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THE INDIAN REORGANIZATION ACT AND THE LOSS OF TRIBAL SOVEREIGNTY

CONSTITUTIONS ON THE ROSEBUD AND PINE RIDGE RESERVATIONS

RICHMOND L. CLOW

The rhetoric of the Indian New Deal has directed scholars to study tribal political activities only after the Indian Reorganization Act of 1934. Graham D. Taylor expressed the prevailing opinion when he claimed that “the tribal governments established under the Indian Reorganization Act constitute a totally new and unfamiliar level of organization for many Indian groups.”¹ Although the flurry of new tribal constitutions adopted after 1934 overshadowed previous constitutional activities, Taylor and others overstate the case. Indian tribes had always had the right to determine their own form of government, and many tribes, beginning with the Cherokee in 1827, had adopted written tribal constitutions long before the IRA. The Brulé Sioux of the Rosebud Reservation and their Oglala kinsfolk

on the Pine Ridge Reservation had between them written and adopted seven constitutions between 1916 and 1933. These documents show both a strong understanding of and a widespread interest in constitutional government among the Sioux. Moreover, these early constitutions actually provided the tribes with more autonomy than did the 1934 IRA constitutions, which required approval or review of the actions of tribal governments by the Office of Indian Affairs in the Department of the Interior or by the secretary of the interior himself. Despite the plenary powers of Congress over Indian affairs, nothing in the context of the pre-1934 constitutions was as limiting as these “limiting clauses” in the IRA constitutions.²

The Rosebud Business Council accepted the first written constitution for that reservation in 1916 and the Pine Ridge people followed with their own written constitution in 1921. The Rosebud document evolved from the reservation’s Business Council. In 1916 members of the council appointed a constitution drafting committee. Asked for his suggestions, Superintendent Charles W. Davis preferred that the Sioux write their own

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constitution because when “we attempt to formulate [it] . . . for them and to mold them to it we will not only . . . fail in our attempt but we will discourage them in their work and dishearten them.”¹ Upon completing the constitution, council members approved the document, but the reservation population did not vote on the constitution.

By writing this document, the Rosebud Business Committee exercised the tribe’s inherent right to create a government of its own choosing.² This constitution based representation to the newly created Rosebud Tribal Council on reservation camps or communities instead of on reservation farm districts.³ In 1916 there were twenty-four indentifiable Indian communities on Rosebud, each of which was permitted to send one male delegate, twenty-five years of age or older, to serve on the council. Elections were held on the first Saturday in December of every even numbered year with the term of office set at two years. Only male allottees twenty-one years of age or older could vote.

This constitution had no restraints requiring outside review, but it did control the conduct of Tribal Council members by prohibiting unauthorized petitions from being sent to any government official without the approval of the council. The 1916 constitution was not popular with the reservation people and was headed toward conflict because the members of the Rosebud Business Committee who drafted the document had never submitted it to the reservation population for approval. This submission was absolutely necessary because the new Rosebud Tribal Council assumed the duties and responsibilities formerly held by both the former Business Committee and all the Rosebud people in general council.⁴ This preemption was a costly mistake but the upshot of it was to demonstrate that the reservation population demanded to have a role in the ratification of reservation constitutions.

In the following year, Claude C. Covey became the superintendent at Rosebud. He reported that the “Tribal Council as con-

ducted on this reservation is the best I have ever seen anywhere.” He added that “practically all of the members of the Tribal Council are the best Indians from every point of view . . . They are industrious, intelligent, in fact, they would be considered the conservative leaders of the Indians.” Covey was also quick to note that there was strong opposition to the existing Tribal Council by those individuals who were once called chiefs or headmen; their powers were declining and they wanted to return to the former general council.⁵ An election was held in June 1920 to determine what type of reservation governing body would represent the tribe—the former general council or the 1916 constitutional government. Nearly 75 percent of the eligible males over the age of twenty-one voted for the general council to represent the tribe.⁶

With this mandate to change the form of representative government on the Rosebud Reservation, tribal members wrote a new constitution that reflected the past vote and the reservation population approved the new government in December 1920. The name was changed from the Rosebud Tribal Council to the Rosebud General Council.⁷ Membership in this organization included “all bona fide” tribal members instead of just male allottees. The nineteenth amendment to the U.S. Constitution giving women the right to vote had been approved 26 August 1920; that may have accounted for the inclusion of women in the tribal organization. Though membership was open to all members of the tribe, a Board of Advisors was created that consisted of the chiefs or headmen from each of the reservation’s scattered camps or communities. The officers of the Board of Advisors, collectively called the Advisory Board, included a chairman, vice chairman, secretary, treasurer, and critic, all elected for a term of two years.

