



The Emergence of Tribal Governments:

Strategy, Meanings, and the  
Institutionalization of Alternatives

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## Introduction: The Puzzle of American Indian Tribal Gains

At the end of the 1960's American Indians were a particularly powerless social group in both urban and reservation contexts. Urban populations suffered from high unemployment, alcoholism, and other negative conditions; where urban organizations did exist they could not claim significant resources or tenure. Tribal populations suffered similarly, and councils on reservations were generally weak, had few resources and little power on reservations much less beyond reservation boundaries or tribal members. Reservations were still often under the direct control of the Bureau of Indian Affairs (BIA), which supervised local action through field officers. While hopeful trends did exist for both (overlapping) sets of Indians, many were still in early stages, and efforts to strengthen these communities internally and externally faced daunting tasks.

Yet thirty years later, the situation of Indians in many respects looks strikingly different.<sup>1</sup> In particular, federally-recognized tribal governments have made tremendous gains in terms of resources at their disposal, the quality and scope of functional capacity, regulatory authority, and their general governmental standing. Federal policies acknowledge their status as sovereign governments, and a variety of mechanisms have been established to incorporate tribal governments into the schema of intergovernmental collaboration at many levels. While a significant amount of confusion and conflict still exist between tribes and states, states are also increasingly acknowledging tribal government sovereignty and establishing new intergovernmental procedures for working with tribes. Tribal governments have achieved functional control of a wide range of

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<sup>1</sup> In some respects, particularly poverty and health statistics, the overall situation even of tribes looks sadly similar even with the changes described here.

valuable natural resources which were formerly under BIA control. Through gaming, some tribal governments have generated significant revenue and find themselves less dependent on the U.S. government and other external sources of income. While the process of institutionalizing tribes as sovereign governments is not complete, a clear direction has been firmly established, and all of these indicators reinforce this outcome.

The advances made by American Indians, and in particular by tribal governments, are impressive, and represent the longest period of improving and distinctively *tribal* outcomes since the founding of the U.S. American Indians are arguably more equipped for survival as distinct (tribal) cultural and social groups, and less threatened by the possibility of termination (of tribes) through forced assimilation, than in many decades. These gains are all the more striking and distinctive when compared to the standing of organizations representing other minority groups, and the decline of policies designed to ameliorate minority group disadvantages. Most simply put, while institutional support for affirmative-action has been increasingly withdrawn, the status of Indians *qua* tribal collectives and the functional capacity of tribal governments have been institutionally fortified. Principles asserted to justify the dismantling of affirmative action, such as equal opportunity and color-blind democracy, seem to fly in the face of this strengthening of tribal collectivities, yet these have not halted the progression of policies not only strengthening tribal groups but augmenting their capacities as governments.

How can we understand the puzzle of American Indian tribal advances amidst overall conservative trends regarding racial equality politics? In particular, how could we understand the distinctive shape these gains have taken, and the rising status of tribal governments in the face of apparently opposing tendencies? The structure of these

outcomes is all the more perplexing in that these policies require federal and state governments to deal with each tribe individually, rather than through a more hierarchical, orderly, aggregative and uniform manner. Federal and state actors must devote extensive resources, and deal with an astonishingly diverse set of independent actors, under the structure that has emerged. Whereas as of the late 1960s, the BIA had centralized hierarchical control and dispensed fairly uniform policies and procedures to and upon tribes, federal and state governments (where they have embraced the emergent framework) now have to work *with* individual tribes, which number 560 at the federal level and up to 220 at the state level (Alaska).

These outcomes are puzzling for students of social movements, political sociology, and political institutions, as well as those studying national politics in the U.S., racial inequality, and federalism in particular. However, no previous research has attempted to explain the full course of complex and unique contemporary Indian polic(ies) as they have developed since 1970, or account for the anomaly of tribal government re-emergence. Yet understanding these outcomes would contribute to understanding the impacts of social movements, the interplay between the effects of non-institutional social movement actors and effects of institutional actors, and a more realistic conception of the types of gains sought and achieved by social challengers. Simultaneously, an analysis of the process generating these changes would contribute to our understanding of how institutional change occurs; the rise of tribal governments offers a rare case in which to somewhat transparently observe and analyze the institutionalization process.

