

*Outline intended to summarize the reading for Coordinators and Mentors. The Module 2 / Week 2 Lecture contains a longer version of the notes presented here and includes definitions for the terms as they appear in the Lecture. The Lecture is organized to follow the two readings assigned for Module 2 / Week 2.*

## **WEST'S INDIAN LAW IN A NUTSHELL, CHAPTER 4 READING OUTLINE FOR COORDINATORS AND MENTORS**

### **INDIAN TRIBAL GOVERNMENTS**

#### **A. ORGANIZATION OF THE TRIBES; TRIBAL CONSTITUTIONS (pp. 63-66)**

- a. At contact, tribes practiced distinct, traditional forms of governance.
- b. Forced relocation and confinement to reservations, significantly disrupted traditional governance systems, damaging the social framework of day-to-day tribal life and traditional ways of decision-making.
- c. Vestiges of tribal traditional governance survived but many were completely altered by federal policies.
- d. This also happened when the federal government would form “tribes” to better serve its own interests – usually the signing of a treaty or the opening up of Indian land for settlement.
- e. Sometimes, a federal agent would appoint a “chief” even in areas where tribes were not governed by a single, male chief. Some tribes would be governed by several leaders, or would have different leaders exercise authority on different subjects. Some had internal and external councils or elders councils, traditional societies, and/or female leadership.
- f. The Wheeler-Howard Act (1934), generally known as the Indian Reorganization Act (IRA) was the government’s attempt to reorganize tribal governance after allowing policies like allotment to wreck tribal communities.
- g. The IRA provided that any tribe or tribe “residing on the same reservation” had the right to organize and adopt a constitution and bylaws which become effective after a vote by the majority of the adult members and approval of the Secretary of the Interior.
- h. “Boilerplate” constitutional language was provided.
- i. Unfortunately, these boilerplates were based on American forms of governance and generally did not incorporate traditional decision-making. As West notes in Nutshell, “Indeed, the Act itself was not designed to confer complete autonomy...virtually all of the new constitutions were reproductions, with insignificant variations of a model produced in Washington with little attention to the needs to individual tribes.” (p. 65)
- j. Many tribes have revised their constitutions to reflect individual tribal concerns and to do away with the requirement for secretarial approval.

#### **B. THE TRIBAL COUNCIL (pp. 66-67)**

- a. Elected governing body of a tribe. May also be called a “business committee.”
- b. Council members are normally elected for a set period of years (known as a “term”). This can range from one year to four, depending on the tribe.
- c. In some tribes, council members are elected by district, in others members are elected at large (meaning, a general election is held and the top vote getters, take the seats on council.)
- d. Councils have general governmental powers over the affairs of the tribe.
- e. Under the IRA however, this power was limited by the requirement that the ordinances or resolutions authorized by the tribal council, required approval by the Secretary of the Interior.
- f. Some go so far as to give the Secretary veto power over council actions which severely limits the autonomy of tribal councils.
- g. Many tribes have revised their constitutional documents to remove the Secretary’s approval requirement. The current policy of the Bureau of Indian affairs is to approve nearly all ordinances the require secretarial approval. The presence of the secretarial approval requirement cannot be done away with in all instances and creates a substantial burden on the autonomy of the tribal government. This is, again, an example of federal paternalism.

#### **C. THE TRIBAL CHAIRMAN (p. 67)**

- a. May also be called a tribal “president” or “governor”

Outline intended to summarize the reading for Coordinators and Mentors. The Module 2 / Week 2 Lecture contains a longer version of the notes presented here and includes definitions for the terms as they appear in the Lecture. The Lecture is organized to follow the two readings assigned for Module 2 / Week 2.

- b. Under some constitutions, the chairman is elected by a vote of the council, in others he/she is elected by a vote of the entire tribal membership.
- c. A chairman's role may differ significantly from tribe to tribe. Sometimes a chairperson will have a lot of decision-making power, sometimes the council will exercise more authority.

D. TRIBAL COURTS (p. 67-69)

- a. Under the federal system, tribal courts were first established in the 1880's to "civilize" Indians.
- b. These courts were known as "Courts of Indian Offenses" and administered a code authorized by the Secretary of the Interior.
- c. Of course, tribes already had traditional forms of law and order (*deciding disputes and punishing or penalizing offenders*).
- d. Different courts were established under the IRA but many still had the same limited jurisdiction and paternalistic attitude that undermined traditional tribal forms of deciding disputes.
- e. However, in the past 40 years, many tribes have either held on to their traditional methods of dispute resolution, or re-introduced traditional dispute resolution.

E. THE TRIBAL ATTORNEY (pp. 69-71)

- a. Tribal attorneys can play a significant role in a tribal council's decision-making process. (*At times and even today, tribal attorneys have been criticized for being overly-paternalistic. According to dictionary.com "paternalism" refers to, "the system, principle, or practice of managing or governing individuals, businesses, or nation, in the manner of a father dealing benevolently and often intrusively with his children. This is the same criticism levied at the federal government in its attitude toward tribes and tribal people.*)
- b. When an attorney is an attorney for a tribe, the entire tribe is his/her client, this creates ethical considerations the attorney must consider.
- c. Some tribes have "in house counsel" or "general counsel" = an attorney employed by the tribe. Others hire law firms to handle legal matters as they arise. Many use a combination of both.

F. TRIBAL CORPORATIONS (p. 71)

- a. Some tribes also created tribal corporations to formalize their economic development activity. These corporations were also structured with boilerplate charters.
- b. Tribal corporate charters also limit the autonomy of the tribal government by requiring approval of the Secretary of the Interior (though charters also allow for removal of the secretarial approval requirement upon a vote of the tribe).