

Northern Cheyenne Constitutional Reform

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The Northern Cheyenne tribe is a sovereign nation. It is a federally-recognized Indian tribe with powers and authority to govern the activities of its members. The jurisdiction of the Northern Cheyenne Tribe extends to the territory within the confines of the Northern Cheyenne Indian Reservation boundaries as established by Executive Orders of previous Presidents of the United States. The Tribe is governed by a Constitution and Bylaws first adopted on November 23, 1935. The governing body of the Tribe is the Tribal Council.

The Northern Cheyenne Constitution and Bylaws were first amended on July 8, 1960. Many changes have taken place since the Constitution was amended in 1960. The population of the tribal members has grown along with tribal government operations. The management and governmental functions outgrew sections of the tribal constitution. While certain sections were still relevant, other sections required changes. It had been 36 years since the Constitution and Bylaws had been amended by the Northern Cheyenne people.

In the early 1990s, in order to meet the demands of the expanding population and economic growth of the Northern Cheyenne Tribe, the Tribal Council determined that its constitution needed to be amended. A Constitution Revision Committee was established to facilitate this process. The Committee was assigned the task of coming up with proposed constitutional amendments, hold public hearings and present their findings and recommendations to the Tribal Council. The Constitution Review Committee worked on this task for approximately three years. Their recommendations were presented to the Tribal Council in 1995.

Finally, on May 10, 1996, a set of constitutional amendments was voted and adopted by the membership of the Northern Cheyenne Tribe. The amendments were divided into three parts: Governmental Reform, Separation of Powers, and Code of Ethics. Each section could be voted on independently of the other reforms. The tribal membership was requested to vote either yes or no on each amendment separately. The amendments are described in detail as follows.

Governmental Reform

This amendment proposed changes to four Articles of the Constitution and Bylaws. This section would reform tribal government in the following ways:

- A smaller, full-time Tribal Council of 11 members—10 district representatives plus the Vice President.
- Four-year staggered terms of office for the 10 district representatives.
- A Vice President elected by the people for a four-year term.
- A primary election within each district for the district's Council seat(s).
- At-large primary elections for President and Vice President.
- Change the Tribe's regular election date to the U.S. Congressional election date.
- Candidate filing fees for Council, President and Vice President .
- Specific election rules.
- Specific rules for filling vacancies in office.

The significance of these changes was felt immediately. The first primary was held in October 1996, with the

first general election taking place in November 1996. The council consisted of 10 members, compared to 23 in the election held just two years earlier. The members now work full-time and have the time and resources to promote the best interests and welfare of the Tribe. The economic and financial stability of the Tribe has improved vastly in the past three years. While the Tribe is still dependent on funding from the federal government, it has built a financially sound base which should carry the Tribe well into the future.

Separation of Powers

The second amendment, called "The Separation of Powers," consisted of an entirely new article—Article XI—which would be added to the constitution in order to establish the principle of separation of powers. The amendment declares that the power of tribal government be allocated among three distinct branches—the legislative (Tribal Council), executive (President and Vice President), and judicial (tribal court system). Each branch would exercise its own powers and could not exercise the powers of another branch.

This concept, still new to the Northern Cheyenne people, has taken a little longer to implement and understand. Prior to adoption, the President, with consent of the Tribal Council, appointed the tribal judges. This gave the President the authority to terminate a judge who may have ruled against a family member or close friend. Justice was then dispensed based on who you knew, not strictly on the merits of the case. Tribal judges are now elected by the people and cannot be terminated by the President of the Tribe. They can only be removed for cause following a strict procedure adjudicated by a three-member Constitutional Court comprised of licensed attorneys. The President and Council are no longer allowed to use their political power to intervene in a court matter. Tribal judges now implement a sound court system without fear of reprisals from the elected officials.

Code of Ethics

The third amendment also consisted of an entirely new article—Article VII—which would be added to the Bylaws in order to establish a Code of Ethics for

the President, Vice President, Secretary, Treasurer and all Council members. Seven ethic rules were set forth. The following is an excerpt from Article VII—Code of Ethics, Northern Cheyenne Constitution and Bylaws:

- "Discharge the duties and exercise the powers of office in good faith and in a manner which the Tribal Official believes will best serve the interests of the Tribe;
- Not accept any compensation, gratuity, benefit or advantage (other than duly authorized emoluments of office) from any source other than the tribe in return for exercising or abstaining from exercising any duty or right of office in any particular way;
- Not use tribal money, property or personnel for personal benefit;
- Not disclose or use for personal gain any confidential information of the Tribe;
- Not knowingly falsify, alter, conceal or destroy any official book, record, account or other document of the tribe;
- Not present, allow or pay any charge or claim against the Tribe which the Tribal Officials know to be improper; and,
- Not knowingly make any false statement in any official statement, report, certificate or other document, presented to or on behalf of Tribal government or the Tribal membership, which has an adverse effect on significant interests of the Tribe or its membership."

The Code of Ethics was adopted to promote high standards of public service and to strengthen the confidence of the Northern Cheyenne tribal members in tribal government. The Code of Ethics amendment received the most "yes" votes of the three proposed sections to the Constitution.

