. Servicemen, servicewomen and veterans

SECTION 1. Power of the People. All governmental power is vested in and derived from the Crow people. All right of government originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

SECTION 2. Self-government. The Crow people have the exclusive right of governing themselves as a free, self-governing, and domestic dependent nation. The Crow people may alter or abolish, by legal means, this constitution and form of government whenever they deem it necessary.

SECTION 3. Inalienable rights. Crow people are born free and have certain inalienable rights. They include the right to a clean and healthy environment and the rights of pursuing life's basic necessities; enjoying and defending their lives and liberties; acquiring, possessing and protecting property; and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

SECTION 4. Individual dignity. The dignity of the Crow person is inviolable. No person shall be denied the equal protection of the laws as prescribed in the Indian Civil Rights Act.

SECTION 5. Freedom of religion. The Crow Nation shall make no law in respect to an establishment of religion or prohibiting the free exercise thereof.

SECTION 6. Freedom of assembly. The Crow people shall have the right to peaceably assemble, petition for redress or peaceably protest governmental action.

SECTION 7. Freedom of speech, expression and press. No law shall be passed impairing the freedom of speech or expression. Every Crow person shall be free to speak or publish whatever they will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for slander or libel, the truth thereof may be given in evidence.

SECTION 8. Right of participation. The Crow public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

SECTION 9. Right to know. No Crow person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the government and its subdivisions, except in cases which the demand of individual privacy clearly exceeds the merits of public disclosure.

SECTION 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed upon without the showing of a compelling tribal interest.

SECTION 11. Searches and seizures. The Crow people shall be secure in their persons, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall be issued without describing the place to be searched or the person or thing to be seized and without probable cause. This warrant must be supported by oath or affirmation reduced to writing.

SECTION 12. Right to bear arms. The right of any Crow person to keep or bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called into question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

SECTION 13. Right to vote. All elections shall be free and open to all eligible electors of the Crow Nation, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right to vote.

SECTION 14. Adult rights. A Crow person 18 years of age or older is an adult for all purposes, except that the legislative body or the Crow people by initiative may establish any other age as the legal age for various purposes.

SECTION 15. Rights of persons not adults. The rights of Crow persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

SECTION 16. The administration of justice. Courts of the justice shall be open to every person and speedy remedy afforded for every injury of person, property or character.

SECTION 17. Due process of law. No person shall be deprived of life, liberty or property without due process of law.

SECTION 18. Crow Nation subject to suit. The Crow Nation and its governmental subdivisions shall have immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each Council of the legislative body.

SECTION 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended as provided in the Indian Civil Rights Act.

SECTION 20. Initiation of proceedings. (1) Civil and misdemeanor offenses within the jurisdiction of the court shall be prosecuted by complaint. All civil actions in court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a judge, or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of five persons, of whom four must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of a judge.

SECTION 21. Bail. All persons shall be bailable by sufficient sureties, when the proof is evident or the presumption great.

SECTION 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishment inflicted.

SECTION 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any misdemeanor proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

SECTION 24. Rights of the accused. In all misdemeanor proceedings the accused shall have the right to appear and defend himself in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and to have a speedy public trial by an impartial jury of the Crow Nation.

SECTION 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a court proceeding. No person shall again be put in jeopardy for the same offense previously tried in any jurisdiction.

SECTION 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, 2/3 of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein.

SECTION 27. Imprisonment for debt. No person shall be imprisoned for debt, except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in the case of tort, where there is strong presumption of fraud.

SECTION 28. Rights of the convicted. Laws for the punishment of misdemeanors shall be founded on the principles of prevention and reformation. Full rights are restored by termination of court supervision for any offense against the Crow Nation.

SECTION 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

SECTION 30. Treason. Treason against the Crow Nation shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No Crow person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court. No person shall be attainted of treason or felony by the legislative body. No conviction shall cause the loss of property to the relatives or heirs of the convicted.

SECTION 31. Ex post facto, obligation of contracts and irrevocable privileges. No ex post facto law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises, or immunities shall be passed by the legislative body.

SECTION 32. Importation of armed persons. No armed person or persons or armed body of men shall be brought into the Crow Nation for the preservation of peace or the suppression of domestic violence, except upon the application of the legislative body or the Crow Nation's President when the legislative body cannot be convened.

SECTION 33. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the Crow people.

SECTION 34. Servicemen, servicewomen and veterans. The people declare that the Crow Nation's servicemen, servicewomen and veterans may be given special considerations determined by the legislative body.

ARTICLE III: GENERAL GOVERNMENT

Section

- 1. Separation of powers
- 2. Continuity of government
- 3. Oath of office
- 4. Initiative
- 5. Referendum
- 6. Recall
- 7. Elections
- 8. Number of electors
- 9. Gambling and prohibition

SECTION 1. Separation of powers. The power of the government of the Crow Nation is divided into three distinct branches -- legislative, executive and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as expressly directed or permitted in this constitution.

SECTION 2. Continuity of government. The seat of government shall be in Crow Agency, except during periods of emergency resulting from disaster. The legislative body may enact laws to ensure the continuity of government during a period of emergency without regard for other provisions of this constitution. Such laws shall be effective only during the period of emergency that affects a particular office of governmental operation.

SECTION 3. Oath of office. Members of the legislative body and all executive, ministerial and judicial offices, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices:

"I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the Crow Nation, and that I will discharge the duties of my office with fidelity (so help me God)."

No other oath, declaration or test shall be required as a qualification for any office or public trust.

SECTION 4. Initiative. (1) The people may enact laws by initiative on all matters.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least ten percent of the qualified electors in each of at least 1/3 of the legislative representative precincts and the total number of signers must be at least ten percent of the total qualified electors

of the Crow Nation. Petitions shall be filed with the Secretary of the Crow Nation at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

SECTION 5. Referendum. (1) The people may approve or reject by referendum any act of the legislative body. A referendum shall be held either upon order by the legislative body or upon petition signed by at least ten percent of the qualified electors in each of at least 1/3 of the legislative representative precincts. The total number of signers must be at least ten percent of the qualified electors of the Crow Nation. A referendum petition shall be filed with the Secretary of the Crow Nation at least three months prior to the election at which the measure will be voted upon.

(2) An act referred to the people is in effect until suspended by petition signed by at least thirty-five percent of the qualified electors in a majority of the legislative representative precincts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

SECTION 6. Recall. The Crow people may recall any elected official at a duly called election of the qualified electors by simple majority.

SECTION 7. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislative body orders a special election.

SECTION 8. Number of electors. The number of qualified electors required in each legislative representative precinct and in the nation shall be determined by the number of votes cast for the office of the Crow Nation's President in the preceding general election.

SECTION 9. Gambling and prohibition. All forms of gambling, lotteries and gift enterprises, as well as, drug abuse, alcohol consumption and possession thereof are prohibited unless authorized by acts of the legislative body or by the people through initiative or referendum.

ARTICLE IV: VOTING AND ELECTIONS**Section**

1. Ballot
2. Qualified elector
3. Elections
4. Eligibility for public office
5. Result of elections
6. Privilege from arrest

SECTION 1. Ballot. All elections by the Crow people shall be by secret ballot.

