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COMMENTARY

A Return to Tradition: Proportional Representation in Tribal Government

DELMER LONOWSKI

One of the objectives of the Indian Reorganization Act of 1934 (IRA) was to provide Indian tribes with a modern system of government. However, the IRA governments differed radically from traditional Native American political systems and were contrary to traditional political culture. This paper suggests a reform of Sioux tribal government that accommodates two essential elements of traditional Sioux political culture: the *tiyospaye* and consensus decision-making. The revised system would establish proportional representation (PR) on the basis of the *tiyospaye*. By utilizing PR with a re-legitimized *tiyospaye*, tribal governments may be able to approximate traditional decision-making processes. While this proposal is generally based on the Sioux tradition, its practical application requires some adaptation to the unique historical political experiences of any modern Sioux tribal government.

The *tiyospaye* is the traditional Sioux social and political unit. Mirsky describes it as an extended bilateral family group with no formal entry or exit procedures.¹ According to Hassrick, the

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tiyospaye was a small, close-knit hunting group whose leader was generally the patriarchal family head. It was a clannish group, with loyalties directed toward the leader and devotion to kin.² Under modern Sioux tribal government, the *tiyospaye* has become politically nonfunctional, because modern Sioux tribal government instead relies on the representation of communities and districts or on reservationwide elections.³ Since familial responsibility, as found in the *tiyospaye*, is an important aspect of Sioux culture, the *tiyospaye* should be included in any effort to reform Sioux tribal government. Representation should be based on the *tiyospaye* rather than on anything else.

The problem with basing representation on the *tiyospaye* is that it is a fluid, nonpermanent organization. There is, however, a means of providing representation to the *tiyospaye* while at the same time accommodating this fluidity: a proportional representation electoral system.

There are several types of PR. In the one considered here—sometimes called the list system—a party nominates a slate of candidates by developing a list of individuals it would like to have elected. Individuals at the top of the list are those most preferred by the party. Voters vote for the party, not the candidate. Following the election, seats in the legislature are distributed among the parties, in proportion to the vote garnered by the party. The party's seats are then given to the candidates in the order they appeared on the party's list, until the party runs out of its allocation of seats. The main drawback is that, when minor, splinter, or extremely small radical parties gain representation, the PR method can lead to the fragmentation of the party system. To remedy this problem, political systems using PR often apply a percentage threshold that must be achieved before a party can gain representation. Under the threshold modification, any party that does not receive a percentage of votes equal to or greater than the threshold does not receive any seats. The proposal here is to treat the *tiyospaye* in tribal elections as a political party within a proportional representation system. This could contribute to solutions for two problems found in present Sioux tribal government: tribal member alienation and low participation rates. One explanation for these problems is that the tribal governments imposed by the IRA are alien to tribal culture.

David Schwartz defines political alienation as estrangement: lack of identification with the political system. He says that others define it as inefficacy—in other words, the inability to have one's

demands heard by the political system.⁴ Both definitions seem to apply to modern tribal government.

If, as Schwartz believes, alienation is estrangement, this view is shared by critics of tribal government who say that the system was imposed on the tribes and that this system is different from traditional decision-making processes. The model tribal constitution developed by the Office of Indian Affairs (OIA) was based on the structures found in local government in the United States, because such structures provided the things the OIA felt the tribes needed for governmental organization.⁵

On the other hand, if alienation is the result of citizen inefficacy, the usual explanation is that the poor, who are not organizationally connected, are more likely to withdraw from politics. Another way to look at inefficacy and alienation is that if the individual perceives that he or she can have no impact on the decisions of the system, he or she may feel ineffective as a citizen. This seems particularly true in traditional political cultures that utilized consensus decision-making.⁶

Either way, the result is a feeling of alienation.⁷ Plurality electoral systems, the type used in the United States and subsequently passed on to tribal government, can cause this feeling among a perennially losing minority. Either of these explanations can account for low participation rates in both tribal government and tribal elections.

Tribes can alleviate the problem of alienation by finding a means of governing with traditional methods in the context of the reservation. Traditionally, decision-making was the result of discussions that continued until all groups were satisfied or the minority seceded and set off on its own, either forming a new *tiyospaye* or joining with another, already existing one. This freedom to secede no longer exists under the current system. Instead, the minority can only abstain or ignore the decision made on the basis of majority rule.⁸ The problem that results, then, is alienation and low participation—alienation because the IRA system does not permit secession; low participation because there appears to be nothing the individual can do to change tribal decisions.

