Of Native Americans and Tribal Members: The Impact of Law on Indian Group Life

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Law has influenced the shape of Indian group life by providing economic or political incentives for groups to organize along particular lines, by forcing groups into closer proximity with one another or separating them, and by creating an official vocabulary for the discussion of group life. The most striking effect of law has been to focus the expression of Indian political identity at the level of the "tribe." Although largely a construct of non-Indian legal forces, the tribe has become a powerful vehicle for assertions of Indian autonomy, even when it has not always been the traditional locus of political legitimacy. Modern Indian identity and community thus reflect conflicts over and distinctive ways of appropriating the institution of the tribe. A second effect of law has been the developing support among tribal members for a supratribal Native American political community. Significantly, however, most tribal members view their support for such a community as a means of strengthening tribal units.

Native American group life assumed no single pattern during the pre-contact period, and that variability continues today. Nonetheless, over the past 500 years, various Native American cultures have experienced similar non-Indian social, economic, and political forces, yielding new organizational and symbolic complexity in these indigenous peoples' group life. To the extent that law can be distinguished among these forces, what particular forms and scope of community and what particular focus of identity has law supported or pressed upon Indian people? This article seeks to answer that question and to examine the tensions Indian groups have experienced and the various adaptations they have made in response to these legal forces.

Historians and social scientists (Hertzberg 1971; Cornell 1988; Nagel 1986) have provided multidimensional accounts of group identity among contemporary Native Americans, emphasizing the historical tendency for identity to expand from the kinship group or clan to the tribe, and further to the group that is sometimes described as Pan-Indian, supratribal, or Native Ameri-

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can. Their accounts have highlighted both internal mobilization efforts (military alliances, religious and cultural revival movements) and external pressures (deliberate as well as unintended) affecting the boundaries of group life. My emphasis here is on historic and contemporary *external* forces, both as they have supported or suppressed internal mobilization and as they have operated more directly to shape group identity and organization. Native groups have not passively submitted to these forces; but the story of their distinctive conflicts over, and responses to, American law demonstrate how groups can appropriate powerful outside pressures to sustain an evolving sense of their identity and community.

Law is one potentially powerful outside influence on political identity. Explicitly, law may establish categories of people eligible for benefits or subject to burdens according to particular understandings of ethnicity or nationality. These definitions may in turn provide incentives or disincentives for groups to organize politically along particular lines. Indirectly, law may establish conditions for informal activity that supports or retards particular forms of group organization or political mobilization. For example, insofar as international law folds all claims of native peoples worldwide into the concept of "indigenous rights," it tends to encourage the formation of coalition groups that cross tribal lines and thereby fosters a sense of political identity beyond the individual's tribe. Finally, in settings where law is salient, law can create an official vocabulary for the discussion of group life that reinforces certain conceptions of political identity and excludes others. The legal notion of "*tribal* sovereignty," discussed below, may have some impact of this sort.

The force of law in constructing political identity is especially noticeable for Native Americans. I am hardly the first legal scholar to remark that the experience of native peoples in the United States is entwined with law to an unusual degree. The existence of hundreds of treaties between the United States and Indian peoples, the inclusion of language in the U.S. Constitution establishing federal control over Indian affairs, and the vast body of federal legislation dealing with Indian relations contribute to the unusually great impact of law on Native American group life. The early and continuous involvement of the Supreme Court in conflicts between Indians and non-Indian settlers has also shaped identity in important ways. Recently, the Court has responded to challenges brought by individuals who were included or excluded from federal legislation that empowers, protects, or disables particular Indian groups. Some of these challenges are on jurisdictional grounds, while others appeal to non-Indian values of equal treatment (Williams 1991). In deciding these cases, courts are sometimes drawn into deciding which levels of group organization and which boundary definitions will

receive their blessing. These decisions, in turn, support or hinder developments in Indian group life and affect the relative strength of various social/political groupings.

My broad claim here is that non-Indian law has powerfully influenced the distinctive forms that assertions of Indian group life have taken. The first of these is Indian attachment to the entity identified as the "tribe," regardless of whether that entity always coincides with the structures traditionally viewed as politically legitimate by its members. The second is the developing Indian support for existence of a Pan-Indian or supratribal political community, although I suggest that, ironically, this development reflects a response to non-Indian attacks on the tribe as a political entity and an effort by Indian political leaders and legal strategists to strengthen the tribe.

The Paramount Place of *Tribal* Sovereignty

For many purposes, the tribe has been the basic unit of federal Indian law (Clinton 1981). Treaties were negotiated and signed with "tribes," and federal legislation protecting Indian groups and affording them rights against the federal government has often limited those benefits to "tribes" and their members. For example, under federal treaties with Indian peoples, the "tribe" has beneficial and compensable rights to land and other property, such as hunting, fishing, gathering, and water rights. Under the federal Indian Non-Intercourse Acts, adopted in the early decades of the republic, the "tribe" is protected against the unauthorized alienation of its ancient and federally secured lands. According to the Indian Reorganization Act of 1934, which authorized groups of Indians to organize under its terms for governmental and commercial purposes, the "tribe" is the unit that possesses governmental powers over a reservation and forms business enterprises.

To understand the importance of the tribal unit and contemporary tribal organizations in Indian group life, it is essential to grasp the basic framework of American law addressing native peoples. The key elements of federal Indian law are (1) federally protected land bases for designated Indian groups, these areas described colloquially as reservations, and technically as "Indian Country";[1] (2) federal acknowledgment of sovereign governmental powers possessed by such Indian groups, those powers ordinarily supplanting state jurisdiction; and (3) a federal trust obligation toward and special federal powers over such Indian groups and their members (Strickland et al. 1982). Most important in this legal scheme is acknowledgment of the preexisting and ongoing sovereignty of Indian groups. Although American law

[1] The term "Indian Country" is defined in 18 U.S.C. sec. 1151.

asserts ultimate federal authority to regulate and even extinguish Indian tribes (Newton 1984), it views tribes as continuing to exercise their historic sovereignty so long as the federal government fails to take such action.

To native groups that possess it, this governmental authority can be a valuable social/political good. It offers groups the opportunity to perpetuate themselves by controlling the official vision of proper social relations and the means of cultural expression. Competing visions can be excluded, and symbolic props for community (such as language and religious expression) can be reinforced. If the governing authority is effectively exercised, exploitive outside economic development can be precluded or turned to advantage, and public choices about the pace and direction of economic development can be made. Furthermore, this sovereign power creates positions of authority within the group that individuals and subgroups can seek to capture for personal or altruistic ends.

