

The Crisis in Native Governments in the 21st Century

DUANE CHAMPAGNE
University of California, Los Angeles

ABSTRACT: Indigenous peoples face intense competition and threats to identity and community from the globalization of information, markets and nation-state relations. Native communities are predisposed to meet the challenges of globalization on their own cultural and political terms. A crisis in Native governments results from Native reconsideration of traditional, colonial and American models of government. All three government forms are not entirely suitable to meet the challenges of present-day globalization or are not compatible with Native cultures. Native communities will most likely meet the challenges of globalization with creative economic and political constructions that include Native cultural understandings and values.

Native communities in the United States are facing greater pressures to change and take greater management over reservation economies and government. During the 21st century, increasing globalization of culture, political relations, and economy presents challenges to Native communities who wish to gain greater political control and management over their own affairs. The story of the 19th century is largely one of loss of Native control over land, government, community and culture. Throughout much of the latter half of the 20th century, Native communities have sought greater self-determination, and by the end of the century, many Native groups are ready to move in directions that will enable them to regain greater control over their communities and promote their interests in community and cultural preservation. Preserving Native community and claims to territory are fundamental values for most Native communities. These values often derive from Creation stories and the religion of the Native community, where specific political, social and cultural arrangements, as well as sacred places and territory are bestowed upon the people from the Creator or intermediary beings such as tricksters (Mann and Fields, 1997: 130-134; McClellan, 1954; Champagne, 1990: 58-65; Speck, 1931: 75; Newcomb: 125-127; Zeisberger, 1910: 92-97; Champagne, 1988: 107-126). Native communities claim their rights from time immemorial and not from the legal-bureaucratic mode of the US government's treaties, laws and acts. The Native right to self-government precedes the US Constitution and creates a law and political

autonomy for Native communities quite unlike any other ethnic or racial group in the United States.

Since the late 1960s, American policy has promoted "self-determination" and such efforts have led to stronger tribal governments and efforts to promote economic development on Indian reservations. Increasingly, tribal communities sought powers of self-government, and welcomed the resources of the self-determination policy in the form of block grants, increased funding from many federal agencies and even efforts made by the Bureau of Indian Affairs to promote self-determination through contracting of services and programs directly to tribal governments. Some tribal governments have been very successful under such arrangements. The Zuni Pueblo, for example, started managing most Bureau of Indian Affairs (BIA) and federal programs by contracts in the mid-1960s and became a prime example for the Self-determination Policy and ultimate passing of the Self-determination and Education Act of 1975 (Ferguson, Hart and Seciwa, 1988: 113-144). Other tribes such as the Salish Kootenai of Montana have reduced the presence of the Bureau of Indian Affairs on their reservation to only two staff people, while all other services are contracted by the tribal government.¹ Similarly, the largest Native nation in the United States, the Navajo, has contracted a large percentage of their services from the Bureau of Indian Affairs and other offices.

Many Native communities have taken advantage of the contracting provision of the Self-determination Act and its primary provision of promoting self-determination through the contracting of the BIA and federal programs. The Great Society Programs of the 1960s and the Self-determination grants have directly funneled significant resources by means of block grants to the control and management of many tribal governments. Since the late 1960s, tribal governments have grown considerably on many reservations, and tribal governments have control over resources and personnel that was not possible during the pre-1960 era. Nevertheless, the process of enhanced control over resources has left most tribal governments still dependent on federal funding, and along with such funding remains BIA and federal oversight and administration.

Furthermore, many tribal leaders argued that there can be no real self-determination without control over economic resources. Native communities would not be free of federal and BIA administration without the economic wherewithal of economic development. Despite federal assistance, many tribal communities had unemployment rates of over 50% and many were as high as 80-90%. Economic and administrative dependence on the federal government greatly restricted Native exercise of self-determination. Many tribal leaders argued there could be no

¹ Personal communication, 1999.

effective self-determination without tribal control and management of their own resources gained through economic development.