I argue that the case of tribal government gains is most fundamentally an example of a particular type of meaning-making, one in which an actor is newly understood as being included in an existing category of social units. Tribes, which have been construed in a variety of ways in U.S. policy, have been newly included in the taken-for-granted category of sovereign governments. Recent federal and state policies acknowledging latent powers or extending new powers to tribes accompany, and further establish, this categorization of tribes. These specific gains and the larger process in which a governmental conception of tribes has come to be widely utilized can best be understood as *institutionalization*. Drawing on recent advances in neo-institutional theories, particularly those that seek to integrate the role of social movement challenges, my study examines the institutionalization of tribes as governments.

### **Research Design and Methods**

I apply a neo-institutionalist framework of social change to the case of tribal government re-emergence through a detailed historical analysis of the process through which tribal governments have become (incompletely) institutionalized as governments. As I cast this as a contingent process, such a close inspection of the historical process is essential. This method has elsewhere been identified as “historical ethnography” (Comaroff 1992), “historical tracing” (Campbell 2002: 29), or “process tracing” (Katzenstein 1996:67). Most simply put, it follows a logic suggested by John Campbell in which he states that “(O)ne way to explain how ideas affect policy making is to show through careful process tracing how specific actors carried certain ideas into the policy-making fray and used them effectively” (2002:29).

More concretely, my research incorporates four elements, each of which has been examined using a variety of data sources (detailed more below). The first includes both the conceptions of tribes as well as the cognitive policy models for dealing with tribes that have been operative at the federal level. The second element is the set of more discrete federal policy deliberations and decision-making moments newly acknowledging or newly extending powers to tribes. The third is the conceptions of tribes and associated cognitive policy models operative at the state level. Finally, the last element is the set of more discrete state level policy deliberations and decisions structuring state-tribal relationships.

The geographic scope of my study is national. State level analysis has been limited to those 34 states with federally-recognized tribes. I include an in-depth case study of state-tribal relations in one state. This state, Washington, was home to a set of tribal actors who were pivotal national leaders regarding the institutionalization of tribes as governments in federal policy. It was also the site of state-level institutional innovation when in 1989 the State of Washington signed the Centennial Accord with 26 federally recognized tribes within its boundaries. In this agreement, each side recognized the sovereignty of the other, and the parties established comprehensive procedures and protocols for government-to-government relations. This was the first such formalized, comprehensive, top-down model institutionalizing tribal government status within state government procedures

Within each of the four federal and state phenomena identified above I have developed my analysis through comparing sub-unit cases. For example, I have

made comparisons across time for particular actors and sets of actors. I have also compared the discourse and action enacted by similar units within state and federal levels (e.g., states, federal agencies, etc.). Cumulatively, my multi-level approach, combined by my use of a great breadth of data sources, provides a dense triangulation of the phenomena in question. That is, patterns of data and preliminary assessments from any particular sub-section of the study have been carefully and extensively examined against those from other sub-sections of the study. This allows me to identify the overall patterns with greater assurance, and also to confidently discuss variation across or within levels.

More specifically, below I list the types of data I have used in my analysis. To demonstrate the breadth of sources, I identify my original data collection in some detail.

**Primary Historical Documents:**

Records, transcripts and reports of or from a variety of public and semi-public national and state hearings, conferences, and other meetings.

Semi-public records held by the Commission on State-Tribal Relations (CSTR; 1977-1984), and the State-Tribal Relations Program (1990 – present) of the National Conference of State Legislatures (NCLS) and the National Congress of American Indians (NCAI).

Publicly-available federal governments documents such as the Congressional record, Presidential policy statements, Congressional committee testimony, and agency policy statements and supporting documents.

State governments' Indian and tribal policy statements and related records.

A variety of county, state, and federal legal documents, including initial filings, court pleadings, and court rulings.

Documents from a variety of other organizations involved in tribally-related policy at the national and state level, such as the National Indian Policy Center (Washington, D.C.), American Indian Law Center (Albuquerque, New, Mexico), Northwest Indian Applied Research Institute (Olympia Washington), Center for World Indigenous Studies (Olympia Washington), and tribally-sponsored organizations as well as groups opposed to tribal rights.



Intertribal documents created by Washington tribes.

Records held by the Washington State Governor's Office of Indian Affairs, Washington State Government archives, plus a variety of Washington State policy statements.

**Interviews:**

Present and past members of the Commission on State-Tribal Relations (CSTR), the National Conference of State Legislatures (NCLS), and the National Congress of American Indians (NCAI). These included the Director, the program manager, and the non-Indian co-chair of the CSTR.