In contemporary American law, the existence of this governing power has offered still another significant advantage to Indian groups. It has enabled them to evade the potential conflict between special rights for Indians (e.g., tax exemptions, freedom from state laws, health and education benefits) and the prevailing American legal values favoring racial equality (Goldberg-Ambrose 1991). For example, when in the mid-1970s non-Indians challenged special employment preferences for Indians within the Bureau of Indian Affairs, the Supreme Court responded that the discrimination was not racial but rather derived from the special political status attached to Indian tribes (*Morton v. Mancari* 1974). Thus, the continued force of other elements of American law valuable to Indian people (such as retention of special rights to ancestral lands) depends in part on the perpetuation of Indian sovereign authority.

Judicial and congressional threats to the scope of this sovereignty have multiplied during the past three decades, particularly in circumstances where non-Indians and non-Indian-owned lands are involved. For example, the Indian Civil Rights Act of 1968 required tribes to conform to certain provisions of the federal Bill of Rights and limited the penalties tribal courts could impose in criminal cases. Supreme Court decisions in the 1970s and 1980s precluded tribal criminal jurisdiction over non-Indians (*Oliphant v. Suquamish Indian Tribe* 1978) and denied tribes zoning power over certain non-Indian owned lands within reservations (*Brendale v. Confederated Tribes* 1989). Sometimes Congress, which has had the ultimate say in forming the contours of tribal authority, weighs in on the side of tribal sovereignty, as in recent legislative schemes involving environmental regulation (Clean Air Act), gaming (Indian Gaming Regulatory Act), and Indian child welfare (Indian Child Welfare Act). But these sup-

portive actions have occurred within carefully controlled federal regulatory regimes.

It is within this framework of tribal sovereignty both heralded and beset that contemporary Indian group life finds expression. In American legislative and judicial settings, the constant linking of the concept of "tribe" with the idea of "sovereignty" has focused Indians' political attention and even loyalty on the tribe as an entity and on existing tribal structures in particular. Further, the constantly endangered quality of tribal sovereignty suggests that any public expression that could jeopardize the legal hold of tribal sovereignty would be subject to criticism from organized Indian interests. Yet complexities and controversies associated with the entities entitled to claim the prized "tribal sovereignty" make it likely that conflicts will arise between the expressions of Indian group life and tribal organizations. These difficulties with existing tribal governing structures can be analyzed into two categories—those associated with the boundaries of the political entity itself and those associated with the legal/political behavior of the entity.

The "Tribe": A Prelegal or Legally Constructed Concept?

The legal notion of "tribal sovereignty" implies there is some generally accepted way to identify the political entity labeled "tribe." In fact, within the American legal system there are established criteria for tribal identification, focusing on such elements as the existence of treaties with a particular group of Indians, the delineation of a single reservation or territorial land base for a group by treaty, statute, or executive order, the historic practice of the federal government of dealing with the group as a unit for purposes of federal benefits, and the political organization of the group within a framework created by federal law (25 C.F.R. part 83). Most often these criteria are invoked when an Indian group seeks "recognition" from the federal government (which triggers federal benefits, the trust responsibility, and more). The problem with these defining characteristics is that they do not always (or even often) correspond to the boundaries of political identity that traditionally have existed for Indian people.

The term "tribe" has a dual meaning—it refers both to the ethnologically defined group (a contested definition even among anthropologists) (Fried 1975) and the legally recognized political entity. Unsurprisingly, these two uses of the word do not always coincide. But by invoking the ethnological term, the law suggests that "tribe" has a natural, prelegal meaning apart from that decreed by federal statutes or treaties. It suggests some preexisting reality with necessary legal consequences, rather than some artificial, non-Indian legal construct whose plea for legitimacy rests on borrowed terminology from cultural studies.

Some recent Supreme Court decisions have fastened onto the notion of tribe as a "prelegal" form—one that generates necessary legal consequences. For example, in determining the scope of tribal sovereignty, the Supreme Court has rejected a relatively simple scheme that would view tribal authority on reservations as all-encompassing unless the federal government has acted within its constitutional authority to deny such power. Instead, the Court has established a complex system in which the status of the reservation land (held in federal trust or in fee ownership) and the race and status of the individual(s) involved affect determinations of tribal or federal versus state jurisdiction. With respect to characteristics of individuals, it seemed, at least until the 1970s, that the relevant distinction was between Indians as a class and non-Indians as a class. Supreme Court decisions had established, for example, that unless Congress positively conferred jurisdiction, tribes lacked criminal authority over non-Indians (*Oliphant v. Suquamish Indian Tribe* 1978) and possessed only partial civil authority over non-Indians who engaged in activities on non-Indian-owned fee land (*Montana v. United States* 1981).

Over the past 15 years, however, the Court has changed course, drawing its critical lines between tribal members and all other individuals. Thus, nonmember Indians are lumped together with non-Indians for purposes such as allowance of state taxation and exclusion from tribal criminal jurisdiction (*Washington v. Confederated Tribes* 1980; *Duro v. Reina* 1990). For many Indian advocates, jurisdiction over these nonmember Indians has been a matter of grave importance because nonmember Indians often enter into reservation life. The reasons are numerous—intertribal ceremonials and powwows; Bureau of Indian Affairs and Indian Health Service employment preference provisions, which do not require that Indians be assigned to their own tribes' reservations (25 U.S.C. secs. 45, 46); foster home placements and adoptions encouraged by the Indian Child Welfare Act, which establishes placement preferences for Indian parents from *any* tribe (25 U.S.C. secs. 1915(a)(3), (b)(ii)); intermarriage and tribal membership rules for offspring of mixed marriages (Hill 1982:155–57); and the proliferation of multitribal cooperative efforts in areas such as energy development and establishment of court systems. Given tribal membership rules, for example, it is not uncommon for children of mixed marriages involving tribal members not to be members of the tribe where they live. Indian advocates often view loss of control over such nonmember Indians as fragmentation of the community itself (Clinton 1981). Indeed, some Indian advocates have gone so far as to support changing rules of tribal membership to eliminate requirements of sufficient tribal ancestry and to emphasize

instead factors such as residence, affinity to and knowledge of the group, and service to the tribe (Jaimes 1992).