Some commentators have argued that those tribes who are going to be able to promote and sustain economic development are those that have already asserted self-determination (Cornell and Kalt, 1998: 15-20; Cornell and Kalt, 1992: 1-66). This argument suggests that the best way to promote economic development on an Indian reservation is to let the tribal government make decisions regarding the welfare of the community, while reducing US federal and BIA interference in Native economic decision-making to a minimum. In the United States, because of treaties, congressional acts and executive decisions, the US government has the responsibility to protect Native lands and resources. This 'trust' obligation often prevents Native tribal governments from exercising control over their assets, since such actions are subject to US government review. For most of the 20th century the BIA negotiated many of the business contracts for tribes, although since the 1980s the tribal governments have become more capable in entering and managing contracts, though they are still under US government oversight and approval. The restrictive administration of Indian affairs and assets was viewed as one fetter on the exercise of self-determination and capability to make economic decisions concerning land and mineral assets.

Many, though perhaps not all, tribal communities have been eager to promote economic development on their reservations and many programs have been promoted by the US government since the 1960s although there have been few success stories of a tribal community that was able maintain a sustained local economy based on the often marginal land-bases left to them. The Alaska Native Claims Act of 1971 created 13 for-profit corporations, but, at the same time, removed Alaska Native assets from trust control. Thus, Alaska Natives are potentially at risk of losing their remaining 44 million acres of territory. So far, however, the Alaska Natives, generally, have used their corporations to protect their remaining lands and promote economic development within the Alaska Native villages and regions. The corporations, however, are often considered relatively alien to the villagers, who demand that the corporations use their assets and political access to ensure the cultural and economic survival of the village communities (Berger, 1985: 99-117). Most tribal leaders do not prefer the Alaska Corporate model because it removes tribal assets from trust status and, therefore, causes the assets to become vulnerable to loss by powerful market forces.

The most striking example of the Native quest to assert greater tribal autonomy and control over significant economic assets is the Indian gaming movement, which now includes over 200 tribes. Native communities entered into the gaming industry generally without government direction or sanction. The process was not a government program, although it followed general policies and laws

created during the self-determination era. The legal and political battles to establish casino-style gaming were carried out by the tribal governments and resulted in the Indian Gaming Regulation Act of 1988, which provided a legal and political framework for Native casino-style gaming in many states. About 25 tribal communities have made considerable amounts of money as a result of gaming and many tribes maintain gaming establishments even though they are too isolated to make large amounts of money. Nevertheless, these small establishments can provide a community with means of employment and still earn a modest profit. The Native gaming industry has encouraged significant amounts of capital accumulation and it has also encouraged many tribal communities to invest in their social and economic infrastructures, as well as diversify their reservations' economies with investments in non-gaming enterprises. The opportunities for gaming have opened up economic possibilities which, for tribal communities, had never been possible before the last decade.

New economic market opportunities and a continuous and strong sense of political and community autonomy have led many tribes to the realization that self-determination will require some significant reorganization of tribal government institutions. If Native communities are to assert greater tribal self-government they must be less dependent on federal funds and administration. Furthermore, Native tribal governments will need to be capable of protecting their interests, land, cultures and political jurisdiction within a highly competitive arrangement of US federal, state and local governments. In the past, tribal communities who lacked the resources and the organization to compete and protect their own legal, economic and political interests often left US governmental assertions of power and jurisdiction unchallenged. Through the trust obligation, the US government often acted as the protector of Native interests in political and legal negotiations, but the inherent conflict of interest in these situations has often been detrimental to Native interests.

The continued assertion of Native self-government, a pattern that began in the 1960s, now requires even greater assertions of economic and political efforts by Native communities. The 21st century remains highly competitive among US governmental entities and Native peoples, who, like most everyone else, are increasingly incorporated into globalized and competitive markets and cultural exchanges. The 21st century promises greater competition, not less. Native assertions of self-government must prepare to meet the challenges of US federal, state, and local governmental competition and relations, and meet the challenges of the global market economy, while mediating the globalization of cultural knowledge and preserving tribal Native community and identity. The challenges can be exhilarating, and may enable many Native communities to make interesting and creative changes that grant greater self-determination and cultural autonomy under conditions of greater tribal government capabilities and greater control over market

resources, while retaining and enhancing community values, traditions and institutions. On the other hand, some communities may be further marginalized politically, culturally and economically under the new conditions, and remain dependent on the government.