Four present and past tribal Chairs, including three former Presidents of the NCAI, as well as two former tribal staff; these individuals have also held many other positions in the Indian policy arena at federal, state, inter-tribal and tribal levels.

A former high-ranking Environmental Protection Agency administrator involved in tribal affairs; and a former staff person for the American Indian Policy Review Commission (1975-1977), currently the Director of the Northwest Indian Applied Research Institute.

Approximately twenty-five state-specific local Indian policy experts or officials, predominantly the Directors or staff of state "Indian Affairs Commissions," including the President of the Governor's Interstate Indian Council.

A number of past or present Washington State officials, including a former Governor, his former chief of staff, two former Directors of Fisheries, a former legal counsel to the state legislature, the Director of the Washington State Governor's Office of Indian Affairs (GOIA), and a former longtime GOIA staff person.

A number of Washington tribal leaders and staff (already included in the above categories), as well as a staff member of the Northwest Indian Fisheries Commission.

Overall, I conducted approximately forty-three interviews. They are listed in an appendix, where I also describe the research process involved.

**Secondary Historical Documents**

Newspaper, magazine, and other journalistic sources.

Previous historical, sociological, political, and legal research.

A great variety of additional and diverse sources.

My understanding of the issues involved in the study also benefited from countless informal conversations with individuals involved in tribal issues, as well as ethnographic observations gathered over a period of years in a variety of contexts.

## Outline of the Dissertation

The dissertation is organized in the following chapters. Chapter One describe the theoretical questions guiding the study. It includes a review of relevant literatures and identifies the gaps in our understanding. It broadly articulates the neoinstitutional approach I employ, which focuses on the promotion of alternative beliefs and practices by social challengers. It also presents my application of the guiding theoretical concepts to the case of tribal governments. Due to the complex, poorly understood and contested nature of Indian law and tribal status, I include extensive elaboration of past and current dynamics involving tribes in order to explain the salience and operationalization of neoinstitutional theory. In doing so I also identify the structural conditions affecting the success of tribal agency. Finally, I conceptually describe the types of action tribes and state actors have taken to advance alternative beliefs and practices.

Chapter Two presents an in-depth and analytically structured historical contextualization of the empirical case. It identifies how tribes have been historically construed and treated in federal Indian policy as conquered wards, minorities, rights-holders, corporations and sovereign nations with governments. It details further the outcome in question; i.e., the contemporary rise of tribal governments qua governments. It also examines the early period of the self-determination policy (1970s) and demonstrates that this outcome was not clearly intended or envisioned by federal policymakers.

Chapter Three first describes the action through which a set of meaning entrepreneurs forcefully introduced the concept of tribes as sovereign governments in the early 1970s. These actors include Indian militants associated with the American Indian

Movement (AIM), who made innovative claims and disrupted a variety of conventional procedures. Meaning entrepreneurs also include tribal leaders not affiliated with AIM who both asserted and acted upon new rights claims. Next, the chapter identifies meaning-making activity by federal judges, the Senate-appointed American Indian Policy Review Commission, and the administration of Ronald Reagan. While each set of actions stemmed from different motivations and contained divergent emphases, they all functioned to further circulate still-novel interpretations of tribal status, rights and powers. These actions brought the claims of AIM and tribal leaders closer to policy processes, and in particular advanced and legitimated the concept of a “Government-to-Government” relationship between tribes and the federal government.

After first identifying the increasing scope of tribal governmental activity, in Chapter Four I detail specific ways that alternative beliefs and practices began to be innovatively inserted into policies and procedures of state government and federal government agencies. This occurs through a combination of creative tribal agency in various collective efforts and the openness of specific state and federal officials either interested in developing new ways of working with tribes or at least willing to do so. A key elite actor is the Environmental Protection Agency, which became the first federal agency outside the BIA to recognize tribes as governments in affirming tribal authority over reservation environmental regulation. Faced with increasing state-tribal disputes, tribal leaders and allies successfully framed these as intergovernmental in nature rather than as racial conflicts involving “special rights.” Subsequently, new methods of domain-specific intergovernmental cooperation were identified, promoted, and adopted through the Commission on State Tribal Relations. Through such actions, governmental

conceptions of tribal status began to replace competing framings within state and federal policy paradigms, and the institutionalization of tribes as governments started to become more concrete.

