

TITLE: The Struggle for Sovereignty at San Carlos: A Decision-Making Dilemma

"Welcome to China," a billboard-toting Apache man sarcastically yells out to you as you drive slowly down the stretch of U.S. Route 70 that leads up to the sign notifying travelers that they are "Entering San Carlos Apache Reservation." Carefully navigating your car by the throng of shouting protesters (most of whom you know), you are alarmed by the disproportionately large number of Gila County and San Carlos tribal authorities, reinforced by K-9 dogs, who have taken up positions on the opposite side of the road, reportedly to preserve order and "protect the people."

Advancing past the tense standoff, you glance back, fearful that what was intended to be a peaceful rally might degenerate into actual violence at any moment. As a tribal member, lawyer and community leader, you realize that you must do what you can to make sure that the situation does not get out of hand. You turn your car around to find a place to park along the crowded road, unsure of what you will do, or what to expect.

Upon reaching the group of protesters, friends give you the scoop about what caused the standoff. They tell you that local off-reservation authorities, reportedly acting on behalf of the tribal council, prevented a caravan of American Indian Movement (AIM) members from entering the reservation to offer their support to those tribal members taking part in the rally. The group "Call To Action"- recently formed by concerned San Carlos residents

to seek tribal government accountability for the reservation's dire financial predicament (an \$8.6 million budget deficit and the suspension of several needed programs and services)-had organized the rally to protest alleged widespread corruption and mismanagement by several members of the tribal council. Just three weeks earlier, Call To Action had staged a temporary takeover of tribal government offices, calling for a new tribal constitution that would provide a fairer system of government complete with a separation of powers and checks and balances.

After taking a minute to catch your breath, you discuss the situation with some of the tribal elders assembled along the road, trying to determine the safest course of action for all involved. They assure you that the group has no intentions of escalating the standoff any further. They only wish that the AIM caravan be allowed to pass. Fully aware that the off-reservation authorities have no jurisdiction to prohibit anyone from entering your reservation, you suggest that legal action may be the best bet to diffuse the volatile dispute. You return to the standoff an hour later, armed with a restraining order against the local authorities. Minutes later, authorities permit the AIM caravan to cross the reservation line, touching off a wild celebration by the protesters. The sense of happiness and relief that you feel is tempered by the knowledge that while the immediate threat of violence has passed, the root causes of the standoff remain....

It has been nearly 25 years since the United States Congress passed the watershed legislation known as the Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 4502 et seq.), an act which officially ushered in the prevailing era of federal

Indian policy that, appropriately, has come to be called the self-determination era. Under this "statutory climate for a real re-awakening of tribal efforts" (Deloria 1983: 103), tribes have been presented with the opportunity to break free from the colonizing yoke of the federal government in order to define and develop their own visions for their communities and their futures. While some tribes have successfully taken advantage of this opportunity, effectively transforming their legal status as sovereign nations into a practical reality, others like the San Carlos Apache are finding it difficult to overcome the many imposing obstacles inherent in the historical legacy and contemporary nature of the tribal-federal relationship. Tribes like the San Carlos Apache are learning-largely through trial and error-that the interwoven tribal objectives of sovereignty, nation-building, and economic development cannot be accomplished without first creating and sustaining legitimate and effective institutions of self-governance. Tribes that are choosing to journey down this path are demonstrating that they are willing to go to great yet imperative lengths-including governmental reinvention through constitutional reform-in order to realize operational self-determination.

Like many other indigenous communities, the more than 10,000 people that call the San Carlos Apache Reservation home are finding the process of turning "the abstract promise of sovereignty embedded in the self-determination policy into genuine decision-making power" a trying and painful exercise (Cornell 1998: 195). Enduring a legacy of colonization that exceeds that of most other reservations in its destructiveness, San Carlos is saddled with a myriad of obstacles to tribal governmental efficacy, including: federal usurpation of indigenous forms of organization and leadership, factionalism and

infighting, a lack of control over reservation land and resources, tribal government dysfunction and incompetence, and institutional dependency.