Up to the present, three modes of constructing tribal governments have been upheld by Native communities or, most often, promoted by the US government. First, Native communities have almost always sought to hold onto significant features of their traditional community and political organization, or governments. This effort to retain tribal community and political identity and political process remains a signature feature of tribal political relations, even within tribal constitutional governments and by-laws offered by the US government through the BIA (Champagne, 1987). A second major political form found among Native American communities is the Indian Reorganization Act (IRA) constitutional governments, and other non-IRA constitutional governments, and those that operate very similarly with by-laws usually directed by the BIA. The latter government forms, only loosely modeled after the US Constitution, were advocated by US officials as a means of changing and incorporating Native political institutions along the lines of an electoral and representative government. A third possible model, the US Constitution, has always lingered in the background of Native governments, a model often advocated, but rarely, if ever, put into practice in Native communities.

One way or another, traditional institutions, colonial governments, or the US Constitutional model present the range of ways in which Native people and US state officials have tried to change and often strengthen Native governments so they can more effectively represent the interests and views of Native communities and protect their way of life and their legal, indigenous rights. I suggest that all three modes or plans for constructing Native tribal governments in the 21st century are not going to be possible. Each model has serious flaws that either do not allow the Native people to retain their cultural and national identity, or do not allow an effective government. A possible solution to the challenges of the 21st century does not lay in the sole use of one or another of the forms of present day tribal government, but new ways must be created to meet the challenges of cultural, political and economic globalization, while retaining and reclaiming core aspects of Native culture and political and community relations. This is a difficult challenge which must be met by the communities themselves and on their own community and cultural terms. We may help them by pointing out possible models and paths, and by refraining from imposing alien political and economic institutions and culture onto Native communities who will most likely continue to reject what does not make sense within their own cultural world view.

Traditional Institutions and Cultures

Are most Native communities ready to meet the political and economic challenges of the 21st century? The answer to this question must be no. Native culture and institutions are not well suited for centralized concentrations of power or for capitalist accumulation and management of factors of production according to demands of the market. Native cultures prefer redistribution and sharing, while hoarding is often severely criticized (Weber, 1958: 59-60; Rich, 1960: 54; Ray, 1974: 68; Adair, 1930: 394-396, 444; Ross, 1999: 30-31; Trosper, 1999: 140-142; Smith & Snake, 1996: 16-20; Snake, 1996: 36-39). Natives often view the land, elements, animals, plants and nature in general as a sacred gift from the Creator, and violating it leads to misfortune and retaliation from the disturbed beings. The world is not to be remolded as in Western views, it is not a natural resource to be exploited, but rather part of a grand plan and so, all resources need to be respected in order that they will play out their role in the Creator's plan. Humans should take only what they need for subsistence, to take more disrupts the relations with the powers of nature. Native views ask that humans accommodate to the world and live according to religious and philosophical prescriptions that honor and respect the forces and beings of nature. The community of many Native groups is not only the social and political connections among humans, but it also extends to intense relations with the forces of the non-human world which are considered powerful and sacred. The relations of this cosmic community can not be disrupted by human interests without retaliation and rebalancing (Champagne, 1995; Zolbrod, 1984: 6-7, 13-14; Loftin, 1994: 648-658).

Furthermore, Native institutional arrangements are based on close connectedness among kinship, religious, political and economic relations. Religious and political relations are closely connected in many communities and are often set out in Creation stories or by intermediary representatives of the Creator such as trickster figures and human prophets. Native political relations are generally consensual with little concentrations of power and wealth. Decisions often require unanimous agreement among families, clans, villages and regional groupings before any binding laws can be approved. Individuals are given considerable respect and autonomy, since each individual is considered a power being who has a role to play and a purpose to fulfill in the Creator's plan and individuals are not empowered or knowledgeable enough to interfere with another person's life plan. Thus, individuals are always given the right to political participation through their social groupings such as families, clans, villages and nations (Farella, 1984: 144-148; Snyderman, 1948: 29; Noon, 1949: 28; Parker, 1968: 100-108; Weslager, 1972: 102; Persico, 1979: 94; Champagne, forthcoming).