Chapter Five analyzes the process leading to the precedent-setting formalization of comprehensive state-tribal relations in Washington State, which provided a model for subsequent formalized relations elsewhere. Theoretically it highlights the indirect effects of legal rulings favoring social challengers. By generating new *practices*, rulings may create conditions favorable for successful attempts to obtain broader goals. Concretely, a distinctive fishing rights ruling imposed a co-management regime and generated a high frequency of routinized collaboration between state and tribal fishery officials. At the same time, tribal officials re-invigorated their continuing requests for formalized intergovernmental relations with the state. The extensive intergovernmental practices in the domain of fishing demonstrated the plausibility of such a relationship and provided a positive functional model for comprehensive state-tribal relations. In 1989 the state and the tribes signed the Centennial Accord establishing “Government-to-Government” relations based upon a mutual recognition of sovereignty.

Chapter Six describes the expanding application of a governmental conception of tribes within federal and state policies. The templates and frameworks established by others are now adopted by increasing numbers of elite actors, often with decreasing controversy. When opportunities arise, the now legitimate governmental framework can be more easily advanced to address problems and suggest the proper way to organize activities. For example, faced with scandals involving the BIA in 1987, Congress acted to reformulate significant Indian program funding. The resulting Tribal Self-Government

Demonstration Project, advocated by tribal “meaning entrepreneurs” active since the 1970s, provided direct funding for tribal governments with much less constraints than prior programs. Importantly, it proceeded from the premise of a Government-to-Government relationship between tribes and the federal government, and the continuing treaty obligations of the United States government. Similarly, additional states established formalized government-to-government relations with the federally recognized tribes in their borders. Other Presidential, agency and Congressional actions further affirmed governmental conceptions of tribes in administrative and policy frameworks.

Chapter Seven presents the discussion and conclusion. It recaps my argument and evidence, and discusses the challenges and strengths of my analysis. I review my motivating theoretical questions and offer reflections on the usefulness and limits of my study for addressing gaps and limits in our understanding. I identify future research directions to further advance theory development. The chapter also includes comments on the current situation of tribal governments and thoughts on future developments, including the relationship between tribal governmental status and the high-profile but relatively recent issue of Indian gaming. I detail some of the many topics not well documented or understood regarding tribal governments and their functioning within U.S. governance.

**A note on language: Indians, Nations and Tribes**

The central empirical focus of my study – the question of tribal status – has been a charged issue in both the political and academic arenas. In these domains tribal leaders and tribally-affiliated scholars have respectively asserted that many common conceptions of tribes and the terms correspondingly applied to them reflect non-Indian interpretations.

Accordingly, many of these terms not only distort but also denigrate actual tribal status. Consequently tribal actors have vigorously protested their use and sought to replace them with other terms. One aspect of these critiques is to establish that the conception of the disparate original inhabitants of the western hemisphere as one group, as *Indians*, is an inaccurate European-based conception. Relatedly, another point is that the indigenous populations of North America were comprised of hundreds of distinctive groups each with their own social, cultural and political characteristics. These points can easily be accepted and incorporated by scholars conscious of the power of language and not wishing to continue the conflation of “indigenous inhabitants” with the undifferentiated category of “Indians.”

A more challenging issue is whether, and how, to use a variety of terms which have been employed to refer to these distinctive social, cultural and political communities themselves. While they have done so to varying degrees in the many historical eras since Europeans arrived, starting in the late 1960s tribes have increasingly promoting the term “nation” as one appropriate label. This emphasizes the political character of Indian collectives, and many Indian scholars have also affirmed the use of this term. Other terms, such as “tribes,” – which I have obviously used in the text above – do not conflict with nationhood but emphasize somewhat more the social and kinship affiliations of Indian communities. The term tribes can be used in a way consistent with or explicitly associated with nationhood – i.e. “tribal nation” – or, when wielded in other ways, such as in contrasting tribes to nations, can insinuate a lesser status. My perception, based on its use in a wide variety of settings, is that by itself “tribe” does not strongly convey a particular status in terms of the political nature of tribes. While others certainly disagree,

there is no singular authority on the issue, no consensually approved “Indian rules of grammar.” As Navajo political scientist David Wilkins has recently written, “What complicates matters, of course, is that there is no single term that is acceptable by all indigenous people all the time, and even people within specific native communities sometimes disagree... on whether they would rather be identified as tribal communities...or national entities” (Wilkins 2003: xix). As a scholar wishing to be sensitive to the power of language and to replace unconscious and uncritical language usage that reinforces historic power inequities, I nonetheless must in the end make my own judgments about what terms to use and how I should use them, in the context of my analysis. In the text below, I frequently use the term tribes for a number of practical and analytical reasons.