SECTION 2. Qualified elector. Any citizen of the Crow Nation 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

SECTION 3. Elections. The legislative body shall provide by law the requirements for residence, registration, absentee voting and administration of elections. It may provide for a system of poll booth registration, and shall ensure the purity of elections and guard against abuses of the electoral process. Except for the initial elections required to put the officers into office under this constitution, elections for all officers shall be on the first Tuesday of November in every even-numbered year.

SECTION 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislative body may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from corrective supervision.

SECTION 5. Result of elections. In all elections held by the Crow people, the person or persons receiving the largest number of votes shall be declared elected.

SECTION 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V: THE LEGISLATIVE BODY

Section

1. Power and structure
2. Size
3. Election and terms
4. Qualifications
5. Compensation
6. Sessions
7. Vacancies
8. Immunity
9. Disqualification
10. Organization and procedure
11. Bills
12. Local and special legislation
13. Impeachment
14. Precincting and apportionment
15. Transitional legislative branch

SECTION 1. Power and structure. The legislative power is vested in the legislative body by the Crow people and for the Crow people. This body shall consist of a Council of the Clans and a Council of the Lodges. The people reserve to themselves the right to vote on initiatives and referenda.

SECTION 2. Size. The size of the legislative body shall be provided by law, but the Council of the Clans shall have two representatives from each of the functional clans, and the Council of the Lodges shall have one representative for every 200 qualified electors as apportioned by the districts and off-reservation.

SECTION 3. Election and terms. Except in the first regular session, as provided in Article V, Section 15 of this constitution, each member of each Council shall be elected for a term of four years which begins on the first Monday of the January immediately following election. One half of each Council shall be elected every two years.

SECTION 4. Qualifications. No person shall serve in the legislative body unless he speaks the Crow language fluently and is a qualified elector of the Crow Nation at the time of his election.

A candidate for the Council of the Lodges shall be a resident of the precinct he seeks to represent for at least one year preceding the next general election. A candidate seeking to serve in the Council of the Lodges as a representative of off-reservation must file as an off-reservation candidate. A candidate for the Council of the Lodges must be at least 25 years of age.

A candidate for the Council of the Clans must have registered in the Clan to which he belongs permanently for the purpose of service in public office. A candidate for the Council of the Clans must be at least 35 years of age.

SECTION 5. Compensation. Each member of the legislative body shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

SECTION 6. Sessions. Except for the first session, the legislative body shall meet each odd-numbered year in regular session ending in the following even-numbered year. The legislative body must have a legislative day at least once every two weeks. Any legislature may increase the limit on the length of any subsequent session. The legislative body may be convened in special session by the tribal President or at the written request of the majority of the members.

SECTION 7. Vacancies. A vacancy in the legislative body shall be filled by special election for the unexpired term unless otherwise provided by law.

SECTION 8. Immunity. A member of the legislative body is privileged from arrest during attendance at sessions of that body and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislative body.

SECTION 9. Disqualification. No member of the legislative body shall, during the term for which he shall have been elected, be appointed to any civil office under the nation; and no member of congress or other person holding an office (except notary public or militia) under the United States or the State of Montana, shall be a member of the legislative body during his continuance in office.

SECTION 10. Organization and procedure. (1) Each Council shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and to determine contested elections. Each Council shall choose its officers from among its members, keep a journal and make rules for its procedures. All standing committees in existence on the date of passage of this constitution shall be dissolved on that day. The legislative body shall establish legislative committees to carry out the duties of the standing committees. Each Council may expel or punish a member for good cause shown with concurrence of 2/3 of all its members. Any member of either Council is considered removed if he misses three consecutive regular meeting sessions without just reason.

(2) A majority of each Council constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislative body and of the committee of the whole, all committee meetings and all hearings shall be open to the public, except as provided in the right of privacy provision of this constitution.

SECTION 11. Bills. (1) A law shall be passed by bill, and such bill shall not be altered or amended on its passage through the legislative body so as to change its original purpose. No bill shall become law except by a vote of the majority of all members of the legislative body present and voting.

(2) Every vote of each member of the legislative body on each substantive question in this body, in any committee thereof or in a committee of the whole shall be recorded and read publicly. On final passage, the vote shall be taken by ayes and noes and the names entered into the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject embraced in any act is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriations bill shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial branches, for interest on the Crow Nation debt and for education and shall originate in the Council of the Lodges. Every other appropriation shall be made by a separate bill, containing only one subject.

(5) No appropriation shall be made for religious, charitable, industrial, education or benevolent purposes to any private association or private corporation not under the control of the Crow Nation.

(6) A law may be changed on the ground of noncompliance with this section only within two years after its effective date.

SECTION 12. Local and special legislation. The legislative body shall not pass a special or local act when a general act is or can be made applicable.

SECTION 13. Impeachment. (1) The tribal President, executive officers, heads of national departments, judicial officers and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from office for cause may be provided by law.

(2) The legislative body shall provide for the manner, procedure and causes for impeachment and may select the Council of the Clans as tribunal.

(3) Impeachment shall be brought only by a 2/3 vote of the Council of the Clans. The tribunal hearing the charges shall convict only by a vote of 2/3 or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to the law.

SECTION 14. Precincting and apportionment. (1) The nation shall be divided into precincts as provided in Article V, Section 2 of this constitution, and each precinct shall elect one representative to the Council of Lodges. Each precinct shall consist of a compact and contiguous territory that is completely within its respective district. Said districts are the six districts within the exterior boundaries of the Crow Indian Reservation and the Off Reservation District. The Off Reservation District shall be one district. All precincts shall be as nearly equal in population as is practicable. Each Clan shall be composed of the registered members of said clan and shall elect two councilmen.

(2) In the legislative session following the ratification of this constitution and thereafter in each session preceding each tribal population census, a commission of five citizens, none of whom may be in public office, shall be selected to prepare a plan for reprecincting and reapportioning the nation into legislative precincts. Each Council shall each designate two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the Council of the Clans shall select him.

(3) The commission shall submit its plan for legislative precincts to the legislative body at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislative body shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative precincts with the Secretary of the Crow Nation. Within 10 days, the Secretary of the nation shall submit this plan to the legislative body for adoption. Upon adoption and presidential approval, it shall become law.

(4) Upon adoption and approval of the plan, the commission is then dissolved.

SECTION 15. Transitional legislative branch. (1) The interim Council of the Lodges shall consist of the members of the Crow Tribal Executive Committee who are serving on the date of passage of this constitution and shall remain

in office until the elected candidates take office in the January immediately following passage of this constitution.

The members of the regular Council of the Lodges shall be elected in a Crow general election to be held on the first Tuesday of the November immediately following passage of this constitution.

Upon election, the members of the first session of the Council of the Lodges shall draw lots to determine which members shall serve for a term of three years and which members shall serve for a term of one year. All subsequent terms shall be for four years.

(2) Members of the Council of the Clans shall be elected in a general election to be held within 30 days of passage of this constitution. In the first session, the candidate from each clan who receives the largest number of votes shall serve for a term of three years, and the candidate from each clan who receives the second largest number of votes shall serve for a term of one year. All subsequent terms shall be for four years.