In rejecting these tribal concerns, the Court has used language reflecting a view that nonmember Indians are outside the "natural" tribal community. The most forceful expression of this view appears in *Duro v. Reina* (1990), where the court disallowed tribal criminal jurisdiction over nonmember Indians. The Court responded to an argument by the United States, which claimed that an Indian's enrollment in *some* tribe indicated sufficient affiliation with traditional tribal values and customs to justify jurisdiction over that Indian on *any* reservation. Justice Kennedy replied:

> But the tribes are not mere fungible groups of homogenous persons among whom any Indian would feel at home. On the contrary, wide variations in customs, art, language, and physical characteristics separate the tribes, and their history has been marked by both intertribal alliances and animosities. . . . Petitioner's general status as an Indian says little about his consent to the exercise of authority over him by a particular tribe. (Ibid., p. 695)

In fact, Justice Kennedy went out of his way to suggest the "logical" similarity in the position of nonmember Indians and non-Indians who may have significant contacts with a reservation. Although Congress has attempted to reaffirm tribal criminal jurisdiction over nonmember Indians by statute (25 U.S.C. sec. 1301), it remains unclear whether the Supreme Court will accept such transcendence of "natural" tribal boundaries (Newton 1992).

Where the Court has promoted the concept of tribe as prelegal and natural, modern legal scholarship has challenged it. Because such scholarship often questions the universality and determinacy of all legal constructs, it was only a matter of time before the "tribe" as a legal entity fell prey to such a test. The thrust occurred in an influential article by Resnik (1989), which challenged the validity of tribal gender discrimination by questioning whether Indian tribal governments really exist as entities wholly separate from the federal government. Doctrinally, federal courts describe Indian tribes as sovereigns that predate non-Indian contact, not requiring delegated federal power in order to function as governments but capable of losing some governmental powers by federal decree (Newton 1992). Resnik questions that doctrine insofar as it frees tribal governments from adherence to non-Indian values, such as those against gender discrimination. According to her reasoning, if tribes are genuine primordial expressions of Native tradition, then they should be free to depart from non-Indian principles of justice (subject, perhaps, to norms of international human rights). If, on the other hand (and as she believes), tribal governmental structure and policies are products

of federal statutory and administrative influence, then insistence on tribes' adherence to non-Indian values may be justified.

There is good reason to doubt that Resnik's conclusions follow from her premises. Implicit in her reasoning is the view that unless contemporary Indian groups reenact longstanding tribal tradition, they are not truly Indian, and not proper heirs to the legacy of tribal sovereignty. Thus, she believes that so long as she can demonstrate federal contamination of otherwise "pure" tribal tradition, she can begin to discredit tribal decisions as expressions of autonomous entities.

Resnik's approach conceives of traditional Indian society as relatively fixed and unresponsive to outside influences. Anthropologists and legal historians project a very different image, however. For example, Shepardson's (1963) study of Navajo government shows that Navajo traditions were transformed regularly over time as contact occurred with various Indian groups as well as non-Indians, and as material conditions changed. Strickland (1975) makes a similar point about the Cherokees, the first Indian group to embrace an American-style written constitution and court system during the early decades of the 19th century. The movement to establish these legal institutions was led by a group of rather assimilated "mixed-bloods." Nonetheless, Strickland argues that "it would be an error to suggest that the mass of full bloods were exploited by the [American style] legal system or even that it was a form of colonialism imposed from above by their own people" (ibid., p. 179). In fact, the melding of Cherokee and Anglo ways that produced the Cherokee court system of the 1800s was just another illustration of tribal accommodation to new influences: "A unique characteristic of the Cherokee people has always been their adaptability" (ibid., p. 183). If Shepardson and Strickland are correct, then even if the federal government has tampered with preexisting Indian organizational forms, the resulting tribal entities need not lack authenticity or legitimacy.

The remaining and important kernel of truth in Resnik's position is that non-Indian influences have been instrumental in the construction of most modern-day "tribes" as functioning legal units. The penetrating work of Cornell (1988) on this subject starts with a distinction between two dimensions of "groupness": the organizational and the conceptual. The first refers to how groups organize themselves as collective actors; the second to the ways in which they conceptualize themselves. Starting with the pre-contact period, Cornell finds that within the diversity of Indian political structures, one frequent feature is that collective action is coordinated at the level of the extended family, the kinship group, the local village, or at most the band of villages. Apart from political organization, however, there was another salient aspect of "groupness" that related to "collective participa-

tion in common symbolic beliefs, cultural practice, and social networks and interactions that established and sustained their common identity and subjectively distinguished them from the rest of the world" (ibid., p. 74). This second element varied in strength beyond the local level from group to group. Navajos, for example, experienced it very weakly. Each kinship or locality group ("chapter") was the main focus for symbolic integration through myths and stories, not the entire collection of such groups (Shepardson 1963; Champagne 1989). In contrast, the Cheyenne experienced this source of broader cohesion in much stronger form. Religious ceremonies, rituals, and beliefs drew together members of all the kinship groups and supplied a source of social integration and identification apart from political structures (Llewellyn & Hoebel 1961).

Contact with non-Indians had two major consequences for the evolution of Indian groups. First, it created material conditions and legal constraints that, as Cornell (1988:76) put it, caused "political integration [to expand] toward the maximal level of self-concept." In the process, smaller divisions within a particular cultural group were swept aside for non-Indian purposes. For example, non-Indian negotiators eager to acquire Indian resources sought out, or more often demanded and invented, political structures similar to their own with which they could deal. Most useful to non-Indians was generating a semblance of centralized Indian leadership, which could be employed to "legalize" resource transfers from Indians to non-Indians and establish indirect rule. Thus when oil was discovered by non-Indians on the Navajo reservation in the 1920s, prospective lessees asked the Bureau of Indian Affairs to identify Navajo leaders capable of signing valid oil and gas leases. From the Navajo point of view, political leaders possessed only local authority and could not speak for the tribe as a whole. So the Bureau concocted a new government for all Navajos with centralized leadership and tribe-wide authority (Young 1961). As political organization became less localized, broader group identification was invigorated and the centralized government rose in symbolic importance (Shepardson 1963).

The creation of reservations during the 19th century inadvertently contributed to this expansion of political integration to the broadest level of group self-concept. Reservations were the products of treaties in which Indian groups gave up vast expanses of land in exchange for promises of independence and security in a more limited realm. The resulting reservations forced tribal subgroups into closer proximity with one another on smaller parcels of land. They also reduced populations through economic disruptions and the hardships of relocation. Locality-based political structures were often a casualty in this process (Satz 1975:145). Simultaneously, the reservations added physical and federal ad-

ministrative dimensions to group identity. Non-Indian boundaries and maps were marked with the name of the larger group, and the existence of a distinct administrative apparatus for all members of the larger group both reinforced the significance of that group and led its members to perceive a common source of imposition. In other words, the perceptions of outsiders about meaningful group boundaries came to influence the point of focus of insiders' group identity.