The 1920 constitution provided for greater community participation by opening council membership to all members of the tribe. In addition, the Rosebud General Council reserved for itself in the first amendment the “authority and power to change and amend

the Constitution and By-laws of the said council any time it [saw] fit to do so."¹⁰ The 1920 constitution required more tribal participation, established a Board of Advisors for the traditional headmen, and specifically defined the broad power of the General Council to amend their governing document. John Buntin, Rosebud superintendent during the 1920 ratification, claimed that "it is best, in all matters which are of very little importance to permit them to name their own representative, which I believe to be the policy of your Office."¹¹ Reflecting the sentiment of the Rosebud people, Carlos Gallinaux, secretary of the General Council, noted that "the organization may not have a legal existence but it is, nevertheless, an Official [sic] organization under the supervision of the Rosebud Superintendent."¹²

By 1921 two written constitutions had governed the Rosebud reservation and the reservation people were responsible for writing and approving each constitution, with minimal interference or help from either the reservation superintendent or the Office of Indian Affairs. In the same year the people of nearby Pine Ridge Reservation drafted their first written constitution. A leader in the movement, James H. Red Cloud, a descendant of the famous chief, delivered copies of the first constitution written by the Oglalas to Henry Tidwell, superintendent of the Pine Ridge Reservation. Tidwell returned the copies to Red Cloud without approving the constitution, preferring not to associate with reservation government.¹³ Tidwell categorized Red Cloud and his supporters as troublesome, unprogressive old men who were trying to preserve their families' past prestige. Indeed, they were trying to do that, but by more liberal and democratic methods than those advocated by the reservation superintendent.

The 1921 constitution became the first written constitution of the Pine Ridge residents, though it was never approved by the Department of Interior's Office of Indian Affairs. It expanded tribal participation by providing a larger governing body to conduct

tribal business. Adult members elected five delegates and five alternates from each of the reservation's eight political districts to serve on the new Oglala Tribal Council.¹⁴ Representatives were elected for a four-year nonstaggered term and selected their own officers, who served one-year terms. The council also elected chiefs, who were to maintain the "dignity of a chief[,] to advise and give peaceful and wise counsel and to defend the rights of the tribe and his fellowmen."¹⁵ Not only were early constitution writers concerned with the need to expand tribal participation in the reservation political process, but they also maintained as much as possible of their cultural heritage in the written documents by continuing the office of chief and group participation in the political process, even though that approach was contrary to the philosophy of the Office of Indian Affairs and its employees. Attempts to change constitutions in the 1920s suggest that on each reservation tribal leaders were aware of their tribe's inherent powers of self-government and that the reservation political leaders understood the fundamentals of constitutional law.

Rosebud leaders revised and amended their 1920 constitution in December 1924. They sent James McGregor, superintendent, a copy of the General Council's revisions in the early spring of 1925. After comparing the 1920 constitution with the 1924 revisions, McGregor informed the commissioner of Indian Affairs that "there seems to be a tendency in this new constitution to be wholly independent of Agency officials."¹⁶ Changes incorporated in the 1924 constitution included limiting the number of members on the Board of Advisors to twenty and basing that number of representatives on the nine reservation farm districts. The amendments added to the former 1920 constitution became integral articles in the revised 1924 constitution and the provision permitting the election of a reservation chief was dropped.¹⁷

At Pine Ridge in the early 1920s, Ernest W. Jermark, the superintendent, noted that the council leadership called meetings whenever

they wanted and that jealous men composed the council leadership. Jermark wrote that he "seriously questioned the advisability of the continuance of a council," and that the council had "not been of material benefit to him [sic]."¹⁸ Despite Jermark's hostility toward the Pine Ridge constitutional government, tribal leaders continued to refine their constitution.