(3) The interim legislative body shall see that the nation is precincted and apportioned as set forth in Article V, Section 14 of this constitution. This apportionment shall serve for the first election of the Council of the Lodges.

ARTICLE VI: THE EXECUTIVE

Section

1. Officers
2. Election
3. Qualifications
4. Duties
5. Compensation
6. Vacancy in office
7. Twenty departments
8. Appointing power
9. Budget and messages
10. Veto power
11. Special session
12. Pardons
13. Succession
14. Information for the President
15. Transitional executive branch and terms

SECTION 1. Officers. (1) The executive branch includes a President, Vice-president, Secretary and Vice-secretary.

(2) Each shall keep the public records of his office and perform such other duties as are provided in this constitution and by law at the seat of government.

SECTION 2. Election. (1) The President, Vice-president, Secretary and Vice-secretary shall be elected by the qualified electors at the general election provided by law.

(2) Each candidate for an executive branch office must comply with nomination procedures provided by law so that the office of President with the office of Vice-president and the office of Secretary with the office of Vice-secretary are voted upon together in primary and general elections.

SECTION 3. Qualifications. No person shall be eligible to the office of President, Vice-president, Secretary or Vice-secretary unless he speaks the Crow language fluently and is 35 years of age or older at the time of his election. In addition, each shall be an enrolled member of the Crow Nation, who has resided within the exterior boundaries of the Crow Indian Reservation for two years immediately preceding his election.

SECTION 4. Duties. (1) The executive power is vested in the President by the Crow people and for the Crow people. He shall see that the laws are

faithfully executed. He shall keep the great seal of the Crow Nation. He shall have such other duties as are provided in this constitution and by law.

(2) The Vice-president shall perform the duties provided by law and those delegated to him by the President. No power specifically vested in the President by this constitution may be delegated to the Vice-president.

(3) The Secretary shall maintain the official records of the executive branch and of the acts of the legislative body and perform any other duties, as provided by law.

(4) The Vice-secretary shall perform the duties provided by law and those delegated to him by the Secretary. No power specifically vested in the Secretary by this constitution may be delegated to the Vice-secretary.

SECTION 5. Compensation. (1) Officers of the executive branch shall receive salaries as provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

SECTION 6. Vacancy in office. (1) If the office of Vice-president becomes vacant by his succession to the office of President or by his death, resignation or disability as determined by law, the President shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected President and the elected Vice-president become unable to serve in the office of President, succession to the respective offices shall be as provided by law for the period until the next general election. Then a President and Vice-president shall be elected to fill the remainder of the original term.

(2) The presiding officer of the Council of the Lodges shall become President in the event that both the offices of President and Vice-president become vacant.

(3) If the office of Vice-secretary becomes vacant by his succession to the office of Secretary or by his death, resignation or disability as determined by law, the Secretary shall appoint a qualified person to serve in that office for the remainder of the term.

SECTION 7. Twenty departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of President, Vice-president, Secretary and Vice-secretary) and their respective functions, powers and duties shall be allocated by law among not more than twenty principal departments so as to provide an orderly arrangement in the administrative

organization of the national government. Temporary commissions may be established by law and need not be allocated within a department.

SECTION 8. Appointing power. (1) Departments provided for in Section 7 shall be under the supervision of the President. Except as otherwise provided in this constitution, each department shall be headed by a single executive appointed by the President, subject to confirmation by the Council of the Clans, to hold office until the end of the President's term unless sooner removed by the President.

(2) The President shall appoint, subject to confirmation by the Council of the Clans, all officers provided for in this constitution or by law for whom appointment or election is not otherwise provided. They shall hold office until the end of the President's term unless sooner removed by the President.

(3) If a vacancy occurs in any such office when the legislative body is not in session, the President shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the Council of the Clans for an office, shall not, except at its request, be nominated again for that office at that session, or be appointed to that office when the legislative body is not in session.

SECTION 9. Budget and messages. The President shall at the beginning of each legislative session, and may at other times, give the legislative body information and recommend measures he considers necessary. The President shall submit to the Council of the Lodges, at a time fixed by law, a budget for the ensuing fiscal period which sets forth in detail for all operating funds the proposed expenditures and estimated revenue of the nation.

SECTION 10. Veto power. (1) Each bill passed by the legislative body, except bills proposing amendments to the Crow Nation's constitution, resolutions and initiative and referendum measures, shall be submitted to the President for his signature. If he does not sign or veto the bill within five days after its delivery to him and if the legislative body is in session or within twenty-five days if the legislative body is adjourned, it shall become law. The President shall return a vetoed bill to the legislative body with a statement of his reasons thereof.

(2) The President may return any bill to the legislative body with his recommendation for amendment. If the legislative body passes the bill in accordance with the President's recommendation, it shall again return the bill to the President for his reconsideration. The President shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, 2/3 of the members of each Council present approve the bill, it shall become law.

(4) (a) If the legislative body is not in session when the President vetoes a bill approved by 2/3 of the members present, he shall return the bill with his reasons thereof to the Secretary. The Secretary shall poll the members of the legislative body by mail and shall send each member a copy of the President's veto message. If 2/3 or more of the members of each Council vote to override the veto, the bill shall become law.

(b) The legislative body may reconvene as provided by law to reconsider any bill vetoed by the President when the body is not in session.

(5) The President may veto items in an appropriation bill, and in such instances the procedure shall be the same as upon veto of an entire bill.

SECTION 11. Special session. Whenever the President considers it in the public interest, he may convene the legislative body.

SECTION 12. Pardons. The President may grant pardons, restore citizenship and suspend and remit fines and forfeitures subject to procedures provided by law.

SECTION 13. Succession. (1) If the President-elect is disqualified or dies, the Vice-president-elect upon qualifying for the office shall become President for the full term. If the President-elect fails to assume office for any other reason, the Vice-president-elect upon qualifying as such shall serve as acting President until the President-elect is able to assume office, or until the office becomes vacant.

(2) The Vice-president shall serve as acting President when so requested in writing by the President. After the President has been absent from the nation for more than fourteen consecutive days, the Vice-president shall serve as acting President.

(3) The Vice-president shall serve as acting President when the President is so disabled as to be unable to communicate to the Vice-president the fact of his inability to perform the duties of his office. The Vice-president shall continue to serve as acting President until the President is able to resume the duties of his office.

(4) Whenever, at any other time, the Vice-president transmits to the legislative body their (President's and Vice-president's) written declaration that the President is unable to discharge the powers and duties of his office, the legislative body shall convene to determine whether he is able to do so.

(5) If the legislative body, within twenty-one days after convening, determines by 2/3 vote of its members that the President is unable to discharge the powers and duties of his office, the Vice-president shall serve as acting President. Thereafter, when the President transmits to the

legislative body his written declaration that no inability exists, he shall resume the powers and duties of his office within fifteen days, unless the legislative body determines otherwise by 2/3 vote of its members. If the legislative body so determines, the Vice-president shall continue to serve as acting President.

(6) If the office of President becomes vacant by reason of death, resignation or disqualification, the Vice-president shall become President for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of President, the successor shall be the President. The acting President shall have the powers and duties of the office of President only for the period during which he serves.