Native emphasis on consensual decision making, individual and local group autonomy and community participation through family, clan, village or other

traditional social forms creates considerable difficulties when facing increasingly bureaucratic and powerful nation-states like the United States. Decisions cannot be made quickly, dissenters are free to withdraw and decisions are difficult to make given the political processes of most Native communities. Native communities and governments worked well within their own context before the European intrusion, but Native political processes were increasingly more difficult to maintain and less effective in protecting Native land and national interests against the US nation-state, the increasingly stronger and more extensive market system and cultural inroads from missionaries, schools and US government officials. Native political orders are not necessarily organized for focused or instrumental action, but they are more capable in maintaining social and spiritual relations among social groups and individuals according to Native world views. Such political, spiritual processes were not designed to organize capitalist enterprises, manage continuous bureaucratic activities, or to manage sustained political competition for territory and rights from local, state and federal governments. If the Native Nations are left to manage the challenges of the 21st century with only their traditional forms of social and political order, most likely the result will be continued economic, political and cultural loss and marginalization (Holm, 1985: 142, 186; Porter, 1999; Record, 1999; Monette and Lytle, 1999: 64) Certainly, most tribal communities do not operate at present in a vacuum and many even predominantly traditional tribal governments have changed to manage relations with the US government and also to develop market relations to provide economic opportunity for their members. Most Native Nations prefer to keep a strong sense of Native community and political process, and are not readily willing to accept US political organization or political culture. Most likely, the solutions that Native communities adopt will maintain a strong sense of their social and political heritage.

The Colonial Model

Native communities in North America, before Western contact, did not engage in capitalist markets or accumulate significant amounts of private wealth, and they did not organize significant concentrations of political power. Relations with colonial administrations led to some changes in tribal government organization among most Native communities. During the 20th century, most Native communities accepted some form of constitutional government. Most of the governments were modeled after the US constitution, but with much simpler organization. The government developed and promoted in Indian country by BIA officials generally did not have independent courts or independent executives. BIA officials thought such organization fit better with Native forms of government which were supplanted by the new government forms (Champagne, 1987: 176-177). Most government sponsored tribal governments lacked resources, required approval from

BIA officials for significant decisions, were not empowered, and functioned as bureaucratic appendages to the BIA administration. To a large extent, the BIA tribal government models did not empower Native governments and perhaps were not intended to provide the level and scope of self-determination that tribes are now beginning to assert.

The IRA constitutional and other constitutional governments introduced by BIA officials have serious flaws. They tend to ignore Native political organization and processes, they do not provide for a strong executive, the tribal council often has plenary powers over all branches of government, and, consequently, there is little or no separation of powers among legislative, executive and judicial branches. Furthermore, since the members of the tribal council are elected and they hold plenary power, all branches of tribal government tend to be politicized, creating great difficulties in maintaining a consistent and effective government. Both the powerlessness and weak construction of most contemporary tribal governments tend to make governance very difficult (Holm, 1985: 142, 186; Porter, 1999; Record, 1999; Monette and Lyttle, 1999: 64). One could perhaps argue that the colonial tribal governments of the past 60-70 years were never designed to allow Native communities to assert the type and scope of cultural, political and economic autonomy they demand and which then poses a challenge in the immediate future.

With contemporary tribal governments, to a large extent, political forms managed and determined by BIA policies have not always provided Native communities with the protection of indigenous rights and are not always suitably organized to engage in competition with local, state and federal government agencies, and are not effective organizations in managing or developing market enterprises. Many tribal communities and leaders believe that the time has come to rethink or at least incrementally change the forms of government, not only in an attempt to make them more effective in the contemporary world of markets and political competition, but also to reclaim them in ways that reflect Native social and political organization and philosophies of government and world views concerning respect for local and individual autonomy. Many Native communities are not ready to abandon their BIA determined tribal governments, but they do want to make them more effective and more culturally sensitive to their values and history as well.