Jermark reported that the tribe was disillusioned with the 1921 constitution and that the reservation leaders wanted a new constitution that would provide a better format for the election of representatives and thereby convince the commissioner of Indian Affairs to approve the document. Toward this end, Jermark sent a copy of the new constitution, written and adopted by the tribal council, to Commissioner Charles Burke.¹⁹ Burke wanted provisions added to the constitution that would strengthen the superintendent's role in tribal government by permitting him to call special meetings of the council.²⁰

The commissioner approved the revised constitution on 18 September 1928.²¹ Following departmental approval, Jermark called for a general council of delegates from the seven farm districts to meet at the Loafer Camp, called Red Cloud's Hall by the Oglalas, on 28–30 November 1928, in order that the delegates could accept or reject the proposed constitution.²² After several days of discussion, twenty-seven delegates voted for and two against it.²³ Only four pages in length, the new constitution required three enrolled adult members from each of the seven farming districts to sit on the new Oglala Tribal Council.²⁴ Article 11, which pertained to the amendment process, stated that no changes were final "until approved in writing by the Commissioner of Indian Affairs."

Another provision in the 1928 Pine Ridge constitution required that the "superintendent of the Pine Ridge Agency shall arrange for the first election of councilmen under this constitution."²⁵ Because the constitution did not define a method for the election of candidates but left that process to the people's discretion

in each district, Jermark attempted to provide some uniformity to the elections by declaring 31 December 1928 as election day reservation-wide. Jermark understood that his suggestion to have uniform elections in all the districts was not binding; as he noted, "I do not know that I have any authority to force the Indians to use this against such plan as each district might care to use."²⁶

This 1928 constitutional government became known as the Committee of 21, but many members of the former government were unhappy with it. Two years after the first council was seated, the dissidents initiated discussions to create a new tribal government at a meeting held 19–21 February 1931, at the Episcopal Church at Porcupine. Assembled delegates voted 45 to 1 to abolish the Committee of 21. To replace it, representatives voted 48 to 0 for the "tribal Council previously known as [the] Oglala Council [to] now be and stand as the tribal council of our reservation." The delegates then appointed one representative from each district to inform the superintendent of the change in government. In defense of the change, they presented a written statement to the superintendent, stating that the former council gave "the people more freedom in speech and expression" than the current government; in addition, government "which [had operated in one form or another] . . . for over 35 years . . . was generally satisfactory to the tribe."²⁷ To counter the dissenters, representatives supporting the Committee of 21 claimed that returned students and other educated members of the tribe backed them while "elderly illiterate gentlemen on this reservation are fighting desperately to revive their old . . . tribunal of chiefs."²⁸

This dispute was more complex than a battle between the descendants of chiefs and headmen and the recently educated Oglalas and revolved around the disputed election of 31 December 1929. Henry Standing Bear, a major supporter of the Committee of 21, changed his allegiance to the dissenting group following the election dispute. So did James

Red Cloud, who had been involved in an earlier election dispute that he lost to James LaPointe, a strong supporter of the Committee of 21. Many other people also turned away from the committee in response to the irregularities of the 1929 election. The opponents of the Committee of 21 claimed that the election had been a vote to test the new constitutional government of 1928 for two years; the two years had passed and the trial period had ended unsuccessfully. James McGregor, the new superintendent at Pine Ridge, announced that his office would remain neutral in this dispute between the two factions.²⁹ McGregor went even further, stating that the Office of Indian Affairs recognized the Committee of 21, but if the tribe decided to change governments that was fine with him. He was not taking sides. To make that clear, McGregor stated that it was "not the mission of this Office to say who shall or shall not be elected to the Council;" and that it was his desire to observe "A HANDS [sic] OFF Policy in the election of members."³⁰

In the summer of 1931, the opponents of the Council of 21 created their own extralegal government called the Council of 100, based upon the former Oglala Tribal Council. In an attempt to determine which government would govern on Pine Ridge, the rival organizations held a joint meeting at Mission Flat Hall in early September. An overwhelming number of delegates voted to discontinue the Committee of 21 and to return to the former Oglala Tribal Council.³¹ The Office of Indian Affairs requested that another general tribal council convene and discuss again the form of reservation government. This time delegates from each of the farm districts met at Allen, South Dakota, on 13 November 1931, and voted overwhelmingly once more for the old form of government.³² After the second general vote in support of the former government, Commissioner of Indian Affairs Charles Rhoads accepted the tribe's will and worked to improve the newly drafted constitution. Rhoads carefully noted, however, "[this] office hesitates to attempt to rewrite the constitution

and by-laws adopted by them, as some matters require an understanding of local conditions and conference with the Indians."³³