The second consequence of Indian/non-Indian contact for tribal organization was the creation of political entities that melded Indian groups with quite distinct identities and self-concepts, or separated groups which thought of themselves as one people. Sometimes these developments were brought about inadvertently. More often, these alterations in tribal organization were deliberate, as when Indian groups were consolidated as a means of maximizing land availability for non-Indians, minimizing administrative structures, and easing the "White Man's Burden." In this way, even some hostile groups speaking different languages found themselves on a single reservation with a single federal administration and set of treaty-based rights. The Hoopa and Yurok in Northern California illustrate this phenomenon, as do the many consolidated reservations in the northern Plains and Pacific Northwest, such as the Confederated Bands of the Yakima Nation in Washington and the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana (Fetzer 1981; Trosper 1976). Recently the Hoopa and Yurok were successful in achieving a complete severance (25 U.S.C. secs. 1300i et seq.); but that development has not been the norm. More often, the combinations have been sustained over time, and reservation-level identity has emerged as a consequence of treatment by outside agencies and politically meaningful conduct by the newly forged "tribal" entities.

Not only were disparate groups melded together, but groups united in self-concept were divided onto separate reservations and treated as distinct political entities for purposes of treaties and recognition of sovereign powers. The Sioux, for example, were pulled apart onto many different reservations as a means of weakening them militarily. Notwithstanding these administrative and legal divisions, members of each Sioux "tribe" continued to intermarry and associate with members of the others (*Miller v. Crow Creek Sioux Tribe* 1984). Other unified groups came to be treated as multiple political entities by the federal government when the United States ordered them "removed" from their ancestral territory in the east but some members refused to leave. Those who remained were first ignored by the federal government, then later recognized as separate "tribes" (*United States v. John* 1978). The Cherokee Tribe of Oklahoma and the Eastern

Cherokee of Mississippi illustrate this phenomenon, as do the Oneida of Wisconsin and the Oneida of New York.

With the passage of the Indian Reorganization Act in 1934 (IRA), Congress engineered further adjustments in the meaning of "tribe" and reinforced the salience of the tribe as political unit. As of the 1930s, the geographic boundaries of Indian country were rather firmly outlined. Within each reservation the IRA provided a mechanism for political organization for all resident "Indians," apparently without regard to their traditional group affiliation. Through referenda held on each reservation, resident Indians could decide whether they wanted to adopt a constitution under the terms of the act, which required approval of all constitutions by the Secretary of the Interior.

Although the stated thrust of the IRA was to revitalize tribal governments that had suffered from Interior Department domination for the previous half-century, the reality was federal control by different means and in the service of somewhat different ends. Tribal group life was reshaped in the process. Neither the referenda nor the constitutions instituted through the IRA facilitated the full expression of Indian political preferences. Indian groups had to vote to "opt out" of the IRA if they were to escape its strictures. Further, the IRA's election rules dictated that binding votes could be taken even if large numbers of Indian traditionalists boycotted the elections, as they did on the Hopi Reservation. Thus small minorities on reservations were capable of triggering application of the act. When the act did become applicable, the Secretary of the Interior's approval power over constitutions usually resulted in structures alien to preexisting Indian political organization. A model tribal constitution, put forth by the Secretary's staff, served as the template for many tribes' drafting efforts.

Thus, whatever novel organizational elements were built into the reservation system became formalized as more than 172 "tribes" accepted the IRA and almost 100 produced constitutions that were ratified by the Secretary of the Interior (O'Brien 1989). Formal political unity, with apparent Indian "consent," was superimposed on whatever cultural and political diversity existed on the reservation, whether it was the combination of distinct peoples or the superseding of surviving traditions of subtribal autonomy. Bureau officials who oversaw the drafting of IRA constitutions pressed for more centralized and secular governments, with leaders elected by majorities rather than chosen by consensus and with more extensive coercive powers than most traditional tribal governments. Indeed, because federalism and separation of powers were rarely included elements, power was even more concentrated in these IRA governments than in the U.S. government.

Law and the Tensions Between "Tribe" and Indian Group Life

The IRA has created new power bases on reservations and often distanced Indian people from the governing structures recognized by outsiders. On some reservations, cleavages within tribal communities turned into vast fissures, as elected leaders realized they no longer needed to accommodate or persuade dissenting minorities. On others, tribal members only went through the motions of following their IRA constitutions; traditional politics continued to dictate significant decisions. Thus, for example, clan status and relationships, not voting rules of the tribal constitution, may determine which policies prevail on the reservation. Champagne (1986) has provided a useful framework for thinking about such developments, pointing out that these IRA governments are "poorly institutionalized." Often, IRA leaders were perceived as easy dupes of Indian Bureau officials, perceptions nourished by the fact that many IRA constitutions required that tribal ordinances receive the Secretary of the Interior's approval before they could become effective.

Theoretically, IRA tribes could bring their political structures into better alignment with actual group politics by constitutional amendment. Changing the system from within has been difficult, however, because the leaders installed through the IRA control access to financial resources and the dispensing of benefits, and because the Secretary of the Interior has to approve all revised IRA constitutions.[2] Frustrated by such obstacles, a group of Sioux in 1973 occupied the town of Wounded Knee, in large part to protest against what they described as the arbitrary, centralized power wielded by IRA government leaders (Holm 1985). Not long thereafter, traditional Hopis went first to federal court and then to the United Nations Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities to challenge the mining lease that their IRA government had authorized on a sacred part of the reservation (National Lawyers Guild Committee on Native American Struggles 1982). Ironically, the contest in federal court resulted in dismissal because the Hopi tribal government was deemed an indispensable party that enjoyed sovereign immunity (*Lomayaktewa v. Hathaway* 1975). In 1984, Zuni religious leaders, in accord with the traditional system of government, appointed an alternative tribal council, condemned the existing tribal council as improperly constituted, and sought federal recognition (which was denied). Armed conflicts over gaming have been erupting for the

[2] 1988 amendments to the IRA eliminated some of the obstacles that the Department of the Interior typically placed in the way of tribes seeking to write new constitutions or amend their old ones, making the process somewhat easier for tribes. 25 U.S.C. sec. 476(c)(1).

past several years between groups claiming to represent traditional Iroquois leadership and the IRA government on the Mohawk reservation (Hornung 1991). In all these instances, the protesters disputed the legitimacy of the officially recognized governments, claiming they were "puppet regimes," mere stand-ins for federal authorities.