The Constitution of the United States as a Possible Model

Although the tribal governments introduced by the BIA resembled the US government in terms of majority rule and representative government, there were many instances in which the BIA-enforced tribal governments did not adhere to the Constitution of the United States, for example, in the lack of power given to the executive, in the imbalance of power, in unicameral tribal councils and often in the plenary powers in the tribal council. The question remains whether the Constitution

can provide a model for Native government organization. At first sight, the Constitution does provide a system of checks and balances among the concentrated powers within the executive, legislative and judicial branches. The Founding Fathers believed that the government needed checks and balances because they believed the competitive international and domestic markets and political environments required strong decision-making powers in the central government (Hamilton, Madison and Jay, 1996: 155-162, 186-196; Palmer, 1994: 5, 55, 65-73). The concentration of powers was checked and balanced so that no one group or branch would assert dictatorial powers Hamilton, Madison and Jay, 1996: 92, 98, 113, 336-347). The United States' government was created to meet many of the issues that now confront Native communities such as competitive markets and external and internal political competition. The Constitution is designed to promote an organized domestic national economy, manage international trade and to provide a centralization of power to carry on diplomatic and trade relations with foreign powers (Hamilton, Madison and Jay, 1996: 199, 302-305, 318, 329-330). In many ways the solution to markets and globalized political competition has been relatively successful and therefore the question remains whether such a model is helpful to Native communities who wish to enter into competitive markets and assert greater capabilities in managing relations with external government powers, such as states, the federal government and local county and city governments.

The model of the US government has not been widely accepted by Native communities, although one can find some interestingly similar constitutional governments among the Cherokee, Choctaw, Chickasaw and Creek during the 19th century, and a more recent example of the recently revised Navajo tribal government (Wilkins, 1999: 101-157; Champagne, 1992). Even in the latter cases, the US government form is adopted, but the political relations proceed along Native rules of political culture and organization which give the governments a unique tone. One reason for this is that the US government model is based on cultural and organizational principles that are alien and incompatible with the cultures and political organization of Native communities. The Founding Fathers judged that human nature is competitive and self interested and that people, if given the opportunity, are quite willing to take advantage of the rights of others. This view of human nature requires checks and balances in order to prevent any one group from gaining dictatorial powers (Wright, 1996: 26-41). Native assumptions of human nature are more along the lines of respecting the spirit-being in each individual and respecting the social groups and beings in the cosmic community as well. Natives emphasize greater individual respect and autonomy to carry out life tasks which are considered religious. Furthermore, governmental features such as majority rule, representative government, separation of powers, separation of church and state and the focus on political individualism, are all alien to the political order of Native

communities which inhibits their adopting a government such as that of the United States. The concentration of powers in elected officials and competitive political relations is not compatible with Native institutional or cultural relations. It is quite doubtful if many, or any, Native communities will directly adopt the US Constitution for their governments due to the US government's cultural assumptions and organizations which are alien to their own.

What Can Be Done?

If the traditional culture and organization of Native communities does not support market participation and concentration of political powers; and the BIA tribal governments are not designed to assert strong political action or market participation; and the US Constitutional model is not compatible with Native cultures; then what are the possibilities for assertions of Native self-determination and market participation? Since Native communities in the United States are within the US sphere of influence and culture, then we can expect that many tribal communities will attempt to adopt elements and concepts from the US government and Constitution and will try to make them work within their own context.

On the other hand, many Native communities have long traditions of resisting US cultural and political innovations. Many pueblo communities, Acoma for example, continue to appoint leaders through traditional and sacred clan and religious society relations. The Acoma want to write a constitution, but they do not wish to change their form of religion and government, rather they wish to write out their government rules, which up until now have been transferred by oral tradition. Acoma Pueblo is also engaged in relatively successful economic development and manages a casino. The Acoma have worked to separate secular business from traditional community in a conscious compartmentalized pattern. Sacred and religious matters remain at the root of the community, while many practice Catholicism. The Acoma are working to retain their traditional religious and political organization, but at the same time they are engaging in capitalist market relations.²

Gaming tribes in California have been doing well for at least a decade, and several have accumulated considerable sums of money. The gross income for gaming tribes in California is estimated at \$4.25 billion, but many consider this to be underestimated. The forms of tribal government that prevail among most California Indian tribes are constitutions or by-laws given by the BIA bureaucracy and even after ten years of gaming activity and sometimes significant wealth, California gaming tribes have not moved to significantly alter their forms of government until recently. The recent gaming compacts with the State of California require that the gaming tribes create legal codes and courts to manage potential criminal and civil