Tribal members began drafting a new constitution in late 1931 and the process continued until early 1933. The new government was called the Oglala Sioux Tribal Council and all enrolled members of the tribe were entitled to vote on any tribal business. Members had to reside in one of the eight political districts that closely coincided with the farming districts. Even though all enrolled adults were members of the tribal electorate, the constitution declared that a forty-six member council composed of an Executive Board and five delegates from the eight districts "shall have complete management of any business coming before and for the best interests of the Oglala Sioux Tribe." In addition, this constitution granted authority to the council to assess fees necessary for the conduct of the tribe's business, but no funds collected were to be loaned or borrowed. All proposed constitutional amendments had to be filed and circulated for thirty days prior to action by the council. A quorum consisted of a majority of the councilmen; when the council was voting on an issue that pertained to tribal property, three-fourths of the adult males had to support the question.³⁴ In short, by eliminating the commissioner's review of constitutional amendments, this document provided for more group participation and less Office of Indian Affairs involvement than the 1928 constitution that it replaced. That the Sioux people were sophisticated in their understanding of a constitution was demonstrated by the relative ease with which tribal constitutions changed on Pine Ridge from 1928 to 1933 and by the fact that the later constitution provided tribal government greater self-rule.

While the Pine Ridge people spent years writing and changing their constitution in the late 1920s, these were relatively quiet times on Rosebud. Superintendent Edward E. McKean considered tribal government a necessary learning experience for the Rosebud people because it "leads [the Indian] . . . to take a

personal interest in his own affairs and is a strong factor in assisting him in his growth toward general citizenship." McKean did complain that the seventy-two delegate Rosebud council was too large to conduct tribal business efficiently.³⁵

Though the 1924 Rosebud constitution provided for popular participation, the council's size made it difficult to reach decisions. Eventually, the council was forced to create a constitutional drafting committee in late 1932 or early 1933. At the regular 6-8 April 1933 council meeting, the members unanimously approved the new constitution and bylaws.³⁶ This 1933 Rosebud constitution decreased the size of the Board of Advisors from seventy-two to twenty, eliminated representation based upon the individual Indian communities, and employed the reservation farm districts as the basis for selecting delegates to the Board of Advisors. In order to amend the constitution, only a three-fourths vote of the council was required. Demonstrating that members of tribal council government understood Congress's paternalistic approach to Indian affairs, the constitutional committee inserted a clause into the 1933 document emphasizing the concept of government relations with the United States. It stated that "this organization shall expect the Congress of the United States to cooperate by securing the consent of said tribe before any legislation is enacted which may effect said tribe."³⁷ In addition, the 1933 Rosebud constitution, like the Pine Ridge document, contained no provisions requiring Office of Indian Affairs review or approval of tribal actions.

William O. Roberts, who assumed the superintendency of the Rosebud Reservation in October 1930, claimed that the 1924 constitution created too large a council and that it only partially represented the Rosebud people. According to Roberts, the recent 1933 constitution was more democratic than the 1924 one. He also noted that special officials from the Office of Indian Affairs had discussed the proposed changes with tribal leaders. Because tribal politics were not conducted in

the same manner as non-Indian politics, Roberts claimed that the Office of Indian Affairs should not tamper with the "general tenor of the proposed constitution and by-laws [but keep them] as nearly in accordance with the Indians' desires as we reasonably can."

Though Roberts was reluctant to get involved in the writing of a tribal constitution for Rosebud, he believed that he had to make some attempt to bring the 1933 document into line with John Collier's dream to create democratic representative reservation governments. Collier, the newly appointed commissioner of Indian Affairs, believed that democratic organizations would aid the tribes in moving forward out of poverty and permit them to take control over their own affairs. Roberts claimed that this 1933 constitution complied with "the Commissioner's desire to bring about a democratic organization among the Indians. Before any new constitution would work, Roberts correctly observed, it would "be necessary to give a good deal of support to the selected leaders."³⁸

The potential for strong department backing of tribal leadership occurred in 1934 when Congress passed the Indian Reorganization Act. This was an act enabling tribes to reorganize and to adopt new tribal constitutions. It is interesting to note that North Dakota Senator Lynn Frazier had introduced a similar bill in the Senate two years earlier without success.³⁹ Commissioner of Indian Affairs Collier, who was the driving force behind the new legislation, viewed the law as the tribal people's salvation. Since many tribes accepted the Indian Reorganization Act and became known as IRA tribes, it is important to ask if, in accepting the IRA constitutions, they gained or lost tribal powers of self-government.