SECTION 14. Information for President. (1) The President may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of national institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or national institution.

SECTION 15. Transitional executive branch and terms. The current executive officers, as designated in Article VI of this constitution, shall remain in office until the elected candidates take office in the January immediately following passage of this constitution. The officers of the regular executive branch shall be elected in a Crow general election to be held on the first Tuesday of the November immediately following passage of this constitution. These first officers shall serve for a term of three years. All subsequent terms shall be for four years beginning on the first Monday of the January immediately following election.

ARTICLE VII: THE JUDICIARY

Section

1. Judicial power
2. Crow national court jurisdiction
3. Crow national court organization
4. District court jurisdiction
5. Justice of the peace
6. Judicial districts
7. Terms and pay
8. Selection
9. Qualifications
10. Forfeiture of judicial position
11. Removal and discipline

SECTION 1: Judicial power. The judicial power of the Crow Nation is vested in the Crow national court and such other courts as may be provided by law by the Crow people and for the Crow people.

SECTION 2. Crow national court jurisdiction. (1) The Crow national court has appellate jurisdiction and may issue, hear and determine writs appropriate thereto. It has original jurisdiction to issue, hear and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts in the nation.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts in the nation and admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislative body in either of the two sessions following promulgation.

(4) The Crow national court process shall extend to all parts of the nation.

SECTION 3. Crow national court organization. (1) The Crow national court consists of one chief justice and two justices, but the legislative body may increase the number of justices from three to five. A majority shall join in and pronounce decisions, which must be in writing.

(2) A lower court judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the lower court judge sitting with the Crow national court shall have the same effect as an opinion of a justice.

SECTION 4. District court jurisdiction. (1) The district court has original jurisdiction in all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have additional jurisdiction

as may be delegated by the laws of the United States or the Crow Nation. Its process shall extend to all parts of the Crow Nation.

(2) The court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislative body may provide for direct review by the district court of decisions of administrative agencies.

(3) Federal courts may have jurisdiction of criminal cases amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

SECTION 5. Justices of the peace. (1) There shall be elected in each district at least one justice of the peace with qualifications, training and monthly compensation as provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal and civil case designated a felony except as examining courts.

(3) The legislative body may provide for additional justices of the peace in each district.

SECTION 6. Judicial districts. (1) The legislative body shall divide the nation into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by reservation district boundaries.

(2) The legislative body may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall cause a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one judicial district to another.

SECTION 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Within 30 days after the election of the Council of the Clans, the interim legislative body and executive officers shall promulgate the manner and procedure by which the judicial officers shall be elected. This election shall be a Crow general election to be held on the first Tuesday of the November immediately following the passage of this constitution. The initial terms of office shall be seven years for Crow national court justices, five years for district judges, three years for justices of the peace and as provide by law for other judges.

(3) All subsequent terms of office shall be eight years for Crow national court justices, six years for district judges, four years for justices of the peace

and as provided by law for other judges. The term of each justice or judge begin on the first Monday of the January immediately following election.

SECTION 8. Selection. (1) The tribal president shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of Crow national court justice or district court judge. If the president fails to nominate within 30 days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the Council of the Clans, but a nomination made while the Council is not in session shall be effective as an appointment until the beginning of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after the Council confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the nation to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

SECTION 9. Qualifications. (1) An enrolled member of an American Indian Nation who has established domicile within the exterior boundaries of an Indian Reservation two years immediately preceding taking office is eligible to the office of Crow national court justice or district court judge if admitted to the practice of law in the nation for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No Crow national court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no Crow national court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid or hold office in a political party.

(4) Crow national court justices shall reside within the Crow Indian Reservation or in as close proximity as housing may provide. During his term of office, every other judge shall reside in the district in which he is elected or appointed.

SECTION 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a

judicial position or absenting himself from the nation for more than thirty consecutive days.

SECTION 11. Removal and discipline. (1) The legislative body shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the Crow national court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of the canon of judicial ethics adopted by the Crow national court or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by law.

ARTICLE VIII: REVENUE AND FINANCE

Section

1. Tax purposes
2. Tax power inalienable
3. Property tax administration
4. Equal valuation
5. Property tax exemptions
6. Highway revenue non-diversion
7. Tax appeals
8. National debt
9. Balanced budget
10. Local government debt
11. Use of loan proceeds
12. Strict accountability
13. Investment of public funds

SECTION 1. Tax purposes. Taxes shall be levied by general laws for the Crow Nation's purposes.

SECTION 2. Tax power inalienable. The power to tax shall never be surrendered, suspended or contracted away.

SECTION 3. Property tax administration. The nation may appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law.

SECTION 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the Crow Nation.

SECTION 5. Property tax exemptions. (1) The legislative body may exempt from taxation:

(a) Property of the United States, cities, towns, school districts, municipal corporations and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions or purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislative body may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

SECTION 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislative body, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation and maintenance of public highways, streets, roads and bridges.

(b) Payment of reservation, city and town obligations on streets, roads and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion and administrative collection costs.

(d) Such revenue may be appropriated for other purposes by a 2/3 vote of the members of each Council.

SECTION 7. Tax appeals. The legislative body shall provide independent appeal procedure for taxpayer grievances about appraisals, assessments, equalization and taxes.

SECTION 8. National debt. No national debt shall be created unless authorized by a 2/3 vote of the members of each Council of the legislative body or a majority of the electors voting thereon. No national debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

SECTION 9. Balanced budget. Appropriations by the legislative body shall not exceed anticipated revenue.

SECTION 10. Local government debt. The legislative body shall by law limit debts of cities, towns and all other local governmental entities.

SECTION 11. Use of loan proceeds. All money borrowed by or on behalf of the nation or any city, town or other local governmental entity shall be used only for purposes specified in the authorizing law.

SECTION 12. Strict accountability. The legislative body shall by law ensure strict accountability of all revenues received and money spent by the nation and cities, towns and all other local governmental entities.

SECTION 13. Investment of public funds. (1) The legislative body shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all cities,

towns and local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for money contributed for retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the Crow Nation's President and legislative body.

(2) The public school fund and the permanent funds of the Crow Nation's Little Big Horn College and all other national institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the nation, its subdivisions and local governmental units and districts within the nation, or

(b) Bonds of the United States or other securities fully gauranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

ARTICLE 1X: ENVIRONMENT AND NATURAL RESOURCES**Section**

1. Protection and improvement
2. Reclamation
3. Water rights
4. Cultural resources
5. Severance tax -- trust fund

SECTION 1. Protection and improvement. (1) The nation and each person shall maintain and improve a clean and healthy environment in the Crow Nation for present and future generations.

(2) The legislative body shall provide by law for the administration and enforcement of this duty.

(3) The legislative body shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

SECTION 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislative body shall provide effective requirements and standards for the reclamation of disturbed lands.

(2) The legislative body shall provide for a fund, to be known as "The Resource Indemnity Trust of the Crow Nation", to be funded by such taxes on the extraction of natural resources as the legislative body may from time to time impose for that purpose.

(3) The principal of the Resource Indemnity Trust shall forever remain inviolate in the amount of one hundred million dollars (\$100,000,000) as soon as the fund reaches that amount, guaranteed by the nation against loss or diversion.