The current crisis-incited by a tribal council that is running roughshod over constitutional dictates, due process, and anyone who questions its authority-is reviving the deep-seated distrust most San Carlos Apache have for the origins, structure, power and reach of tribal government. There is mounting sentiment that San Carlos can no longer afford to live under the current system of government if it is ever to realize true sovereignty and the cultural and economic prospects that accompany it. A growing number of people on the reservation are publicly demanding the abandonment of the current tribal constitution-rooted in federal imposition, intervention and dependency-and the development of a new tribal constitution that possesses the legitimacy of tribal consensus and sanction. Without a new constitution, you fear that political stagnation and cultural divisiveness will reign supreme at San Carlos. Without a new constitution, you fear that true sovereignty and meaningful economic development will remain reservation pipe dreams.

The stage for the modern system of tribal government at San Carlos was set with the passage of the federal legislation known as the Indian Reorganization Act (IRA) in 1934.

The IRA represented-at least overtly-an attempt by the federal government to restore a sense of bilateralism to Indian affairs.

While the philosophy undergirding the act focused on bringing an end to the BIA's autocratic rule by extending to tribes "the fundamental rights of local self-government and of opportunities for educational and economic assistance and the safe-guarding and

conservation of their lands" (Haas 1954: 11), it compelled tribes to subscribe to a completely foreign structure of government that further repudiated indigenous group organization and practice. The Bureau of Indian Affairs (BIA), dissatisfied with the lack of urgency that tribal governments like the one at San Carlos were exhibiting in creating tribal constitutions, drafted a generic boilerplate constitution that it designated for use by tribes as a model for their own constitutions. This boilerplate model would become the law of the land for the San Carlos Apache.

Although the IRA system promulgated political independence and economic self-sufficiency, it essentially ratified the extreme breakdown in traditional authority at San Carlos. Most traditional leaders chose not to participate in the formation of the new government. With the IRA system in place, distinct tribal bands living on the reservation were officially subsumed into a single political entity. Power was centralized in the tribal government, with tribal elected officials exercising considerable power over business operations as well as political administration. The system also lacked any form of independent or insulated judiciary, leaving the tribal government to appoint tribal court judges. Furthermore, the bare-boned IRA constitution failed to mandate any comprehensive separation of powers between the executive and legislative branches of government.

Today, more than 60 years after the IRA's passage, the San Carlos Apache are still living with moniker of "IRA tribe." While some tribes like the Tohono O'odham have successfully revised or abandoned the IRA constitution in favor of tribally sanctioned

constitutions that are better equipped to effect community-specific goals related to sovereignty and economic development, the obsolete IRA document prevails as the foundation of tribal self-governance at San Carlos. The BIA continues to exert considerable clout over tribal affairs. Gradual federal and state appropriation of the control and disposition of the tribe's most vital economic enterprises-its land and natural resources-has severely curbed the tribe's ability to effectively govern the reservation in its entirety. Gaming has provided some with jobs and income, but the reservation's remote location all but prevents the industry from becoming an economic bonanza for the tribe.

What limited autonomy the San Carlos government does possess has been impeded by a pronounced degree of institutional volatility and incompetence, due in large part to the constitution's failure to adequately separate executive and legislative powers (Record 1998: 13). In addition, clan divisiveness and familial factionalism still drive much of reservation politics, contributing to a high rate of turnover among elected tribal officials. Political scandal has become a way of life at San Carlos; in 1991, the chairman and vice chairman were ousted from office in the midst of allegations of various wrongdoings. The tribal judiciary also has endured its share of internal struggles, experiencing a torrent of terminations and recalls in recent years.

The absence of a separation of powers at San Carlos is once again reared its ugly head as the most recent governmental power struggle has unfolded. The tribal council, desperate to maintain the status quo in the midst of fiscal insolvency, has transformed the reservation into a virtual police state. Consistently deploying tribal law enforcement

authorities on its own behalf, the council seems determined to neutralize any and all who oppose them. The council has gone so far as to order the removal of the tribal chairman- the council's most vehement critic- from office. Tribal court judges who rule contrary to the council's wishes have been removed and replaced with more obedient council appointees. Those who publicly expressed their disapproval of the government's actions or who held peaceful protests have routinely been arrested or harassed. All in all, it seems, San Carlos is living with a broken system.