There are several important distinctions between the IRA constitutions for Pine Ridge and Rosebud and those preceding them. First, the commissioner of Indian Affairs encouraged tribes to accept the IRA; in the past, the reservation people had pushed for local tribal constitutions. Second, the Office of Indian Affairs generally remained outside previous

reservation constitutional disputes and assumed the position that people in the community should write their own governing documents because they understood local needs better than outsiders, but officials from the Reorganization Office actively pushed for constitutional revision under the Indian Reorganization Act. Third, the success of the new IRA constitutions required the support of the existing councils at both reservations, since these councilmen would have to appoint a committee to draft a new constitution that conformed to the guidelines established by the Indian Reorganization Act and to subsequent regulations written by the Office of Indian Affairs.

After lengthy discussions, the Pine Ridge and Rosebud people accepted the IRA and eventually adopted new constitutions that were subsequently known as IRA constitutions or New Deal constitutions. They did not widely differ from each other in content and scope except in the matter of the selection of representatives to the tribal council. Pine Ridge maintained the farm district as the political boundary for representation to the council while Rosebud employed individual reservation communities as political divisions. These differences, though, were in line with the historical preferences of the constituents of the respective reservations for either farm district or individual community as the basis for council delegation selection.

The IRA constitutions were longer than the earlier ones. In general, these New Deal constitutions attempted to maintain broad tribal powers, but the IRA tribal constitutions adopted at both Pine Ridge and Rosebud contained specific clauses limiting tribal sovereignty that are found only in the previous 1928 non-IRA Pine Ridge constitution. In the absence of these clauses in the earlier tribal constitutions, Congress had to pass a specific act diminishing tribal powers of internal self-government.

Since a tribe has the inherent power of internal self-government, these "limiting clauses" found in the IRA constitutions de-

creased a tribe's power to make its own decisions by requiring Office of Indian Affairs review or secretarial approval of Council actions; this power did not exist in the seven previous Pine Ridge and Rosebud constitutions, save for the 1928 Pine Ridge document.⁴⁰ Therefore, many tribes that accepted the IRA and its accompanying constitutions lost political power. Ironically, John Collier wrote, "it is imperative that we set the feet of our Indian friends on the path that leads to self-government," when the Rosebud, Pine Ridge, and other tribes already possessed the powers of self-government.⁴¹

In the IRA constitutions, legislative actions of the tribal council fell into three categories. First, the tribal council could pass resolutions that did not require Office of Indian Affairs review or approval only when the resolution affected tribal operations or regulated "the procedure of the council itself."⁴² Second, some tribal resolutions required the approval of the secretary of the interior. For instance, neither tribal council could pass a resolution altering reservation voting districts nor could they employ legal counsel without the action being "subject to the approval of the Secretary of the Interior."⁴³ It should be noted that whenever an IRA constitution required secretarial approval, "the action of the council [did] not go into effect until the Secretary had actually approved the resolution or ordinance in question. In such cases, there is no time limit with which the secretary must act."⁴⁴ Third, some council actions required review by the reservation superintendent before going into effect. Such review, which differed from approval, was required when the council appropriated tribal funds for public purposes, levied taxes against tribal members, restricted persons from trust lands, and passed tribal law and order ordinances. Ordinances that affected nonmembers of the tribe were "subject to review by the Secretary of the Interior."⁴⁵ Both the Pine Ridge and Rosebud IRA constitutions contain identical review processes. Generally, the superintendent had the power to accept or reject the tribal resolution ten

days after he received it. The secretary of the interior had ninety days to rescind or to approve the superintendent's decision, and if no department action was taken within the required time frame the resolution went into effect.⁴⁶