SECTION 3. Water rights. (1) All rights to the use of any waters for any useful or beneficial purpose are hereby reserved by the Crow Nation.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution or other beneficial use, and the right of way over the lands of others for all ditches, drains, flumes, canals and aqueducts necessarily used and storing water shall be held to be a public use of the Crow Nation.

(3) All surface, underground, flood and atmospheric waters within the exterior boundaries of the Crow Indian Reservation are the property of the Crow Nation for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislative body shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records.

SECTION 4. Cultural resources. The legislative body shall provide for the identification, acquisition, restoration, enhancement, development, preservation and administration of scenic, historic, archeologic, scientific, cultural and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

SECTION 5. Severance tax -- trust fund. The legislative body shall dedicate not less than 1/4 of the severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by a vote of 3/4 of the members of each Council of the legislative body.

ARTICLE X: EDUCATION

(1) It is the goal of the Crow people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the nation.

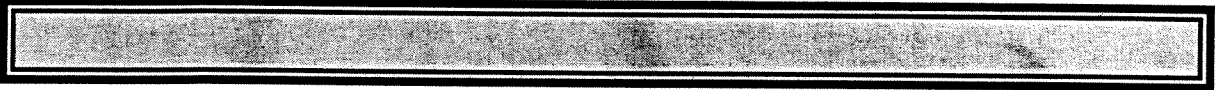
(2) The Crow Nation upholds the distinct and unique culture of the Crow Indians and is committed in its educational goals to the perpetuation of the Crow Nation's culture. Culture consists of the four major divisions which are communication, social structure, technology and ideology.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 19____, by the Crow Tribal Council at a duly noticed and convened meeting of said Tribal Council, a quorum being present and there being ____ votes cast for passage and adoption of this constitution and ____ votes cast against passage and adoption of this constitution.

CHAIRMAN OF THE CROW TRIBAL COUNCIL

APPENDIX D

HO-CHUNK CONSTITUTION



CONSTITUTION of the HO-CHUNK NATION

PREAMBLE

We the People, pursuant to our inherent sovereignty, in order to form a more perfect government, secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our traditions and perpetuate our existence, and secure the natural and self-evident right to govern ourselves, do ordain and establish this Constitution for the Ho-Chunk Nation.

ARTICLE I - TERRITORY AND JURISDICTION

Section 1. Territory. The territory of the Ho-Chunk Nation shall include all lands held by the Nation or the People, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise, by the governments of the United States or the Ho-Chunk Nation, existing or in the future.

Section 2. Jurisdiction. The jurisdiction of the Ho-Chunk Nation shall extend to all territory set forth in Section 1 of this Article and to any and all persons or activities therein, based upon the inherent sovereign authority of the Nation and the People or upon Federal law.

ARTICLE II - MEMBERSHIP

Section 1. Requirements. The following persons shall be eligible for membership in the Ho-Chunk Nation, provided, that such persons are not enrolled members of any other Indian nation:

- (a) All persons of Ho-Chunk blood whose names appear or are entitled to appear on the official census roll prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the Wisconsin Winnebago

Annuity Payroll for the year one thousand nine hundred and one (1901), or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187); or

(b) All descendants of persons listed in Section 1(a), provided, that such persons are at least one-fourth (1/4) Ho-Chunk blood.

Section 2. Relinquishment of Membership and Re-enrollment. Enrollment in any other Indian Nation shall constitute voluntary relinquishment of membership. Adult members may relinquish their membership or the membership of their minor children. Relinquishment of membership shall be done in writing. Any adult member who has voluntarily requested to be removed from the Membership Roll shall not be eligible for re-enrollment. Any minor whose membership has been relinquished by a parent shall be eligible for re-enrollment upon reaching the age of eighteen (18).

Section 3. Re-enrollment by General Council. Any person of at least one-fourth (1/4) Ho-Chunk blood who has relinquished membership under Section 2 of this Article may be re-enrolled into membership by a two-thirds (2/3) vote of the General Council, provided, that such individual is not an enrolled member of any other Indian Nation.

Section 4. Membership Roll. The Legislature shall maintain one official roll of all tribal members.

Section 5. Membership Code. The Legislature shall have the power to enact laws not inconsistent with this Article to govern membership. Removal of any person who is not eligible for membership from the Membership Roll shall be done in accordance with the Membership Code, provided, that such removal is approved by at least a two-thirds (2/3) vote of the General Council.

Section 6. Appeals. Any person who has been rejected for enrollment or who has been removed from the Membership Roll shall have the right to appeal to the Judiciary for a remedy in equity consistent with this Constitution.

ARTICLE III - ORGANIZATION OF THE GOVERNMENT

Section 1. Sovereignty. The Ho-Chunk Nation possesses inherent sovereign powers by virtue of self-government and democracy.

Section 2. Branches of Government. The government of the Ho-Chunk Nation shall be composed of four (4) branches: General Council, Legislature, Executive, and Judiciary.

Section 3. Separation of Functions. No branch of the government shall exercise the powers or functions delegated to another branch.

Section 4. Supremacy Clause. This Constitution shall be the supreme law over all territory and persons within the jurisdiction of the Ho-Chunk Nation.

ARTICLE IV - GENERAL COUNCIL

Section 1. Powers of the General Council. The People of the Ho-Chunk Nation hereby grant all inherent sovereign powers to the General Council. All eligible voters of the Ho-Chunk Nation are entitled to participate in General Council.

Section 2. Delegation of Authority. The General Council hereby authorizes the legislative branch to make laws and appropriate funds in accordance with Article V. The General Council hereby authorizes the executive branch to enforce the laws and administer funds in accordance with Article VI. The General Council hereby authorizes the judicial branch to interpret and apply the laws and Constitution of the Nation in accordance with Article VII.

Section 3. Powers Retained by the General Council.

- (a) The General Council retains the power to set policy for the Nation.
- (b) The General Council retains the power to review and reverse actions of the Legislature except those enumerated in Section 4 of this Article. The General Council shall return such reversals to the Legislature for reconsideration consistent with the action of the General Council. The General Council retains the power to review and reverse decisions of the Judiciary which interpret actions of the Legislature. The General Council does not retain the power to review and reverse decisions of the Judiciary which interpret this Constitution.
- (c) The General Council retains the power to propose amendments in accordance with Article XIII, including those which reverse decisions of the Judiciary interpreting this Constitution.

- (d) The General Council retains the power to establish its own procedures in accordance with this Constitution.
- (e) The General Council retains the power to call a Special Election.
- (f) Actions by the General Council shall be binding.

Section 4. Excepted Powers. The General Council does not retain the power to review actions relating to the hiring or firing of personnel.

Section 5. Annual Meetings. The People shall meet in General Council at least one time each year, which shall be called by the President, and at other times as provided in Section 6 of this Article. Notice shall be provided by the President for all Annual Meetings of the General Council.

Section 6. Special Meetings. Special Meetings of the General Council shall be called by the President upon petition by twenty (20) percent of the eligible voters, or upon written request of a majority of the Legislature, or when deemed necessary by the President. Notice shall be provided by the President for all Special Meetings of the General Council.