Pressures on tribal governments stemming from the Supreme Court's recent treatment of tribal sovereignty have further distanced some Indian people from their officially recognized political structures. As Williams (1986) has observed, the Court's decisions have seemed to make tribal sovereignty depend on conformity to non-Indian legal/political ways. In cases where the Court has voted to uphold tribal sovereignty, it has often mentioned with approval how much the tribal government institution involved (e.g., court, taxing authority) resembles its non-Indian counterparts (*Kerr-McGee Corp. v. Navajo Tribe* 1985). Conversely, in cases where tribal sovereignty has been denied, the Court has sometimes observed that tribal governments lack attributes it finds essential in governments, such as American-style separation of powers and protection of individual rights (*Oliphant v. Suquamish Indian Tribe* 1978; *Duro v. Reina* 1990).

The lesson of these cases has not been lost on tribal groups. Indian leaders have realized that one guarantee of continued tribal self-governing authority within the American legal system is adherence to non-Indian legal/political forms. Accordingly, many tribes have established court systems complete with appellate review, environmental protection agencies with formal procedures, and their own bills of rights. These very actions, however, have made tribal governments more vulnerable to criticism and attack from traditionalists and others who question whether these governments reflect their group functioning and aspirations. Responding to such concerns, some tribes, such as the Navajo, have attempted to supplement their Anglo-style judicial systems with peacemaker courts or other alternative dispute resolution systems relying more on traditional authority figures and communal pressure (Zion 1983). Interestingly, these self-conscious attempts to reconstruct traditional ways are sometimes greeted skeptically by the more traditional tribal members.

Thus, even though the legal doctrine of tribal sovereignty and the tribal focus of the IRA encourage Indians' political identification with existing tribal entities, there is reason to believe that the alien structure of many tribal governments, resulting from the IRA and pressures to conform to non-Indian institutions, undercuts that sense of identity. Yet there are strong inhibitions on Indians' criticism of tribes as legitimate national entities, stemming largely from Indian fears that criticisms will aid the enemies of tribal sovereignty. Those fears are well founded in

the behavior of Congress, the Supreme Court, and federal agencies such as the U.S. Commission on Civil Rights.

A particularly vivid illustration of this dilemma facing Indian people is the controversy surrounding the Indian Civil Rights Act of 1968 (ICRA). This federal legislation declared that tribal governments would have to act in accordance with certain provisions of the U.S. Bill of Rights, such as the guarantees of free exercise of religion, equal protection of laws, and freedom from unreasonable searches and seizures. Indian testimony at the time of the ICRA's enactment included both protests against the misuse of tribal power and deep concern over federal intrusion into tribal sovereignty and traditions (U.S. Commission on Civil Rights 1991). The ICRA expressly enabled defendants convicted in tribal court to raise claims of civil rights violations via petitions in federal court for the writ of habeas corpus. It did not specify, however, whether an individual aggrieved by tribal action outside the framework of a criminal prosecution could bring a civil action in federal court to prevent further violations or to seek redress.

In a 1978 decision, *Santa Clara Pueblo v. Martinez*, the Supreme Court answered this question in the negative, refusing to entertain a sex discrimination claim directed at a pueblo ordinance which made it easier for children of male members to become enrolled than for children of female members. Under *Martinez*, Indians and non-Indians alike (unless they are criminal defendants) are left to present their claims of ICRA violations to tribal courts, which do not fully resemble their non-Indian counterparts in terms of judicial independence and procedural guarantees.

Ever since *Martinez* was decided, Congress and the U.S. Commission on Civil Rights have been investigating the need for federal legislation more closely policing tribal compliance with the ICRA, including legislation that would allow federal courts to review tribal court decisions (Clinton, Newton, & Price 1991). In that setting, any statements by tribal members questioning the authenticity, legitimacy, or processes of tribal governments are treated as an invitation to further curtailment of tribal powers. Resnik's (1989) article, discussed above, made this connection explicit. Dissatisfied with the result in *Martinez*, she grounded her critique of the opinion, at least in part, in the fact that Santa Clara was an IRA-organized tribe. According to her argument, pervasive federal involvement in the organization of the tribal government and the approval of its ordinances made it untenable for the federal courts to wash their hands of responsibility for tribal actions. Anticipating concerns about tribal sovereignty, she reflected on whether the pueblo's IRA government actually expressed that sovereignty or merely imposed federal policies.

Such arguments frighten Indian legal advocates, because such contentions can fortify the position of non-Indians poised to curtail tribal sovereignty. Although restricting tribal sovereignty is not the only possible reaction to perceived tribal abuses (an international human rights model for response is one alternative; Clinton 1988), in the current hazardous environment for tribal sovereignty, restrictions are a likely outcome. Yet taking even a small risk with respect to tribal sovereignty is difficult for Indians to defend. Thus, for example, when Sioux traditionalists and American Indian Movement members occupied Wounded Knee in 1973, challenging the leaders of the IRA government, the National Congress of American Indians (NCAI) quickly supported the established tribal government, despite evidence of its harsh methods of operation. NCAI is the largest and oldest Indian-controlled Indian advocacy organization in the United States (Hertzberg 1971). Justifying the groups's position, NCAI executive director Charles E. Trimble described the protest as a "clear threat" to the sovereignty of all tribes.

My own work with Indian groups offers another illustration of the tensions surrounding tribes as expressions of Indian group life. Several dozen tribal members from a variety of small tribes situated in San Diego and Riverside counties in California have formed an organization called Southern California Indians for Tribal Sovereignty (SCITS). Although SCITS membership is restricted to members of local tribes, only some of the SCITS members are tribal officials. What unites the membership is their concern that too many tribal leaders are allowing their tribes' sovereignty to slip away, through excessive deference to state and federal authorities. The most painful thorn has been an agreement that tribal leaders approved between the local counties and the Bureau of Indian Affairs, whereby federal support otherwise earmarked for tribal education projects has been directed to the county sheriffs for state law enforcement on the reservations. (California is one of several states to which the federal government beginning in 1953 delegated law enforcement authority on reservations.) This agreement has led to an increased presence of state officers on tribal lands, and a perceived tendency for police to harrass tribal members over minor matters. Although criminal conduct on the reservations has troubled many tribal members, SCITS believes the contracts took the wrong approach, because they increased state interference with tribal sovereignty, and did so at tribal expense. SCITS asserts that the tribes did not lose their jurisdiction when the state acquired law enforcement authority, and therefore the federal government should support the development of tribal law enforcement; in the alternative, California should be required to fulfill its law enforcement obligations with its own funds.