You personally have not survived the crisis unscathed. Your brother, a tribal court judge, was recently suspended indefinitely without pay for his decision to rescind a host of frivolous criminal charges levied by the tribal council against their most vocal opponents. To make matters worse, many of your closest friends have been fired from their positions with the tribe for publicly voicing support for Call To Action's demands.

Although the current crisis is once again pushing the debate over government to the forefront of public consciousness, you were part of a group that actually initiated the constitutional reform process at San Carlos a few years ago. Spurred by public sentiment, the tribal government- in what now seems an ironic twist- appointed you to head the San Carlos Constitutional Review Committee, entrusting you and two dozen other tribal members with developing a new draft constitution. During your deliberations, you and the committee identified several specific areas of inherent weakness in the active constitution, including: its failure to mention the tribe's sovereign powers or "inherent

sovereignty"; weak jurisdictional provisions over the tribe's territory; vague and confusing differentiation between the various branches of government, most notably the role of the chairman and the council; and the limited jurisdiction of the tribal court. After 17 months and 32 meetings, you and the committee have produced a draft constitution that, while not perfect by anyone's estimation, promises ultimately to embody and respect the will of tribal members and their hopes for the future.

In drafting the new constitution, you and the committee drew from the constitutions of a number of other tribes, including the White Mountain Apache, Hochunk, Oneida, and Tohono O'odham. Utilizing the U.S. government's tripartite system of democracy as its basic model, you and the committee incorporated what you felt are the fundamental elements necessary for stabilizing a historically volatile tribal government—namely providing for a comprehensive configuration of checks and balances, a clearly defined separation of powers, and the creation of an independent judiciary insulated from the other two branches.

Under the terms of the draft constitution, upon tribal ratification, the council (the government's legislative body) would increase in size from nine to thirteen legislators, three from each of the four reservation districts and one at-large majority leader. The council's powers would be confined to making laws concerning the tribe's "general welfare" and passing an annual budget. Legislative meetings would be held within reservation boundaries and would be open to the public.

Instead of a chairman and vice chairman, the executive branch would consist of a president and vice president who would run for office together on a single ballot.

Executive powers would include line item veto power, administering and enforcing tribal laws, approving tribal spending in concert with the annual budget, proposing laws, and negotiating business agreements subject to approval by the council.

The tribal judiciary would expand considerably to comprise a Supreme Court of three justices, a Court of Appeals of three judges, and other lower tribal courts. Voters would elect the trial court judges, while the president would appoint the Court of Appeals and Supreme Court judges, who would then be confirmed by the council. The judiciary would have the power to declare the laws of the tribe void if such laws were not in agreement with the constitution. The judiciary would be insulated from the legislature by an ethics committee, which would have the power to initiate impeachment proceedings in accordance with the constitution, with a unanimous vote needed from the council to bring impeachment. The chief justice of the Supreme Court would preside over an impeachment process involving the president or any legislator, while the president would preside over a judge or justice.

In keeping with the terms of the existing constitution, the tribal council needs to first review and discuss the draft, and then hold public meetings in each district to incorporate the people's recommendations. The council then needs to approve the revised draft before submitting it to the BIA for its review and approval. After making the necessary changes,

the council then needs to ratify the final version of the draft and submit it for approval by popular vote.

You submitted the committee's report, complete with the draft constitution, to the tribal council almost a year ago. The committee subsequently sent letters to the tribal council on two separate occasions requesting a special meeting to review and approve the draft constitution, but to date the letters have gone unanswered. It is becoming obvious that the current tribal council, recognizing that implementation of the draft constitution would severely curb their powers, intends to sit on their legislative hands. It will be difficult for the constitutional reform process-estimated to take about three years to complete-to get off the ground unless the tribal government takes the initiative.

Given this dilemma, what course would you, as director of the San Carlos Constitutional Review Committee, take to launch the reform process and then guide it through to legislative fruition? Should the reform process be driven by a sense of urgency, concentrating on current circumstances, such as the tribe's financial straits and the reservation's climate of civil unrest? Or should it be driven by a sense of caution and thoroughness, taking into account the importance of building popular consensus and sanction? How can constitutional reform-in its nature, scope and timing-strike a balance between the two courses? How can you, given the current atmosphere of political conflict and communal apathy, lead the way in developing a constitutional solution that speaks to both long-term cultural visions as well as the more immediate needs of your tribal constituency?