Conclusion

This most current constitutional reform process has changed the basic structure of the Northern Cheyenne tribal government. It has streamlined the decision-making process and provides the tribal membership with access to their representatives on a day-to-day basis. Specific delineations of power between the legislative and executive branches still

need refinement. The election process is clearly defined within the constitution and election ordinances. On the whole, the constitutional amendments have been a positive improvement for the Northern Cheyenne Tribe.

RED INK: What specific cultural, social and economic forces sparked the movement for constitutional reform?

Gourneau: The council was getting unwieldy. There were 23 council members who met once a month and were required to make major policy decisions for the Tribe, and they didn't always have the correct and current information necessary to make those decisions. The membership of the Tribe was expanding and under the old constitution, there was a representative for every 500 people. The number of council members would have continued to grow in step with the expanding membership and have become even more unmanageable.

RED INK: How was the original constitution unsatisfactory or deficient?

Gourneau: It wasn't so much unsatisfactory or deficient, because we really had nothing to compare it with. However, there were certain provisions that had been discussed for many years. We felt it was time to initiate some of the changes that had been proposed to those provisions.

RED INK: What were the motivations behind each of the three major amendments to the constitution?

Gourneau: As far as Governmental Reform was concerned, we felt it necessary to make fundamental changes to the structure of our tribal government. These included a smaller tribal council, staggered terms to promote stability, a primary and a general election, and a different format for filing for candidacy.

For Separation of Powers, it was necessary to provide a viable court system for the tribal members. The intent was to get qualified judges, meaning licensed attorneys, to serve as judges and begin a true and competent court system.

For the Code of Ethics, the reform was undertaken to promote an honest and ethical government for our people.

RED INK: What have been the political consequences of the first amendment, Governmental Reform?

Gourneau: A smaller, full-time council enables the Tribe to concentrate on issues and to have the time and resources to pursue economic and social development projects. The staggered terms for council members means that there is not a complete turnover of the council every two years as had been the case previously. Council terms are now four years, with an election every two years through the staggered process. The Vice President is now elected at large by the membership, whereas before the changes the Vice President was first elected to the council and then the council members selected one from amongst themselves to serve as Vice President. The primary system allows each of the districts to select their own representatives, because in the primary election, we can only vote for our district representative and the at-large positions. These positions are the President, Vice President and the tribal court judges. The two individuals that receive the most votes in the primary election for each seat are then put on the ballot for the general election. At the general election all the adult members can then cast their votes for each of the vacant seats.

RED INK: Was the rationale behind the constitutional reform that effective governance and economic development are inextricably linked? If so, how?

Gourneau: One of the driving forces behind the governmental reform was the need to enable council members to serve full-time. The underlying premise for this was that the council members would be able to devote more time and energy to economic development issues. Fortunately for the council, the Tribe negotiated a water settlement with the State of Montana and the U.S. government. Under the agreement, we were given a \$10 million development fund. In 1997, the Tribe used the fund to establish the Northern Cheyenne Permanent

Fund, investing our financial resources wisely. That fund has now grown to over \$18 million. We have also initiated an Economic Development Endowment Fund which is now worth almost \$3 million.

RED INK: What have been the political and cultural consequences of the Separation of Powers?

Gourneau: The political and social consequences of the Separation of Powers has been positive for the Tribe. Because of the working relationships that have been established by Chief Judge Calvin Wilson, our court orders are now being recognized and enforced by neighboring counties and the state. Council members are no longer required to make judgements about court cases. However, some of the tribal members still feel that they can go to the Tribal President and/or council members to request that they intervene in a particular case. There have been times when council members try to exert authority over the court system, but the Chief Judge has been diligent in keeping the two government branches separate.

RED INK: How important is it to insulate the judiciary from the other branches of tribal government?

Gourneau: Insulating the tribal judiciary from tribal government was a crucial part of our Tribe's constitutional reform. After all, the cases should be decided on their merits and the record, and not by who you know. An important part of the Separation of Powers is the authority of the court to review council decisions. The more separate we are, the more there is a sense of impartiality. Not everyone agrees with the decisions made by judges. However, if you feel that the case was decided on the merits and that you were given due process, then it is easier to accept a decision that was made against you. But if you feel the decision was made because the defendant was related to the tribal president or the council and the judge made a decision based on political connections, it creates frustration and turmoil.

RED INK: What have been the consequences of the Code of Ethics? How has it acted as a deterrent

against corruption?

Gourneau: It is hard to measure how the Code of Ethics has acted as a deterrent against government corruption, other than to say that not a single officer or council member has been charged with corruption in the four years since constitutional reform.

RED INK: How has reform led to greater cultural consensus for and sanction in the political process?

Gourneau: The present council has worked hard to keep the traditional religious and ... blended the two and there was great division within the Tribe. There is still division within the Tribe, however, we feel that those differences are better left to be handled by the traditional societies.

RED INK: Do you recommend that tribes take more than one turn at reform? If so, why?

Gourneau: For our Tribe, dividing the issues worked well for us. There are still a few contentious issues we need to resolve such as enrollment criteria, recall and absentee voting, the role of religious societies, and land issues. Change is always difficult and it appears to work better if the membership concentrates on a few issues and resolve those before tackling other difficult issues.