As an informal consultant to SCITS, I have observed the thin line its organizers walk between criticizing and undermining elected tribal leaders. The bylaws of the organization are careful to indicate that it is not its mission to interfere with internal tribal politics. According to article 10, section 1, for example, "SCITS shall remain neutral regarding Indian political issues. To keep this neutrality, SCITS shall avoid entanglement or alignment with the internal tribal affairs and policies of Indian country." Yet in organizational meetings, it is not uncommon to hear from people with grievances against their tribal governments, such as unfair evictions from tribal housing projects. When these speakers realize that advocating tribal sovereignty means strengthening the very tribal officials they sometimes resent, they become troubled.

Yet where can they turn for help? If they turn to the Bureau of Indian Affairs, they have reinforced federal paternalism. And even if they are willing to overcome this compunction, they will find that the federal government is increasingly reluctant to interfere in "internal" tribal matters—this even though the federal government has contributed to rigidities and entrenched governing groups on reservations through its history of heavy influence over the structure and operation of Indian group life. The state is insensitive to tribal concerns and eager for any excuse to expand its authority at the tribe's expense. Traditional tribal dispute resolution institutions have been sapped by the existence of state jurisdiction; and the advent of state jurisdiction in California has also led the federal government to shed any sense of responsibility for funding and promoting tribal courts or other dispute resolution systems. Advocating the elimination (technically, retrocession) of state jurisdiction is one possible pursuit that does not compromise tribal sovereignty; but it is a long process and, under current law, completely dependent on state consent. Thus these SCITS members are left in the uneasy position of advocating on behalf of tribal governments whose operation does not always meet their expectations of appropriate political organization and function.

I have spoken with SCITS leaders about the apparent contradiction of promoting tribal sovereignty while challenging the actions of tribal officials, and they are acutely aware of the dangers. In their public statements to the Bureau of Indian Affairs, they take care to appear to be supplementing rather than effacing tribal governments. But the tensions are palpable. The law of tribal sovereignty, both judicial and statutory, has led them to defend, or at least not to appear to attack, institutional expressions of their group life that have afforded them some shaky hold on their autonomy. SCITS's strategy of seeking ways to strengthen tribal sovereignty *on behalf of their tribes,* but independent of some of their tribal leadership, is a course of action that at least allows

them to build a base for genuine group expression in the longer term.

In sum, judicial doctrines of tribal sovereignty, together with federal laws mandating Indian political organization at the tribal rather than the village, kinship, or clan level, have channeled Indian political identity and organizational activity into existing tribal entities. Yet the territorial boundaries of these entities are often the product of federal contrivance rather than a reflection of traditional conceptual identity or political organization. And in their structure and operation, many reproduce non-Indian political values rather than indigenous methods of social organization and control. Occasionally, as with the Hopi, Zuni, Sioux, and Mohawk, these disjunctures generate challenges to tribal government in federal agencies or courts, appeals to international bodies, or even armed confrontation. But few such challenges receive widespread exposure outside Indian country. Tribal sovereignty in any form is so precarious within American jurisprudence today that it often seems too dangerous for Indians to vent their concerns about tribal legitimacy "in public." And there is at present no international institution with the mandate and stature necessary for it to offer meaningful redress (Coulter 1991).

Champagne (1986) has observed that the gap between surviving traditional tribal social/political organization and many contemporary tribal governments has impeded the development of effective tribal governing structures (and, in turn, tribal economic development). To their credit, many tribal leaders are acknowledging this predicament and seeking solutions. Some are attempting to incorporate traditional governance mechanisms into contemporary institutions such as tribal courts. The Tlingit at Sitka, for example, have a Council of Elders, whose views are sought in the resolution of difficult disputes (*Hepler v. Perkins* 1986). Tribal codes are being rewritten and constitutions amended to reflect the values and practices of group life. Federal laws and regulations relaxing the hold of the Bureau of Indian Affairs over tribal decisions (e.g., Indian Self-Determination and Education Assistance Act of 1975) provide a fertile soil for the growth of such indigenous efforts.

Indian Identity and Group Life Extending Beyond the Tribe

Just as law has focused the expression of Indian political identity at the tribal level, so it has pressed the boundaries of that loyalty outward, to encompass Indians of other tribes. In neither instance has the influence of law invariably reflected deliberate federal policy. But the consequences of legal definitions and con-

ceptions, incentive structures, and ordered frameworks for informal interactions are manifest at both levels.

Interaction among Indians of different ethnological groups, other than through warfare, was not unknown before Indian-European contact. Individuals sometimes left their group to reside with one that was alien (Llewellyn & Hoebel 1961; Reid 1970). The cause might be ritual banishment, personal disgrace, fear of revenge, or intermarriage. Sometimes adoption, formal or informal, was available as a means of permanently integrating the newcomer into the group (Reid 1970; Moore 1987). Beyond this individual mobility, there were, before contact, multitribal alliances such as the great League of the Iroquois and federations such as the Creek. Furthermore, the rules of warfare among certain tribes dictated that prisoners of war might be taken as slaves or servants and eventually integrated into the victorious group (Perdue 1979).

There was little sense of commonality, however, among the diverse groups of people. As Berkhofer (1979) has written,

> The first residents of the Americas were by modern estimates divided into at least two thousand cultures and more societies, practiced a multiplicity of customs and lifestyles, held an enormous variety of values and beliefs, spoke numerous languages mutually unintelligible to the many speakers, and did not conceive of themselves as a single people—if they knew about each other at all.

By classifying all the many native peoples as "Indians," the first European invaders generated an idea that has in turn created a reality in its own image, through non-Indian power and native response. Military alliances formed by native groups to combat European force, notably among the Southwestern Pueblo villages in the 17th century and among the northeastern woodland tribes led first by Pontiac and later by Tecumseh in the 18th century, reflected a developing sense that native groups faced a common enemy and plight (Gilbert 1989; Cornell 1988). But through the early years of the 19th century, non-Indian diplomatic and economic maneuvers were still successful in promoting divisiveness among Indian groups.