Reservation factionalism, administrative inertia and governmental illegitimacy promise to serve as daunting obstacles to the reform process. Factionalism plays a particularly divisive role in tribal politics at San Carlos because of its marked degree of subtribal heterogeneity. In addition, reservation leaders and administrators, affiliated with identifiable factions of the tribe, more often than not succumb to the pressures of family and band loyalties. The tribal government, and especially the tribal council, continue to serve as feeding stations for factional and familial nepotism.

How do you navigate past the divisive factors of factionalism and infighting preoccupying the political consciousness, factors which often serve to exacerbate those problems that sparked the reform movement to begin with? How do you get passionate tribal adversaries to put aside their personal concerns and differences to explore deeper tribal issues? How do you focus tribal intellectual resources on developing fundamental, lasting and positive change?

Assuming that you are able to negotiate these reservation obstacles, you still must contend with a marked degree of communal apathy. If your tribal constituents are disinterested in the reform process, the new constitution will most likely fail to possess the level of cultural legitimacy it needs to thrive. Unfortunately, while everyone at San Carlos seems to have an opinion about what is best and worst for the tribe, most are so thoroughly discouraged with the political process that they don't participate.

In what ways can constitutional reform function to replace individual apathy with collective participation in government? What methods can you employ to build tribal consensus and self-esteem through the reform process? How do you go about drawing the attention of tribal members away from the immediate problems of poverty, tribal bankruptcy, and civil unrest towards long-term self-determination initiatives like constitutional reform? How can you shift the tribal focus from the management and distribution of federally derived services to building a tribally derived vision of the future? How do you transform disinterested or disenchanting community members into active tribal stakeholders?

There are some potentially crippling obstacles to reform embedded in the draft constitution itself. Under the current system of government, which is predicated on the arbitrary power of the majority rule, tribal consensus is infrequently sought, and even more infrequently adhered to. Traditional Apache value systems, on the other hand, vested authority in those who gained and maintained their status as leaders in the eyes of the people. In other words, "leaders were leaders because the rest of society regarded them as such" (Holm 1982: 64).

Given this dichotomy, can the draft constitution (as described above), with its roots in the U.S. system of tripartite democracy, successfully align traditional Apache notions of authority with contemporary governance? How can constitutional reform combine traditional values with a tribally sanctioned and tribally specific political process, while

still beholden to the federal government? Can you realistically initiate constitutional reform that restores tribal consensus to its traditional position as the root of authority? Is it possible for tribal consensus to properly operate as a catalyst for change when the BIA is directly involved in the reform process? How do the San Carlos Apache restructure themselves so that their systems of governance have relevance and meaning for all of the people?

Among the most hotly contested provisions are the draft constitution's qualifications for elected leaders-including one that requires a minimum blood quantum for elected leaders, and another that requires that all tribal officials be able to speak fluent Apache. These issues were sources of great contention during committee deliberations, and promise to be major stumbling blocks once the reform process is opened up for public debate.

What about the feasibility of engaging in multiple rounds of reform, which would provide the tribe with the ability to postpone decisions on those constitutional issues that threaten to derail the inaugural reform process?

To make your situation more complicated, family, friends and committee members are urging you to run for tribal office so that you may help bring an end to the current conflict. You would love to undo the hurt the government has caused your friends and loved ones, but more importantly, you are committed to giving the tribe a new constitution, as you feel that it is probably the only thing that can bring the tribal government the popular acceptance it needs to affect significant progress for San Carlos.

It is imperative that the community perceive you as neutral if you are to rebuild their trust in the political process.

As one of the strongest advocates of the reform movement, would this be a wise move considering the public's deep-rooted disdain for elected officials and the current system of government? Couldn't your decision to run for office be misconstrued as self-serving? In the long run, would the reform process be more acceptable to the people if it is directed by someone who is operating outside the institutional subject of communal discontent?

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