This paper proposes that representation in tribal government be based on the *tiyospaye* rather than on the geographic entities of districts, geographic communities, or reservations. In such a scheme, the *tiyospaye* would be given representation on the tribal council. Proportional representation can be used here as both a means of identifying the *tiyospaye* through the self-identification

of its members and a basis for allocating seats on the council in proportion to the percentage of votes cast for the *tiyospaye*.

One last point needs to be considered before we can explore proportional representation as a partial remedy for the problems of tribal government. That point is whether PR would be considered constitutional in light of the interpretation of the United States Constitution in *Reynolds v. Sims*.⁹ Felix Cohen writes that a tribe is free to establish its own form of government. He says that the tribe is not constrained by the constitutional requirements of a republican form of government or a separation of powers imposed on state and local governments.¹⁰

An even more authoritative source can be found in the opinion of the United States Eighth Circuit Court, which ruled, in a case against the Cheyenne River Sioux tribe, that apportionment could be based on either population or the number of qualified voters. This was acceptable because the tribal constitution said either method could be used.¹¹ In other words, the court did not impose *Reynolds v. Sims* but instead appeared to go along with Cohen's suggestion that a tribe is free to adopt its own form of government. PR, though untested in United States courts, would appear to be acceptable in the case of tribal governments. Of course, in most cases, because of tribal by-law requirements, its implementation would require the approval of the secretary of the interior.

THE ELECTORAL SYSTEM

Today, the Sioux tribal governments use plurality electoral systems. The advantage of this type of system is that it produces, or is more likely to produce, a government with a majority for decision-making in the legislature. Of course, this assumes party competition or at least some means of distinguishing the majority from the minority. It produces legislative majorities by discriminating against small parties, by encouraging a two-party system, which in turn makes a stable one-party government possible.¹² These advantages are irrelevant to tribal government, since there is no party competition. This is the point that Champagne makes when he suggests that Sioux social and political identifications are with kinship groups that have little congruence with the norms of representative government¹³ and, it could be added, with the communities or the districts that were imposed by the IRA system.

Powell suggests that, if a plurality electoral system uses single-member districts, some districts will be noncompetitive, giving citizens less incentive to vote. In addition, single-member districts tend to distort the votes given to a single party (or a dominant interest), increasing the legislative representation it receives. There is also a tendency to encourage the formation of broadly based political parties that may not be representative of some social class groups.¹⁴

The vote distortion is even more serious in multiseat districts, which exist in many tribal governments, because in that case the individual has more than one vote with which to distort the outcome. The result is that all of the seats in one district are given to the same party (or dominant interest).¹⁵

What does this have to do with tribal government? The tribes do not have party systems. The role played by parties here appears irrelevant to tribal government. This is, in fact, what the authors of the IRA felt. They only sought to accomplish geographic representation when they modeled tribal government on United States local governments which were nonpartisan as well. Grinnell writes that, in doing so, they failed to recognize the *tiyospaye*.¹⁶

The establishment of election districts not only ignored the *tiyospaye* as a center of social interaction but often even divided it.¹⁷ The allotment program had the same effect, in that family members were assigned land away from the other members of their *tiyospaye*.¹⁸

Another problem with the plurality electoral system, and especially with multimember districts, is that the voters tend to vote for candidates from their own *tiyospaye* because of familial loyalty and shared interests. This has the effect of distorting the vote in favor of one or two families, leaving others unrepresented in tribal government. Feraca provides us with a concrete example: In 1938, there were 550 votes in the Pine Ridge agency district. The Slim Butte *tiyospaye* had about 125 votes. Consequently, Slim Butte would probably never have a representative on the council.¹⁹

One problem with the application of proportional representation to tribal government is that political parties have had no role in tribal government. According to Grinnell, the families supporting particular candidates are more like factions within the tribe. Often these factions are even further divided, with rapidly shifting alliances among the subfactions that are held together primarily for the distribution of benefits and advantages to the *tiyospaye*.²⁰

This is the key to making PR work in tribal government. We need to think of the *tiyospaye* as a political party. Anthony Downs defines a political party as a coalition seeking to control the governing apparatus by legal means. This coalition is held together by self-interest and common interests.²¹ Downs's definition seems to fit the activities of the *tiyospaye* in tribal government as described by Grinnell. In the scheme proposed here, the *tiyospaye* would produce a list of candidates and would receive seats on the tribal council in proportion to the percentage of votes the slate obtained in the tribal election.