Gradually, however, the racially inspired policies of non-Indians began to reproduce in Indians the original European race-based conceptions. Shrinking numbers made coalition building increasingly essential for survival. In addition, however, a wide variety of federal measures incorporated this view of Indians as a single group, supporting such shifts in group identity. A 1778 treaty with the Delaware, for example, provided that friendly tribes might, with the approval of Congress, enter the Confederacy and form a state, of which the Delawares would be the head. Many 19th-century Indian treaties created special jurisdictional status for "bad men among the Indians," without regard to tribal

affiliation (Strickland et al. 1982:66). Federal legislation, which began supplanting treaties in the early 19th century and took over completely after 1871 (25 U.S.C. sec. 71), was particularly inclined to focus on group rights for Indians as a whole rather than for individual tribes. Most notable among these statutes is the Non-Intercourse Act of 1834, which applied federal criminal law to Indian Country (18 U.S.C. 1152). Significantly, any crime committed by one Indian against another, regardless of tribal affiliation, is excluded by the terms of the act, the implication being that these matters should be handled by the tribes themselves. This approach was continued through federal regulations adopted in 1883, authorizing creation of Courts of Indian Offenses on reservations (Hagan 1966). Under these regulations, the Courts of Indian Offenses could hear criminal cases arising on the reservation, with no distinction made between Indians belonging to that reservation's tribe and members of any other tribe (25 C.F.R. secs. 11.1–11.306). Federal services, such as health care and education, came to be delivered to Indians on or near reservations regardless whether they lived on or near their own tribal territory, thereby encouraging Indians to seek opportunities on the reservations of other tribes (U.S. House of Representatives 1990).

Throughout the 1820s and 1830s, Congress considered recommendations for creating a political unit variously called the "Indian Territory" or "Western Territory" west of the Mississippi, which would be reserved for Indians of various tribes, be governed by a multitribal legislature and judiciary, send a delegate to Congress, and serve as the embryo for a new, all-Indian state (Satz 1975). Despite having passed the Senate several times, this measure never became law. American expansionism and the politics of slavery, combined with opposition from some of the larger tribes, doomed the proposal. By the late 1830s, however, Indian groups newly removed to the West began to form their own multitribal councils for mutual assistance. Despite the antipathy of federal officials, these Indian groups managed to reach agreement on common concerns such as liquor control and resistance to land cessions.

The policies of tribal suppression and Indian assimilation, so prevalent during the 19th and early 20th centuries, had the unintended result of contributing to supratribalism as well. It was during this period that the federal government established off-reservation boarding schools for Indian children and coerced countless Indian parents to enroll their children. The government's aim was to isolate Indian children from their native culture, so they could be remade more easily in a non-Indian image. By bringing together Indians from a wide variety of tribes, this policy also inadvertently promoted intermarriage and improved

communication (as English became a common language) and cultural exchange (Cornell 1988).

Even more indirectly, federal efforts to suppress Indian tribalism and traditional practices led impoverished and despairing Indians to turn to spiritual renewal movements, such as Peyotism and the Sun Dance, that cut across tribal lines and developed an ethic that emphasized Pan-Indian community. Interestingly, the myths and narratives that describe the origins of modern Peyotism emphasize transcending bonds of kin and tribe in the interests of peaceful relations and friendship with all Indians. As Vescey (1991:190) notes, "Peyotism has functioned to produce an Indian consciousness partially through an assertion expressed through myth and ritual, of Indian identity apart from non-Indians." The Native American Church of today, which recruits members from Indian groups throughout the nation, is a legacy of these destructive mid- to late-19th-century policies, although it has gone on to create a positive Pan-Indian vision. Its practices facilitate intertribal mobility and new social bonds as members lend each other money, intermarry, and work together. Interestingly, that church, together with other Native American peyote-using religious groups, has been exempted from federal and state drug control laws (American Indian Religious Freedom Act Amendments of 1994; *Peyote Way Church of God Inc. v. Meese* 1991). The legal justification for this special exemption rests, at least in part, on respect for traditional Indian religion, even though the Native Americans Church draws on no single tribal tradition, and the membership is distinctly supratribal.

With the 20th century came the first all-Indian political advocacy movements, starting with the Society of American Indians, founded in 1911, through the National Congress of American Indians in 1944, the National Indian Youth Council in 1961, and the American Indian Movement in 1968 (Hertzberg 1971). Federal law during the 1950s and 1960s contributed to the development of supratribal identification among these groups (Cornell 1988). The most important measures were statutes and regulations that vigorously promoted relocation of Indians from reservations to the cities. Between 1940 and 1980, urban Indians went from 8% to 53% of all Indians in the United States. In the cities, Indians came in contact with state and local bureaucracies ignorant of tribal differences and prepared to treat all Indians as belonging to a single group. They also encountered discrimination based on "Indianness" rather than on tribal affiliation. Responding to these urban conditions, Indians began to join together across tribal lines. And because many urban Indians maintain regular contacts with their tribes, the conditions existed for this identification to spread back to the reservation.

The overall impact of law on Indian-wide political identification is incipient and tentative, however. Laws with a supratribal

focus have yet to produce any serious competition for the tribe as the magnet for Indian political loyalty and organizational activity. That is largely because legal developments tending to expand Indian political identification are usually justified in terms of strengthening tribal sovereignty. It is too early to predict whether those developments will contribute to supplanting of tribal sovereignty with a broader notion of Indian social/political community. But the endangered status of tribal sovereignty suggests that Indian advocates will be cautious about any legal innovation that weakens the tribal institutions currently privileged to assert tribal sovereignty claims within American law.

A survey of more recent legal developments broadening the conception of Indian group life beyond the tribe reveals their underlying connection to the defense of tribal sovereignty. The 1974 Supreme Court decision in *Morton v. Mancari*, affirming the federal employment preference for Indians with the Bureau of Indian Affairs, stimulated the hiring of Indians for influential federal positions, with no requirement that they work on their own reservations. The Court justified this otherwise "suspect classification" as no different from the requirement that legislative representatives be domiciled in their home district. Both provisions, the Court indicated, promoted self-government. But because the Court's holding would enable a San Carlos Apache to receive preference for Bureau employment on a Chippewa reservation, one reading of the decision stresses the Court's implicit redefinition of Indian political community to encompass Indians regardless of particular tribal affiliation. Surprisingly, the Court studiously ignores this implication of its holding, preferring to emphasize the benefits for each separate *tribe's* sovereignty.