One reason to widely use the term tribe is that even as its implications are unclear and thus suspect to some, it remains in common, almost universal use, by tribal actors themselves as well as by a wide range of Indian and non-Indian scholars. Not using the term in any extended consideration of issues relating to Indian communities easily leads to twisted and lengthy phrases or requires specifically naming all the groups in question. Both result in torturous sentences and painfully repetitive paragraphs.

Another reason is the nature of my analysis, which aims to track and analyze changes in the categorizations underlying various terms. I wish to understand how tribes have been successful in gaining a wide *acceptance* of their nationhood and governmental statuses that certainly seemed out of reach thirty years ago. Tribes have, quite impressively, been successful in conveying these statuses so that other actors now think of tribes in these ways. To study this requires an emphasis on understanding what has

been and what has happened rather than a sole emphasis on what is now established, or what should be. As such, in addition to tribal efforts to establish their self-categorizations and terminology – which is the primary action analyzed in the study, and a viewpoint extensively articulated - my analysis focuses partly on a variety of historical conceptions of tribes by actors such as federal and state officials. In my text I must represent those non-tribal views as accurately as possible, and describe not what *should* have been but what *was* the case in terms of how Indian communities were understood in particular policies. I am careful not to legitimate these conceptions, or to assert what tribes *are* or *are not*. However, for descriptive clarity I discuss these non-tribal conceptions using language that is consistent with these views. Consequently, while in some places I identify the views of tribes and use their terminology, in other places I identify the views and use the terminology of non-tribal actors. Thus in describing discussions about the nature of tribal status by a variety of tribal and non-tribal actors, the general term tribe seemed to be the most natural, and “neutral,” language to use.<sup>2</sup>

### **Concluding Comments**

The analysis I have developed represents a particularly “thick” analysis of a very complex and historically grounded set of processes and events. At the very best, this study presents a partial and incomplete analysis of the multidimensional and dynamic

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<sup>2</sup> The primary alternative, consistently using “nations,” would seemingly lead to extremely cumbersome and confusing, if not nonsensical, passages. In other words, rather than discussing how “General Pope saw no reason to treat tribes as sovereign nations,” nationhood phraseology would generate “General Pope saw no reason to treat Indian nations as sovereign nations.” The latter phrase would misrepresent Pope’s perceptions, for he did not perceive Indian nations and evaluate how to treat them as such. Rather, he saw Indian tribes, not nations of any sort, much less sovereign nations. Rather than repeatedly noting throughout the text that the terms used to discuss Indian communities represent particular viewpoints, many of them non-tribal viewpoints – which is often self-evident – in most cases I simply describe these terms and associated policies. Hopefully, the overall analysis will require of any reader a heightened awareness of the power of perceptions and language, and a critical examination of the how they are deployed regarding American Indians and tribal nations.



phenomenon of tribal government re-emergence. These limits apply both to the analysis itself and my ability to situate this analysis adequately within the complex and subtle legal, political and social contexts of federal Indian policy, historical tribal status suggested by this policy, and tribal conceptions of collective self-identity. Inevitably, I have condensed consideration variation in order to identify large patterns, including my frequent reference to action taken by “tribes” to refer to actions taken by a smaller subset of tribes. And as tribal leaders have emphatically pointed out, there is no such thing as “the tribes” but rather independent and quite distinct social, cultural and political entities. Indeed, there also exists some variation in the exact range of legal rights and political powers enjoyed even by federally recognized tribes. For example, tribes in some eastern states became formally federally recognized in the 1970s and 1980s through processes involving land rights claims. Reflecting the nature of tribal prospects at the time, some of these tribes accepted in settlements a restriction of their powers vis-à-vis state governments, while others had these terms dictated to them through the Congressional legislation approving their recognition and / or land settlement. Thus the status, rights and powers I discuss do not uniformly apply equally or completely to every single federally recognized tribe.

Nonetheless, even with such variation, the general outline of my study does address the main tendencies of federal policy. Indeed, it is because the subsequent developments founded on a conception of tribes as governments that the limitations on eastern tribes are now notable and frustrating for these tribes. Thus, even given these limitations and weaknesses, I believe my analysis sheds new light both on the substantive case of tribal governments in both federal and state policies and on the theoretical issue

of challenger-instigated change processes. I will of course leave it to the reader to make her or his own judgments regarding my success in doing so, and whether my analysis rings “true” regarding both the case and the process I describe.