From the discussion above, it appears that PR could be made to work in tribal government. However, we must keep in mind the recommendation by Lopach, Brown, and Clow²² and Lawrence²³ that any efforts to reform tribal government must take into account Native American traditions and political culture. We have seen that the modern *tiyospaye* can act as a political party, but the question is whether the application of PR can lead to a modern tribal government that resembles traditional tribal government.

TRADITIONAL TRIBAL GOVERNMENT

The intent of this section is not to present a comprehensive discussion of traditional Sioux tribal government but to point out the elements that seem to be relevant to the application of PR. The literature suggests that the traditional culture emphasized the rights of the community rather than the rights of the individual. Sharon O'Brien describes the tribe as a community in which the individual's responsibility to the community was more important than his or her personal rights.²⁴ Tribal leaders received their power from this community. Marule suggests that authority was a collective right delegated to the leader but that responsibility and authority always remained with the people.²⁵

In spite of this emphasis on the community, traditional Sioux tribal government seems to have evinced a tremendous respect for the rights of the individual. All members of the community were equal in prestige.²⁶ The majority of the tribe did not impose its will on the minority. If it attempted to do so, the minority could either acquiesce or withdraw from the *tiyospaye*. (This by itself could explain the modern low participation rates and alienation.) The tribe practiced consensus decision-making. The only acceptable decisions were those in which there was unanimous con-

sent.²⁷ Biolsi suggests that this tradition changed to the extraordinary three-fourths majority rule for the Teton Sioux because of their interpretation of the Fort Laramie Treaty of 1868 and their opposition to *Lone Wolf v. Hitchcock*, which allowed Congress to throw out the three-fourths rule.²⁸ (This is one example of the need to adjust tribal government to the unique historical experiences of a particular tribe.) We will see below that the scheme proposed here will allow for either the consensus or the three-fourths majority decision rule.

Hassrick states that consensus decision-making has its origins in an individualism made possible by a hunting economy that required small, dispersed groups. If the individual did not agree with the community decision, he could form another *tiyospaye*. This imposed the need for unanimity rather than majority rule. If a dominant leader or the majority were to attempt to impose its will, the individual and his family and friends might secede.²⁹

In his description of the tribal government of the Oglala, Grinnell suggests that what he defines as factions (we defined these factions as *tiyospaye* or potential political parties) were groups of persons or families that lack clearly defined and recognizable organization and membership.³⁰ In fact, this seems to describe the organization of the *tiyospaye*.

The *tiyospaye* was a family hunting group, but it was not confined to the family. Mirsky writes that a person would traditionally belong to his mother's or his father's band.³¹ In fact, this depended on personal choice. After rejecting a community decision, the individual might even choose to form a separate and independent *tiyospaye*. If the individual was well liked and capable of providing food, other members of his family and some of his friends might join the new *tiyospaye*.³²

The *tiyospaye* was led by a headman, who usually achieved this position through hereditary, but also through family status and demonstrations of bravery, fortitude, generosity, wisdom, and spiritual powers gained through dreams and visions.³³ If a headman lacked these qualities, the members of the *tiyospaye* might either join another *tiyospaye* or choose another headman.³⁴

In the structure of traditional Sioux tribal government, the tribal council was the *Naca Ominicia*. The members of this council were the headmen of the families living in the *tiyospaye*, along with various shamans, braves, hunters, and medicine men who were there by common consent. Anyone could participate, but genuine membership in the *Naca Ominicia* did not occur until the

individual had demonstrated ability in some way.³⁵ Decision-making was by consensus imposed by the individual's right to secede.

From among its own members the *Naca Ominicia* appointed an executive committee called the *wicasa itacan*, which was charged with implementing the policies of the *Naca Ominicia*. The *wicasa itacan*, in turn, chose its own leaders, who were *wicasa* or "shirt wearers." The *wicasa* were the official executives of the tribe.³⁶

From this description of traditional tribal government, several elements can be identified that must be accommodated in reforming modern tribal government. The first, is to find a means to guarantee respect for the minority in tribal decision-making. Second, the *tiyospaye* must be taken into account. Third and perhaps most importantly, there is a need to restore traditional consensus decision-making. If these elements can be accommodated, it seems possible to restore the traditional institutions: the *Naca Ominicia*, the *wicasa itacan*, and the *wicasa*.