Also manifesting American law's broadening conception of Indian political community is the Indian Child Welfare Act of 1978. Among other things, this legislation creates certain preferences, applicable in state court, for adoptive and foster care placements of Indian children. Although the initial preferences are for family members and members of the child's tribe, the next level of preference encompasses Indians of any tribe (25 U.S.C. secs. 1915 (a)(iii) and (b)(2)). As with the Indian employment preference for the Bureau, the official justification for this scheme is enhancing tribal sovereignty, even though the effect is to enlarge the sense of political community to embrace Indians of other tribal groups.

A final illustration drawn from federal law involves the criminal jurisdiction of tribal courts. After the 1978 Supreme Court decision in *Oliphant v. Suquamish Indian Tribe* had stripped tribal courts of criminal jurisdiction over non-Indians, many tribes continued to assert criminal authority over Indians enrolled in other tribes. Twelve years later, in *Duro v. Reina* (1990), the Court rejected tribal criminal jurisdiction over these Indian nonmembers

as well, premising its decision partly on the lack of a pan-Indian political community. Soon thereafter, Congress exercised its prerogative to override the Court's decision, legislatively recognizing tribal criminal jurisdiction over nonmember Indians (25 U.S.C. sec. 1301). In the legislative discussions preceding the enactment, Indian advocates advanced the notion of common bonds among Indians across tribal lines, resulting from employment, intermarriage, religion, ceremonial practices, and the experience of a distinctive legal regime. Subsequent tribal actions drawing the boundaries for criminal jurisdiction to include Indians nationwide should foster acceptance by nonmember Indians of the political legitimacy of tribes other than their own, as well as increased exchange of legal ideas and institutions among tribes.

Notwithstanding the supratribal implications of the post-*Duro* federal legislation, the new law also has had consequences for *tribal* sovereignty. Jurisdiction over nonmember Indians has become an important testing ground for the embattled doctrine of tribal sovereignty. *Oliphant* (1978) had been a stinging defeat for tribal sovereignty, both because of its direct impact on tribal control over reservation conduct and because it signaled increased Supreme Court activism in narrowing the scope of tribal governing authority. After *Oliphant*, the only way for tribes to appear as more than slightly overgrown social clubs was to assert criminal authority successfully over *some* nonmembers; and the only nonmembers left were nonmember Indians. Thus, Indian advocacy of a supratribal Indian political community in the *Duro* litigation and subsequent legislation is largely an artifact of the holding in *Oliphant*. Indian advocates would have preferred to premise tribal criminal authority on general territorial jurisdiction, regardless of the defendant's race or tribal membership (U.S. American Indian Policy Review Commission 1977). They settled for jurisdiction over nonmember Indians because that was the only way left to salvage some part of tribal sovereignty.

At the tribal level, many cooperative intertribal governing institutions stretch the bounds of Indian political identification and group life beyond the tribe, but again usually in the service of tribal sovereignty. Southern California Indians for Tribal Sovereignty (SCITS), described above, is a typical example of a supratribal group that exists to advance the interests of tribes as sovereigns. Sometimes these institutions are framed or encouraged by federal law. When, for example, the Indian Child Welfare Act of 1978 authorized tribes to take jurisdiction over child welfare matters from the states, the Bureau of Indian Affairs issued regulations authorizing smaller tribes to join together in "consortia" for that purpose (25 C.F.R. sec. 13.1(c)). Each consortium would be a single entity that would exercise jurisdiction over all members of participating tribes. Similarly, in 1988, when Congress enacted legislation reflecting the settlement of water

rights claims of several tribes in San Diego County, California, one central element of the settlement was the creation of an intertribal entity called the San Luis Rey River Indian Water Authority, with power to receive federal funds and water allocations (San Luis Rey Indian Water Rights Settlement Act). The settling tribes were to establish this entity through duly enacted tribal ordinances and to endow it with the power to act for them. According to the legislation, once the authority is established, it "shall be treated as an Indian entity under Federal law with which the United States has a trust relationship." Both for the child welfare consortia and the water authority, a pan-tribal entity is created with direct authority over tribal members or property.

In other instances, the institutions are purely tribal innovations, as with the Council of Energy Resource Tribes (sometimes called the tribal OPEC) and the growing number of intertribal courts that supply trial and appellate court services to geographically proximate groups of tribes. Interestingly, the chief judge of the Northwest Intertribal Court System, based in Washington State, is a Hopi. Whether federal or tribal in origin, these organizations tend to be formed so that smaller tribes can secure their own tribal sovereignty. In the absence of such cooperative ventures, tribal governing power would be practically unattainable, and states would begin to encroach on tribal sovereignty to fill the vacuum. Nonetheless, such intertribal institutions can simultaneously create the framework for expanded Indian political loyalties, by focusing attention on broader networks, creating new political leadership and constituencies, and supplying a new language for Indians to discuss and think about their political ties. Such developments can form the rationale for further laws treating Indians as a distinct group, rather than as a collection of tribal members.

Obviously, it is not in the interest of tribal leaders to take actions that weaken their political base. Furthermore, American law is ambivalent at best toward legal recognition and support for groups defined on an ethnic or racial basis (Williams 1991). Thus, if further expansion of Indian group life occurs, that result will probably be the unintended consequence of actions taken to buttress tribal sovereignty.

Conclusion

Contemporary Indian tribes are an amalgam of traditional identifications and organization, federal pressures, and Indian improvisation. Given the disjuncture between traditional social/political orders of many Indian groups and contemporary tribal entities, there is reason to believe that the tribe, as a legal construct, has outpaced the tribe as a socially meaningful unit. Nonetheless, tribal members have come to see the empowerment of

tribal governments as essential to maintaining Indian autonomy and avoiding state authority. That is because current federal policy and Supreme Court decisions have annointed the tribe as the repository for Indian sovereignty, while simultaneously placing that very sovereignty in jeopardy. Thus tribal members often feel compelled to defend tribal governments even when they do not always agree with the form particular tribal governments take, the powers these governments exercise with regard to local Indian subgroups, the methods of decisionmaking they employ, or the individuals who have come to power within tribal institutions. The consequences are often factionalized and unstable tribal governments, although many tribes are initiating projects to infuse more traditional beliefs and practices into tribal institutions.

While federal Indian law has overtly promoted tribal organization, direct and indirect legal stimulants for supratribal identification have also been evident. Indian group life has taken on added dimensions as a result. These measures have not always been well received by federal courts, however. They tend to be most successful when they are linked with the advancement of tribal sovereignty.

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