Section 7. Procedures. Twenty (20) percent of the eligible voters of the Nation present in General Council shall constitute a quorum. Each action of the General Council shall require the presence of a quorum. The President shall call all Annual and Special General Council Meetings, except those meetings called pursuant to Article IX, Section 2. When a quorum is attained, the General Council shall select either the President or another person to conduct the meeting. A secretary shall be appointed to record the minutes of all General Council meetings, including any votes taken. The secretary shall transmit the minutes of General Council meetings to the Legislature.

ARTICLE V - LEGISLATURE

Section 1. Composition of the Legislature.

- (a) Legislative powers shall be vested in the Legislature.
- (b) The Legislature shall be composed of Representatives from the following Districts, subject to Section 4 of this Article: the Black River Falls District, consisting of Clark, Eau Claire and Jackson counties, which shall elect three (3) members; the Wisconsin Dells District, consisting of Wood, Juneau, Adams, Columbia, and Sauk counties, which

shall elect three (3) members; and the La Crosse-Tomah District, consisting of La Crosse, Monroe, Vernon, and Crawford counties, which shall elect one (1) member; and the Wittenberg District, consisting of Marathon and Shawano counties, which shall elect one (1) member; and three (3) members which shall be elected at-large from outside the Districts listed above.

- (c) The Legislature shall select from among its Members a Vice President to serve throughout such Member's term. The President shall preside over meetings of the Legislature. The Vice President shall preside over meetings of the Legislature in the absence of the President and at such times the Vice President shall retain the power to vote.

Section 2. Powers of the Legislature. The Legislature shall have the power:

- (a) To make laws, including codes, ordinances, resolutions, and statutes;
- (b) To establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power;
- (c) To constitute a Board of Directors for each Department, except the President shall name the Executive Director, subject to confirmation by the Legislature;
- (d) To authorize expenditures by law and appropriate funds to the various Departments in an annual budget;
- (e) To raise revenue, including the power to levy and collect taxes and license fees;
- (f) To set the salaries, terms and conditions of employment for all governmental personnel;
- (g) To set its own procedures, select its officers, and to enact laws governing attendance of its members, including penalties for absences;
- (h) To enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation;

- (i) To negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals;
- (j) To authorize and appropriate funds to employ legal counsel in accordance with applicable law;
- (k) To acquire or purchase lands for the benefit of the Nation and its members;
- (l) To enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets;
- (m) To enact laws to prevent the sale, disposition, or encumbrance of Ho-Chunk lands, or other Ho-Chunk assets;
- (n) To purchase under condemnation proceedings any lands within the jurisdiction of the Ho-Chunk Nation;
- (o) To enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation;
- (p) To enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise;
- (q) To issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities;
- (r) To protect and foster Ho-Chunk religious freedom, culture, language, and traditions;
- (s) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation;
- (t) To enact laws governing law enforcement on lands within the jurisdiction of the Nation;
- (u) To enact laws to regulate domestic relations of persons within the jurisdiction of the Nation;
- (v) To establish and maintain headquarters for the Ho-Chunk Nation;

- (w) To enact laws to regulate hunting, fishing, trapping, recreation and all other related activities on lands within the Nation's jurisdiction;
- (x) To enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

Section 3. Codes. The Legislature shall adopt Codes governing Membership, Open Meetings, Elections, Ethics including conflicts of interest, nepotism, and the conduct of all elected and appointed officials and employees, and other Codes as deemed necessary.

Section 4. Redistricting or Reapportionment. The Legislature shall have the power to redistrict or reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain an accurate census for the purposes of redistricting or reapportionment. The Legislature shall redistrict and reapportion at least once every five (5) years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall exercise this power only by submitting a final proposal to the vote of the People by Special Election which shall be binding and which shall not be reversible by the General Council. Any redistricting or reapportionment shall be completed at least six (6) months prior to the next election, and notice shall be provided to the voters.

Section 5. Compensation. Members of the Legislature shall receive reasonable compensation. No increase or decrease in compensation for Legislators shall take effect until after the next General Election. No member of the Legislature shall receive compensation as an employee or in any other capacity within the Executive branch during their term of office.

Section 6. Terms of Office. Members of the Legislature shall serve four (4) year terms which shall be staggered. Legislators shall represent their respective Districts until their successors have been sworn into office except if the Legislator has been successfully removed or recalled in accordance with this Constitution. Members of the Legislature shall be elected by a majority vote of the eligible voters from their respective Districts.

Section 7. Qualifications. Members of the Legislature shall be at least twenty five (25) years old and eligible to vote. No person shall become a member of the Ho-Chunk Nation Legislature if otherwise employed by the Ho-Chunk Nation. No person convicted of a felony shall serve as a Legislator unless pardoned.

Section 8. Meetings. The Legislature shall hold regular monthly meetings. The Legislature may hold special meetings as necessary. Members of the Legislature shall hold and attend regularly scheduled meetings in their respective Districts. Failure to attend such monthly or District meetings on a regular basis may constitute grounds for removal or recall. The Legislature shall not schedule a special meeting at the same time as a regularly scheduled District meeting.

Section 9. Open Meetings. All meetings of the Legislature shall be open to all members of the Nation, except when in Executive Session.

Section 10. Executive Session. The Legislature may, upon duly recorded vote, go into executive session. At such sessions, all persons, except members of the Legislature and its officers, shall be excluded from the meeting chamber, except any person whose presence shall be required by the Legislature.

Section 11. Quorum. A majority of the Legislature shall constitute a quorum. A quorum shall be necessary to transact official business of the Legislature. Each session of the Legislature shall require a quorum.

Section 12. Voting. A majority vote of the quorum shall be necessary to exercise the powers of the Legislature, except as otherwise provided by this Constitution. The votes of each member of the Legislature shall be recorded in the minutes of the meeting.

Section 13. Budget. The Legislature shall enact an annual budget. The budget shall include an appropriation of operating funds for each branch of the government. The Legislature shall not appropriate funds which have not been authorized by law. No item shall be included in the budget if it is not authorized by law.

ARTICLE VI - EXECUTIVE

Section 1. Composition of the Executive Branch.

- (a) The Executive power of the Ho-Chunk Nation shall be vested in the President of the Ho-Chunk Nation.
- (b) The Executive Branch shall be composed of any administrative Departments created by the Legislature, including a Department of the Treasury, Justice, Administration, Housing, Business, Health and Social Services, Education, Labor, and Personnel, and other

Departments deemed necessary by the Legislature. Each Department shall include an Executive Director, a Board of Directors, and necessary employees. The Executive Director of the Department of Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of the Department of the Treasury shall be called the Treasurer of the Ho-Chunk Nation.