REFORMING TRIBAL GOVERNMENT

The key to the reform of Sioux tribal government is the recognition and restoration of the role of the *tiyospaye* in tribal affairs. It seems necessary to distinguish the *tiyospaye* as used here from the "communities" that were incorporated into the by-laws of the Rosebud Sioux Council. The traditional *tiyospaye* was a nonpermanent organization, with its membership free to join another *tiyospaye* or form a new one.³⁷ The "communities" are geographic entities. Biolsi wrote that John Collier made a real effort to incorporate the *tiyospaye* into the IRA government on Rosebud by providing for community representation. He even hired an anthropologist to identify the communities.³⁸ The cultural error that was made here was the assumption that the *tiyospaye* was a permanent organization that could be defined geographically.

In 1964, Feraca suggested a reform that would eliminate the geographic definition. The communities would be constitutionally recognized, with the membership in the community defined by community rolls.³⁹ There are two problems with this plan: One is that constitutional recognition makes it extremely difficult to form other communities, since this would require an amendment to the document; the other is that, in order to change communities,

the individual would have to reregister with another. Both problems can be remedied with proportional representation.

It is this problem of identifying the *tiyospaye* membership that has been causing the difficulty. This is especially true where the *tiyospaye* is not limited to family members and where members might change *tiyospaye* affiliation as described by Grinnell.⁴⁰ PR makes it possible to provide legitimate recognition of the *tiyospaye* in spite of its fluid membership.

Traditionally, the *tiyospaye* could be identified by the fact that its members camped together. This is no longer possible because of the historic land allocation policy and because public housing in the modern era is not assigned by family groupings. We defined *tiyospaye* as a political party. In a proportional representation system, it is the party that presents a list of candidates to the voters. We are suggesting that, in the case of modern tribal government, the *tiyospaye* should present the list of candidates for election, and the individuals who support the list constitute the *tiyospaye*. On this basis, each *tiyospaye* can be recognized. New *tiyospaye* can be formed by any group that submits a list of candidates in the next tribal election. It is assumed here that the *tiyospaye* will remain essentially a family grouping, but it is possible for other individuals to identify with and accept the leadership of a different *tiyospaye* if they find the decisions made by their original *tiyospaye* unpalatable.

An advantage of using proportional representation to identify the *tiyospaye* is that the *tiyospaye* (party) can be organized in the traditional manner. The top of the list submitted by the *tiyospaye* for the election could be the headman (head of the family) and his or her close advisors, who would normally be family members. The choice of the headman could be hereditary, but it could also be based on other traditional values. In particular, in the context of modern tribal government, it might be based on the potential ability of the headman to obtain economic benefits for the family.

Proportional representation also corrects the problems caused by the electoral systems currently being used. Families that are currently unrepresented on the tribal council will gain some representation unless a threshold is included in the scheme. Under the plurality electoral system now practiced, those individuals who belong to families that are in the minority and are unable to elect individuals to the tribal council are not represented on that council. If PR were instituted, each *tiyospaye* would receive

some representation and, as a consequence, the benefits of tribal membership.

A second element in the reform of tribal government should be the development of a decision-making process, other than simple majority rule, that can help assure the protection of minority rights. One of the major complaints about Sioux tribal government is the lack of checks and balances that can protect minority rights.⁴¹ Traditionally, consensus decision-making provided this protection. A return to tradition would involve providing each *tiyospaye* with a veto over tribal council action, thus restoring consensus decision-making. The rights of the individual could also be protected in the traditional manner. If the individual did not approve of the position taken by the *tiyospaye*, he or she would be free to join another *tiyospaye* or to form a new *tiyospaye* to compete in the next election in order to obtain a veto.

Here it is necessary to digress briefly, because this reform raises the problem of party system fragmentation—the creation of numerous small parties. In other words, it is conceivable, though unlikely, that each nuclear family could form its own *tiyospaye*. An effective remedy is the establishment of a threshold, as is done in other proportional representation systems. In Germany, the threshold is established at 5 percent, resulting in a system that includes four parties.

We are still working under the assumption that tribal government can be organized in any manner the tribe sees fit; however, there is probably a strong likelihood that those who are disenfranchised by the threshold would challenge it in court. For an indication as to how the court would react, we can look at the apportionment cases. In *Mahan v. Howell*, the court has allowed up to a 16 percent variation in the population of legislative districts because of a state interest.⁴² The tribal government's interest in preventing fragmentation would appear, then, to permit up to a 16 percent threshold as well.