² Personal communication, 2000.

issues that might arise around the Native gaming enterprises. Many Californian tribes are finding that their constitutional and governmental organizations are not strong enough to fulfill their governmental needs, but few have yet to make significant changes. Most tribal communities still require BIA approval for changes and many communities are only thinking of refining or updating their constitutions. Most Californian Native communities are small, both in terms of land and population. A constitution such as that of the United States is too elaborate for small communities with less than 300 acres and populations of less than 500 and, in many cases, under 100 people. This small population inhibits the development of elaborate government organization. The recent movement towards establishing relatively independent courts is an outgrowth of the new economic and political complexities of gaming, but there has been no comparable effort to provide the tribal chairs with stronger executive powers, and most of the executive and legislative powers lay in the unicameral tribal council with very little power delegated to the tribal chair.

The Mississippi Choctaw made significant constitutional revisions before entering upon their remarkable manufacturing developments. Philip Martin, the highly influential tribal chair, engineered a constitutional revision that separated powers between the tribal council and the tribal chair by placing considerable decision-making powers over economic management in the hands of the executive, or tribal chair. These changes enabled the chair to make many critical business decisions such as the hiring and firing of head managers for the Choctaw business enterprises. Chairperson Martin has served a long term of office and has had great success in developing a variety of manufacturing plants among the Mississippi Choctaw communities. Few Native communities are willing to tolerate strong executive leaders, but Philip Martin is credited with developing the Choctaw reservation's economy in ways and with success that is not observed in most other Native communities (Ferrara, 1998).

The Pequot tribe of Connecticut has also been very successful economically, mainly through their casino-style gaming enterprise. Some estimates of Pequot business income exceed \$1.5 billion. Nevertheless, while having the dedicated and charismatic leadership of Skip Hayward, the Pequot tribal council remains very much a direct democracy of a New England Town Hall where all adult members are allowed to vote. The tribe is small, with less than 800 members. A tribal council and officers are elected by the town council and the elected officials manage the Pequot business interests. The Pequot have also created a court system. With all their assets, the Pequot have invested in hotels and other businesses in the region in order to diversify. The pattern of tribal government management and development of business enterprises generally seems to be the preferred pattern in Indian country. Collective entrepreneurship and redistribution of tribal business profit are more

compatible with Native culture and values than are private entrepreneurship and accumulation of wealth.

During the 1990s, the Navajo tribal government went through several reorganizations. The effect of the changes was to adopt laws that created a government more similar to the US government with a president, unicameral legislature and a relatively independent court system. These changes evolved over many years and were made incrementally. Traditionally, the Navajo lived in small decentralized communities of related kin and clans. Today, the local groups are organized into 110 local chapters that have become increasingly powerful in Navajo political relations. The chapters have moved to decentralize the Navajo government and are even moving to decentralize other institutions such as the Dine community college. The political decentralization of powers and programs reflects the Navajo tradition of autonomous and decentralized communities. While the Navajo government has often managed large business contracts over the extraction of minerals on Navajo lands, the tribal government has not managed large-scale market enterprises and market management does not seem to drive Navajo government relations (Office of Navajo Government Development, 1998: 33-40; Wilkins, 1999: 101-169).

Patterns of Change??

Many Native communities in the United States are embarking on market-based enterprises and are moving to strengthen their capabilities for managing competitive relations with federal, state and local governments. The 21st century may yet prove to be an era of increased Native American self-government, as well as market participation and perhaps even cultural consolidation. The formation of and market participation may well be uneven, and most small tribal groups may still have few options, although many small gaming tribes have had considerable success in gaming and subsequent economic diversification. The specific path of change and the rate of change will most likely greatly depend on the cultural and political institutions of the Native communities themselves, as well as their market opportunities and relations of political competition and access with state, federal and local governments. The prospect of greater government capabilities and economic self sufficiency through engaging in market relations may prove to be a combination that will allow many Native communities to not only realize their cultural views of community autonomy, but will provide greater assets for investment in cultural preservation as well as cultural creativity. How tribal communities can retain culture and self-determination within an increasingly globalized market, political and cultural relations may prove to be a central issue for indigenous peoples during the 21st century.

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