The foregoing constitutional restrictions requiring review by the reservation superintendent or secretarial approval clearly limit an IRA tribe's powers of internal self-government. Kenneth Meiklejohn, assistant solicitor for the Department of the Interior, noted informally that it falls upon the tribal officers to follow constitutional restrictions and bylaws. He added that "[i]n exercising powers of review or approval which the Department specifically enjoys by virtue of constitutional provisions conferring them or recognizing them, the validity or invalidity of an ordinance or resolution may well be a factor in determining whether it should be objected to." He argued that the Department should follow the Indians' desires when reviewing or approving tribal acts. If it did not, the Department would soon be acting as a supreme court. That would be a "wide departure from the promises of local self-government which have been made to the Indians and which are implicit in the restrictions upon the powers of review and approval contained in the constitutions and charters."⁴⁷ Collier himself noted that the IRA legislation "was composed as a constructive forward-looking program for the Indians to save their lands, to enable them to have self-government in a far broader sense than has heretofore existed for many years."⁴⁸

Despite Collier's prose, the reality was that Pine Ridge and Rosebud lost internal sovereignty because of the IRA constitutional provisions of secretarial approval and Interior Department review. Even though the assistant solicitor in the Department wanted to temper its review and approval powers, the fact remained that the Department could refuse to approve many controversial resolutions affecting important jurisdictional issues on the reservations. While tribal powers of self-government decreased, the powers of the reserva-

tion superintendent and the secretary of the interior increased by virtue of the IRA constitution. This loss of tribal power explains why the conservative full bloods on the Pine Ridge and Rosebud reservations refused to support the Indian Reorganization Act. The full bloods, who favored a greater degree of self-government than other reservation groups, made their mark on the early reservation constitutions that provided for a greater degree of tribal sovereignty and tribal participation than the IRA ones. As a result of their defense of self-rule, their opposition to the more restrictive IRA constitutions was inevitable. Reinforcing this full-blood opposition was the fact that, after the adoption of New Deal constitutions, Indian service personnel considered the new tribal governments on Pine Ridge and Rosebud as mere advisory bodies to the Office of Indian Affairs.⁴⁹

By placing the current IRA Pine Ridge and Rosebud tribal constitutions in their historical context as documents that came late, we can see that these tribal governments lost some sovereignty by accepting the New Deal constitutions. The concept of self-government was not expanded but, in fact, decreased as the Department of the Interior gained more control over tribal affairs by exerting secretarial right of approval and Department review over certain tribal resolutions through specific tribal constitutional provisions. The Office of Indian Affairs, not Congress, made the decision to insert the provisions for Department review into the constitutions. Tribes that maintained their pre-IRA constitutions, notably the Navajo, now have a greater degree of self-government, and federal courts have upheld the premise that tribes whose constitutions do not contain limiting clauses do not have to submit their tribal ordinances to the Department for approval.⁵⁰ An understanding of the broad tribal powers found in the pre-IRA constitutions makes evident the demise of tribal decision-making. John Collier's plan to broaden tribal self-government was defeated by the very wording of the New Deal constitutions, with their limiting clauses, that he so

desperately wanted approved on the Sioux reservations of Pine Ridge and Rosebud. This history of lost tribal rights makes it important for the present reservation communities to consider constitutional revisions through which they might be able to eliminate Department approval and review. Although "such tribes are [only] free, with the backing of the Interior Department, to amend their constitutions to remove the requirement of secretarial approval," it is worth ending this discussion by noting that in 1985 and 1986, the Rosebud and Pine Ridge Tribal Councils initiated the removal of some of the "limiting clauses" from their IRA constitutions.⁵¹