The threshold is consistent with traditional tribal practices. Although the individual was free to separate from the tribe, her chances of survival were reduced unless she either joined or formed another *tiyospaye*. Likewise, under PR with a threshold, the opportunity to achieve representation might be reduced if the membership of the new *tiyospaye* were too small.

The success of consensus decision-making will hinge on the *tiyospaye's* ability to negotiate a consensus. This system is contrary to the Anglo-American procedure of making decisions by major-

ity rule, but it may have been the traditional method used by the Sioux. Consensus decision-making is problematic, because it requires support by the entire body making the decision. The prolonged discussions and negotiations that are needed make it difficult to reach a decision.⁴³ This problem may be partially remedied if the veto is given to the *tiyospaye* rather than to individual tribal members. Barbara Epstein reported this kind of modification in her study of peace activist groups.⁴⁴

Although the wisdom of consensus decision-making may be doubtful to those raised in the Anglo-American tradition, it was employed successfully in the past by Native Americans. In fact, it was used extensively in modern times by the European Community between 1966 and 1986 and, to some extent, continues to be used today. Wessels suggests that, although the European Community is moving away from consensus decision-making, consensus is still the goal in every decision because it provides political stability.⁴⁵

This raises a question: In a consensus decision-making system, why have more than one representative for each *tiyospaye*? There seem to be two answers to this question, one traditional and the other pragmatic. Our discussion of the traditional *Naca Ominicia* indicated that this group consisted of the headmen and other prominent individuals. These "other prominent individuals" also belonged to the families of the headmen, which gave those families multiple representation. Where the tradition has been a three-fourths majority rule (as with the Lakota), there would be no problem with multiple representation. Having more representatives would have the effect of weighting the vote in favor of the *tiyospaye* that has the larger number of supporters.

There are several reasons why this would be practical. If the veto were to be exercised by the *tiyospaye*, it would be desirable for the *tiyospaye's* representative on the *Naca Ominicia* to be able to consult with other members of the *tiyospaye* before exercising that veto. Having other members on the council would facilitate such consultation.

In addition, to expedite decision-making on less important issues, it might be desirable to use either simple majority rule or the Lakota three-fourths majority variation. This is similar to the practice of the European Community between 1966 and 1986.

Finally, multiple representation would make it possible to generate more power within the *Naca Ominicia*. Instead of a lone

representative attempting to obtain action from the *Naca Ominicia*, a group of representatives would present a united front.

With the restoration of the *tiyospaye* and the reinstatement of consensus decision-making, it is relatively simple and, as we shall see below, even necessary to return to the traditional institutions. Under proportional representation, there is no need for districts. The modern tribal council is replaced by the *Naca Ominicia*. Traditional representation in the *Naca Ominicia* is restored, with representation based on the *tiyospaye*. In the traditional manner, the *Naca Ominicia* appoints the tribe's *wicasa itacan* (executive committee), which, in turn, names the *wicasa*, who are the executives of the tribe.

Originally, the function of the *wicasa itacan* was to interpret and enforce council decisions. It would appear that the *wicasa itacan* were the executive cabinet and, in a modern system, could provide political oversight of tribal programs. If the *Naca Ominicia* is large, the *wicasa itacan* could be used to provide representation to each *tiyospaye* in the tribal executive.

Under PR, it would be essential to return to traditional governmental structures. The tribal executive must be responsible to the *Naca Ominicia* and not directly elected by the people, as is currently done. There are two reasons for this: (1) If the tribal executive is responsible to the *Naca Ominicia*, it cannot exceed its authority and subvert the representation and protection of the minority instituted by PR and consensus decision-making. In more familiar terminology, this system would accomplish what checks and balances achieve in the United States federal and state context. And (2), according to Powell, if the determination of the tribal executive does not result from the PR process, the impact of PR on voter turnout will be negligible.⁴⁶ This requirement coincides with the practice of modern proportional representation systems and with the traditional means of naming the *wicasa itacan* and the *wicasa*. Under modern circumstances, this could cause some problems.

Feraca reported that Pine Ridge was concerned about electing the executive from within the council because of the fear that one individual might hold two paying positions.⁴⁷ The important point here is that the determination should be made by the council so that it reflects a decision based on proportionality. This is another case where adaptation to the unique experiences of a particular tribe is required. Concerns such as those of Pine Ridge can be accommodated by retaining council election of the execu-

tive; however, such selection would have to be from outside the council.