Section 2. Powers of the President. The President shall have the power:

- (a) To execute and administer the laws of the Ho-Chunk Nation;
- (b) To make recommendations to the Legislature on matters of interest or benefit to the Nation;
- (c) To propose legislation and an annual budget to the Legislature;
- (d) To administer all Departments, boards, and committees created by the Legislature;
- (e) To nominate the Executive Directors of each Department subject to confirmation by the Legislature except that if a confirmation vote is not taken by the Legislature within ninety (90) days the nomination shall be deemed confirmed;
- (f) To remove an Executive Director of a Department or to reassign an Executive Director to another position;
- (g) To select and hire personnel in accordance with applicable law;
- (h) To preside over meetings of the Legislature;
- (i) To cast the deciding vote in the Legislature in case of a tie;
- (j) To call Annual and Special Meetings of the General Council;
- (k) To represent the Ho-Chunk Nation on all matters that concern its interests and welfare;
- (l) To execute, administer, and enforce the laws of the Ho-Chunk Nation necessary to exercise all powers delegated by the General Council and the Legislature, including but not limited to the foregoing list of powers.

Section 3. Qualifications. The President shall be at least thirty-five (35) years old and eligible to vote. No person convicted of a felony shall serve as President unless pardoned.

Section 4. Compensation. The President shall receive reasonable compensation. No increase or decrease in compensation for the office of President shall take effect until after the next General Election.

Section 5. Term of Office. The President shall serve four (4) year terms. The President shall serve until a successor has been sworn into office. The President shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation.

ARTICLE VII - JUDICIARY

Section 1. Composition of the Judiciary. There shall be a Supreme Court of the Ho-Chunk Nation, a Trial Court of the Ho-Chunk Nation, such other lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature.

Section 2. Composition of the Supreme Court. There shall be one Chief Justice and two Associate Justices of the Supreme Court.

Section 3. Composition of the Trial Court. There shall be one Chief Judge of the Trial Court and other Associate Judges as deemed necessary by the Legislature.

Section 4. Powers of the Judiciary. The judicial power of the Ho-Chunk Nation shall be vested in the Judiciary. The Judiciary shall have the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.

Section 5. Jurisdiction of the Judiciary.

(a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of

the Nation's sovereign immunity.

(b) The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court.

Section 6. Powers of the Trial Court.

(a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment and mandamus.

(b) The Trial Court shall have the power to declare the laws of the Ho-Chunk Nation void if such laws are not in agreement with this Constitution.

Section 7. Powers of the Supreme Court.

(a) The Supreme Court shall have the power to interpret the Constitution and laws of the Ho-Chunk Nation and to make conclusions of law. The Supreme Court shall not have the power to make findings of fact except as provided by enactment of the Legislature.

(b) The Supreme Court shall have the power to establish written rules for the Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules are consistent with the laws of the Ho-Chunk Nation.

(c) Any decision of the Supreme Court shall be final.

Section 8. Qualifications.

(a) The Chief Justice of the Supreme Court shall be at least forty (40) years old, an attorney admitted to practice in any State and before the Ho-Chunk courts, and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Chief Justice of the Supreme Court unless pardoned.

(b) Associate Justices of the Supreme Court shall have been admitted to practice before the Ho-Chunk Courts and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Associate Justice of the Supreme Court unless pardoned.

(c) The Chief Judge and Associate Judges of the Trial Court shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Chief Judge or Associate Judge of the Trial Court unless pardoned.

Section 9. Terms of Office. The Chief Justice of the Supreme Court shall be elected to serve for six (6) years and until such time as an election is held and a successor has been sworn into office. At the first election for positions on the Supreme Court, the candidate receiving the highest number of votes for the position of Associate Justice shall serve a four year term; the candidate receiving the second highest number of votes shall serve a two year term. Thereafter, Associate Justices shall serve for four (4) year staggered terms. A Supreme Court Justice shall serve until a successor has been sworn into office. The Chief Judge and any Associate Judges of the Trial Court shall be appointed by the Legislature to serve for three (3) year staggered terms and until their successors have been sworn into office.

Section 10. Election of Supreme Court Justices. Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions in Article VIII, Section 1, unless otherwise provided.

Section 11. Appointment of Trial Court Judges. The Legislature shall appoint a Chief Judge and any Associate Judges to the Trial Court.

Section 12. Compensation. Supreme Court Justices and Trial Court Judges shall receive reasonable compensation. No increase or decrease in compensation for Justices or Judges shall take effect until after the next General Election or appointment to that office.

Section 13. Conflict of Interest. Any Justice or Judge with a direct personal or financial interest in any matter before the Judiciary shall recuse; failure to recuse constitutes cause for removal in accordance with Article IX, Section 4. The Legislature shall appoint a Justice or Judge pro tempore to fill any vacancy due to recusal.

Section 14. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgement or verdict may appeal to the Supreme Court. All appeals before the Supreme Court shall be heard by the full Court.

ARTICLE VIII - ELECTIONS

Section 1. General Elections. General Elections shall be held on the first Tuesday in June of odd numbered years. Offices of the Legislature, Executive, and Judiciary shall be filled at General Elections.

Section 2. Special Elections. Special Elections shall be held when called for by the General Council, the Legislature, or by this Constitution or appropriate ordinances. In all Special Elections, notice shall be provided to the voters.

Section 3. Election Code. The Legislature shall enact an Election Code governing all necessary election procedures at least one hundred and twenty (120) days before the election.

Section 4. Election Board. The Legislature shall enact a law creating an Election Board. The Election Board shall conduct all General and Special Elections. At least sixty (60) days before the election, the Election Board may adopt rules and regulations governing elections. Election Board members shall serve for two (2) years. Election Board members may serve more than one term. The Legislature may remove Election Board members for good cause.

Section 5. Eligible Voters. Any member of the Ho-Chunk Nation who is at least eighteen (18) years old and who meets all other requirements established by the Ho-Chunk Nation shall be eligible to vote.

Section 6. Certification of Election Results. The Election Board shall certify election results within three (3) days after the date of the election.

Section 7. Challenges of Election Results. Any member of the Ho-Chunk Nation may challenge the results of any election by filing suit in the Trial Court within ten (10) days after the Election Board certifies the election results. The Trial Court shall hear and decide a challenge to any election within twenty (20) days after the challenge is filed in the Trial Court.

Section 8. Oath of Office. The Election Board shall administer the oath for the offices of President, Legislature, and Judiciary on the 4th Wednesday following the election after the Election Board certifies the Election results.

ARTICLE IX - REMOVAL, RECALL AND VACANCIES

Section 1. General Council Removal of Legislators. The General Council may remove any member of the Legislature for malfeasance. No vote by the General Council to remove a member of the Legislature shall take place before such Legislator has been given reasonable notice of the impending action and has had a reasonable opportunity to be heard.

Section 2. General Council Removal of the President. The General Council may remove the President for malfeasance. No vote by the General Council to remove the President shall take place before such President has been given reasonable notice of the impending action and has had a reasonable opportunity to be heard.

Section 3. Legislative Removal of Legislators. The Legislature may remove a member of the Legislature for good cause. Any member of the Legislature subject to removal shall be informed of the charges, be given adequate notice of the impending removal action, and given an opportunity to prepare and present a defense including presenting witnesses and other evidence. An affirmative vote of three-fourths (3/4) of the entire Legislature shall be required for all Legislative removal actions under this Section. The Legislator subject to removal shall not vote.

Section 4. Legislative Removal of Judges. The Legislature may remove a Judge for good cause. A Judge subject to removal shall be informed of the charges, be given adequate notice of the impending removal action, and given an opportunity to prepare and present a defense including presenting witnesses and other evidence. An affirmative vote of three-fourths (3/4) of the entire Legislature shall be required for all legislative removal actions under this Section.