NOTES

1. Graham D. Taylor generally described the limiting clauses found in IRA constitutions, but he did not compare these documents to pre-IRA constitutions. See *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln: University of Nebraska Press, 1980), p. 65.
2. Wilcomb E. Washburn strongly believes that the Indian Reorganization Act provided tribal governments with the greatest degree of internal self-rule since before the tribes' concentration on reservations. Refer to his article, "A Fifty-year Perspective on the Indian Reorganization Act," *American Anthropologist* 86 (1984): 279-88.
3. Charles W. Davis to Commissioner of Indian Affairs, 15 May 1916, Central Classified Files, Rosebud, Decimal 054, File 38194-16, Record Group 75, National Archives (RG 75, NA).
4. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49-63 (1978); *Felix S. Cohen's Handbook of Federal Indian Law* (Charlottesville, Va.: Bobbs-Merrill, 1982), p. 247.
5. Constitution and Bylaws of the Rosebud Tribal Council, Article I, Sec. 1, and Article II, Sec. 1, approved by the Business Council on 1 March 1916, Central Classified, Rosebud, Decimal 054, File 38194, RG 75, NA. Hereafter cited as 1916 Rosebud Constitution.
6. 1916 Rosebud Constitution, Article I, Sec. 2; Article I, Sec. 3; Article IX, Sec. 2; Article IV.
7. Claude C. Covey to Commissioner of Indian Affairs, 11 October 1917, Central Classified, Rosebud, Decimal 054, File 95673, RG 75, NA.
8. Rosebud Annual Narratives, 1920, Frame 0466, Roll 118, Microcopy 1101, NA; Carlos Gallineaux to Commissioner of Indian Affairs, 15 September 1920, Central Classified, Rosebud, Decimal 054, File 62245, RG 75, NA.
9. Rosebud General Council, Article I, 20 December 1920, Central Classified, Rosebud, Decimal 054, File 101910, RG 75, NA. Hereafter cited as 1920 Rosebud Constitution.
10. 1920 Rosebud Constitution, Article III; Article IV, Sec. 1; Article IV, Sec. 2; Article IX; Amendments, Article I (quoted).
11. John Buntin to Commissioner of Indian Affairs, 21 September 1920, Central Classified, Rosebud, Decimal 054, File 62245-20, RG 75, NA.
12. Carlos Gallineaux to Commissioner of Indian Affairs, 20 January 1925, Central Classified, Rosebud, Decimal 054, File 101910-22, RG 75, NA.
13. Henry Tidwell to James H. Red Cloud, 9 June 1921, Central Classified, Pine Ridge, Decimal 054, File 61020, RG 75, NA.
14. Constitution of the Pine Ridge Reservation, 26 April 1921, Article 2, Article 4, Article 18, Central Classified, Rosebud, Decimal 054, File 61020, RG 75, NA. Hereafter cited as 1921 Pine Ridge Constitution.
15. *Ibid.*, Article 3, Article 18; Article 31 (quoted).
16. James McGregor to Commissioner of Indian Affairs, 3 March 1925, Central Classified, Rosebud, Decimal 054, File 101910-22, RG 75, NA.
17. Constitution and Bylaws of the Rosebud General Council, Article IV, Sec. 1, Article 14, approved 5 December 1924, Central Classified, Rosebud, Decimal 054, File 101910-22, RG 75, NA.
18. 1926 Pine Ridge Annual Narrative, Frame 0815, Roll 106, Microcopy 1011, NA.
19. Ernest W. Jermark to Commissioner of Indian Affairs, 16 January 1928, Central Classified, Pine Ridge, Decimal 054, File 1131-24, pt. 1, RG 75, NA.
20. Charles Burke to Ernest Jermark, 27 April 1928, (copy) Central Classified, Pine Ridge, Decimal 054, File 1131-24, pt. 1, RG 75, NA.
21. 1928 Pine Ridge Constitution, Central Classified, Pine Ridge, Decimal 054, File 1131-24, pt. 1, RG 75, NA.
22. Notice, Pine Ridge Agency, 5 November 1928, Central Classified, Pine Ridge, Decimal 054, File 1131-24, pt. 1, RG 75, NA.
23. James H. Red Cloud, Chairman, Pro Tem, 30 November 1928, Central Classified, Pine Ridge, Decimal 054, File 1131-24, pt. 1, RG 75, NA. It is interesting to note that the first day's discussion centered on the credentials of seven of the delegates.
24. 1928 Pine Ridge Constitution, Article 2, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA.
25. 1928 Pine Ridge Constitution, Article 11

(quoted); Article 2 (quoted).

26. Ernest W. Jermark to Commissioner of Indian Affairs, 12 January 1929, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA.

27. Minutes and Proceedings of a Meeting held at Porcupine, 19, 20, 21 February 1931, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA.

28. James LaPointe and others to Commissioner of Indian Affairs, 8 March 1931, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA.

29. James McGregor to Commissioner of Indian Affairs, 28 February 1931, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA.

30. GENERAL NOTICE TO PINE RIDGE INDIANS, 18 February 1931, Central Classified, Pine Ridge, Decimal 054, File 1131-24, RG 75, NA; original emphasis.