The reform of tribal government to reflect traditional structures seems feasible. The question remains whether these reforms will solve the problems faced by tribal government.

PROBLEM SOLVING

The reforms suggested above are really a call for the return to traditional Sioux tribal government. The fundamental requirement seems to be the reinvigoration of the *tiyospaye* in the tribal decision-making process. From there it is simply a matter of restructuring modern tribal institutions in more traditional ways. These reforms should help alleviate the twin problems of low participation rates and alienation.

The transformation of the *tiyospaye* into a pseudopolitical party, coupled with proportional representation, will at least partially reduce the levels of alienation. Unlike the current plurality systems, where a vote cast for a losing candidate is a wasted vote that gains no representation, the PR system allows all votes to count toward increasing the representation and voice of the *tiyospaye*. PR assures the representation of almost all tribal members.

If the *tiyospaye* is turned into a political party in a proportional representation electoral system, participation rates are likely to increase, partly because the individual's vote does count—his time and effort in preparing for the election will actually lead to representation. Perhaps the most important reason that involvement will increase is Sioux tradition. The voter will be participating out of family loyalty and pride and because any vote cast for the *tiyospaye* contributes to representation and to the honor and prestige of the family.

In addition, these reforms will enhance the protection of minority rights. Under the present system, members may be represented in theory, but under PR, where each vote counts, they are represented in fact. Through this representation, the minority has access to tribal government and thus can participate more effectively.

The return to consensus decision-making may seem radical, but it would provide the strongest protection possible for minority rights. Even a return to the three-fourths majority rule would make it more difficult for the plural majority to impose its will on

the minority. Either decision-making method would provide a check—absent in today's tribal government—on the power of the leadership.

The reforms we suggest here would make the *tiyospaye* the basis of Sioux tribal government. In fact, the *tiyospaye* would become the legitimate framework of political competition and decision-making. With proportional representation, with or without consensus decision-making, each family would be able to enter into the competition for tribal leadership. With consensus decision-making, each family would be able to protect its interests.

CONCLUSION

This paper offers a theoretical approach to the reform of tribal government. Although the outline presented above addresses the most serious problems identified in the literature, more study of tribal government is needed, because these suggestions rely on four assumptions that need to be tested.

First, we assumed that the low rates of participation in tribal elections and government were the result of individual alienation from a political system that operates counter to traditional values. However, the most common explanation of low participation rates is a low level of socioeconomic status. With the poverty and the educational problems found on the reservation, this explanation very well could be valid. We need to find out whether the cause is low socioeconomic status or political and cultural alienation.

The second assumption is that the Sioux want to restore traditional values and institutions. Currently, the people are divided as to whether traditional cultural values should be held and preserved or whether Native Americans should conform to the white culture as a more pragmatic approach to solving the problems found on the reservation. If those advocating a return to traditional values are only a vocal minority, then reforms may not have the support of the majority of the members of the tribe.

The third assumption is that traditional Sioux values have survived the assimilationist policies of the nineteenth century and the IRA's destruction of traditional tribal government, and that the education and socialization processes that have been effected during the last hundred years have had little impact on traditional political culture. These processes, however, have to have had

some impact. One repeatedly sees and hears mention of concepts found in white political culture, such as separation of powers, checks and balances, and majority rule. Have these ideas been accepted into Sioux culture, or does the tribe really desire to return to traditional political practices?

This relates to the fourth assumption, that the Sioux have wanted to reform their governments, if only they could. Two possible obstacles to reform can be suggested. The first is the control by the Bureau of Indian Affairs (BIA). It could be argued that the BIA, for a variety of bureaucratic and organizational reasons, has prevented the reform of tribal government. This would appear to be the case anyway during the first forty years under the IRA. However, based on Cohen and the court cases cited above, this no longer seems to be the case.⁴⁸

If the BIA is not preventing reform, perhaps it is those individuals currently in control of tribal government. If this is true, procedures are available through the BIA that can circumvent objections by the present tribal leadership.

We need to find out what has prevented the reform of tribal government. Is it the BIA? Is it the current leadership? Or is it simply the lack of a model around which to organize reforms?

The final assumption that needs to be tested is the continued strength of the family, the *tiyospaye*. Does that strength remain? This and the other assumptions can be tested, for the most part, through survey research.

If all of these assumptions are tested and appear well founded, proportional representation could provide a basis for restoring traditional tribal government. Most importantly, it would address and possibly alleviate the problems of low participation rates and alienation.

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