Section 5. Recall by General Council. The President, Legislators, and Members of the Judiciary shall be removable by recall vote at a Special Election requested by the General Council. At the request of the General Council, the Election Board shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date of the General Council request. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election. In any Special Election, no more than three (3) persons shall be subject to recall vote.

Section 6. District Recall of Legislators. A member of the Legislature shall be removable by a recall vote called by a petition of thirty (30) percent of an eligible voters of the District which elected such member of the Legislature. A petition shall be submitted to the Election Board, which shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date a petition is duly submitted. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election.

Section 7. Removal for Felony Conviction while in Office. Any person serving as President, Legislator, or a member of the Judiciary, who is convicted of a felony while in office, shall be removed from office and such office shall be deemed vacant.

Section 8. Vacancies in the Judiciary. If a vacancy occurs in an office of the Supreme Court because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or any other reason, such vacancy shall be filled in the following manner:

(a) If twelve (12) months or more remain before the next General Election, the Election Board shall call a Special Election in accordance with Article VIII.

(b) If less than twelve (12) months remains before the next General Election, the Legislature shall fill the office by appointment.

Section 9. Vacancy of the Office of the President. If the office of the President becomes vacant by reason of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner:

(a) If twelve (12) months or more remain before the next General Election, the Vice President shall serve as President pro tempore and the Election Board shall call a Special Election in accordance with Article VIII. Upon election of a President at a Special Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any.

(b) If less than twelve (12) months remain before the next General Election, the Vice President shall serve as President pro tempore. If less than twelve (12) months but more than three (3) months remain before the next General Election, the Election Board shall call a

Special Election in the appropriate District within thirty (30) days to fill the seat vacated by the Vice President. Upon election of a President at the next General Election, the Vice President shall resume his seat on the Legislature for the remainder of his term, if any.

(c) If less than three (3) months remain before the next General Election, the office shall remain vacant.

(d) A Vice President serving in the capacity of President pro tempore shall not vote in the Legislature except to cast the deciding vote in case of a tie.

Section 10. Vacancies in the Legislature. If a vacancy occurs in the Legislature because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner:

(a) If three (3) months or more remain before the next General Election, the Election Board shall call a Special Election in the appropriate District to be held within thirty (30) days.

(b) If less than three (3) months remains before the next General Election, the seat shall remain vacant, except when the Vice President assumes the office of the President pursuant to Section 9(b) of this Article, an election to fill that vacancy shall be held within thirty (30) days.

Section 11. Terms for Vacancies. Persons elected or appointed to fill a vacancy in the Judiciary, the Office of the President, or the Legislature shall serve out the term of the person whom they are replacing.

ARTICLE X - BILL OF RIGHTS

Section 1. Bill of Rights.

(a) The Ho-Chunk Nation, in exercising its powers of self-government, shall not:

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense and to have these rights explained at the time of arrest;

(7) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without the due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

ARTICLE XI - STATUTES AND RESOLUTIONS

Section 1. Statutes. All final decisions of the Legislature on matters of permanent interest shall be embodied in statutes. Such enactments shall be available for inspection by members of the Nation during normal business hours.

Section 2. Resolutions. All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in a resolution, noted in the minutes, and shall be available for inspection by members of the Nation during normal business hours.

Section 3. Form. All statutes and resolutions shall be dated and numbered and shall include a certificate of verification.

Section 4. Review. The Legislature shall submit statutes and resolutions to the Secretary of Interior for approval when required by federal law.

ARTICLE XII - SOVEREIGN IMMUNITY

Section 1. Immunity of Nation from Suit. The Ho-Chunk Nation shall be immune from suit except to the extent that the Legislature expressly waives its sovereign immunity, and officials and employees of the Ho-Chunk Nation acting within the scope of their duties or authority shall be immune from suit.

Section 2. Suit Against Officials and Employees. Officials and employees of the Ho-Chunk Nation who act beyond the scope of their duties or authority shall be subject to suit in equity only for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its jurisdiction for purposes of enforcing rights and duties established by this constitution or other applicable laws.

ARTICLE XIII - AMENDMENTS

Section 1. Requirements. This Constitution may be amended by a majority vote of the qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the Secretary of the Interior, provided, that at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. If the voters adopt the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-five (45) days after the election unless the amendment(s) are contrary to applicable law.

Section 2. Requests for a Secretarial Election. It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment to this Constitution at the request of two thirds (2/3) of the entire Legislature, at the request of the General Council, or upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-Chunk Nation.

ARTICLE XIV - SAVINGS CLAUSE

All actions of the Nation, formerly known as the Wisconsin Winnebago Tribe, taken before the effective date of this Constitution, including elections and terms of office, shall remain in full force and effect to the extent that they are consistent with this Constitution.

ARTICLE XV - ADOPTION OF CONSTITUTION

This Constitution, when adopted by a majority vote of the registered voters voting at a Special Election authorized by the Secretary of the Interior in which at least thirty (30) percent of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for approval and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval.

ARTICLE XVI - CERTIFICATE OF ADOPTION

Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on May 27, 1994, the Constitution of the Ho-Chunk Nation of Wisconsin was submitted to the qualified voters of the Wisconsin Winnebago Tribe and on September 17, 1994, was duly adopted/rejected by a vote of 356 (number) for, and 122 (number) against, and 2 (number) cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 880 (number) entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Diane K. Proven
Chairman, Election Board

[Signature]
Election Board Member

[Signature]
Election Board Member

[Signature]
Election Board Member

APPROVAL

I, Ada E. Deer, Assistant Secretary - Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe. This Constitution is effective as of this date; PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Ada E. Deer
Ada E. Deer
Assistant Secretary - Indian Affairs

Washington, D.C.

Date: **NOV 01 1994**

APPENDIX E

UNITED STATES CONSTITUTION

The Constitution of the United States (Without Amendments)

Preamble

We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish the Constitution of the United States of America.

Article I.

Sect. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Sect. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representative and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose the Speaker and other officers; and shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each state chosen by the legislature thereof, for six years and each senator shall have one vote. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the

expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise during the recess of the legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgement in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sect. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present be entered in the journal.

Neither house, during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Sect. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces; To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the states in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; -And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States:--And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II.

Sect. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

The Congress may determine the time of the choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and

he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their session.

Sect. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sect. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III.

Sect. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall,

at stated time, receive for their services a compensation which shall not be diminished during their continuance in office.

Sect. 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

Article IV

Sect. 1. Full faith and credit shall be given in each State to the public act, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sect. 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sect. 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Sect. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Article V.

The Congress, whenever two-thirds of both House shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided [that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article;] and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI.

Sect. 1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Sect. 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the

United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

Sect. 3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In Witness whereof, we have hereunto subscribed our names.

APPENDIX F

FEDERALIST 10



FEDERALIST No. 10

The Same Subject Continued
(The Union as a Safeguard Against Domestic Faction and Insurrection)
From the New York Packet.
Friday, November 23, 1787.
MADISON

To the People of the State of New York:

AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease.

Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of

representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

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