31. Minutes of Council, 4 September 1931, Mission Flat, Pine Ridge, Central Classified, Pine Ridge, Decimal 054, File 51571-31, pt. 1, RG 75, NA.

32. James McGregor to Commissioner of Indian Affairs, 20 November 1931, Central Classified, Pine Ridge, Decimal 054, File 51571-31, pt. 1, RG 75, NA.

33. Charles Rhoads to James McGregor, 25 August 1932, Central Classified, Pine Ridge, Decimal 054, File 51571-31, pt. 1, RG 75, NA.

34. 1933 Pine Ridge Constitution, Article 1, Central Classified, Pine Ridge, Decimal 054, File 51571-31, pt. 1, RG 75, NA; Article 2; Article 3 (quoted); Article 7; Article 8; Article 5.

35. E. E. McKean to Commissioner of Indian Affairs, 28 October 1929, Central Classified, Rosebud, Decimal 054, File 35682-31, RG 75, NA.

36. Minutes and Proceedings, Rosebud Tribal Council, Parmlee, South Dakota, 6-8 April 1933, Central Classified, Rosebud, Decimal 054, File 40444-30, RG 75, NA.

37. 1933 Rosebud Constitution, Article IX, Central Classified, Rosebud, Decimal 054, File 40444-30, RG 75, NA.

38. W. O. Roberts to Commissioner of Indian Affairs, 23 August 1933, Central Classified, Rosebud, Decimal 054, File 40494-30, RG 75, NA.

39. *Cong. Rec.*, 16 February 1932, Senate, 72nd Congress, 1st Session, Vol. 75, pt. 4, p. 4015. For the text of Frazier's bill see *Survey of Conditions of the*

Indians in the United States, Hearings, U.S. Senate, pt. 22, 1932, p. 12231-12233.

40. *United States v. Wheeler*, 435 U. 313, 322-23 (1978); *Felix S. Cohen's Handbook of Federal Indian Law*, 1982, p. 231.

41. John Collier to William O. Roberts, 17 April 1934, Central Classified, Rosebud, Decimal 066, File 56439-33, RG 75, NA.

42. 1936 Pine Ridge Constitution, Article IV, Sec. 1(s); 1935 Rosebud Constitutions, Article IV, Sec. 1 and 4(t). For a general discussion of the limiting clauses in the IRA constitutions, consult Taylor, *The New Deal and American Indian Tribalism*, pp. 96-97, 101-3. It is important to remember that Taylor did not compare the IRA constitutions with the pre-1934 constitutions.

43. 1936 Pine Ridge Constitution, Article III, Sec. 3, Article IV, Sec. 3; 1935 Rosebud Constitution, Article III, Sec. 3, Article III, Sec. 1(b).

44. William Zimmerman to James H. Red Cloud, 31 December 1942, Central Classified, Pine Ridge, Decimal 054, File 51571-31, pt. 2, RG 75, NA.

45. 1936 Pine Ridge Constitution, Article IV, Sec. 1 (g, h, i, k, m, p, and r); 1935 Rosebud Constitution, Article IV, Sec. 1 (g, h, i, j, k, and m).

46. 1936 Pine Ridge Constitution, Article IV, Sec. 4; 1935 Rosebud Constitution, Article IV, Sec. 2.

47. Kenneth Meiklejohn, Memorandum to Mr. McNickle, 10 January 1939, Central Classified, Rosebud, Decimal 057, File 9712-C-36, RG 75, NA.

48. John Collier to Charles Face, 8 October 1934, Central Classified, Rosebud, Decimal 066, File 56439-33, RG 75, NA.

49. Ruth Hill Useem, "The Aftermath of Defeat: A Study of Acculturation among the Rosebud Sioux of South Dakota," Ph.D. diss., University of Wisconsin, 1947, pp. 155-62.

50. *Indian Law Reporter*, April 1985, vol. 12, p. 1028. In the case, *Kerr-McGee Corp. v. Navajo Tribe, et al.* decided in April 1985, the Supreme Court stated that "the Bureau of Indian Affairs, in assisting the drafting of tribal constitutions, had a policy of including provisions for secretarial review."

51. *Indian Law Reporter*, April 1985, vol. 12, p. 1028.