

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES

Institute of International Studies

Doctoral Dissertation

2018

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FACULTY OF SOCIAL SCIENCES

Institute of International Studies

Department of American Studies

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**Rebuilding the White Earth Nation: Tracing the Long-
Term Process of Constitutional Reform**

Doctoral Dissertation

Prague 2018

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Opponents:

Year of the defense: 2018

Evaluation:

Bibliographic Information:

KRAUSOVÁ, Anna. *Rebuilding the White Earth Nation: Tracing the Long-Term Process of Constitutional Reform*. Prague, 2018. 128 pages. Doctoral Dissertation (PhD.). Charles University, Faculty of Social Sciences, Institute of International Studies. Department of American Studies. Supervisor Doc. PhDr. Miloš Calda.

Abstract

Native nation building is a phenomenon largely neglected by mainstream political science. There are empirical and theoretical gaps in the study of political structures of Native nations. The empirical focus of this dissertation is on the rebuilding process of the White Earth Nation located in northwestern Minnesota. The objective is to investigate the long-term process of White Earth governance in order to get insights into the background of the present state of the White Earth institutional stalemate. I trace external and internal factors that influenced the formation, preservation, and transformation of the White Earth government established as part of the Minnesota Chippewa Tribe under the Indian Reorganization Act provisions in 1936. To understand this process, it is necessary to include the historical context of the White Earth constitutionalism from 1913 to the present. I analyze some hitherto unknown archival materials using a flexible theoretical framework which I designed specifically for the purpose of studying the White Earth nation-building process. This case-specific framework eclectically uses a combination of theoretical approaches of Native American studies, genealogy, Vincent Pouliot's practice tracing, and new institutionalism. My findings suggest that the White Earth constitutional reform stalemate is the result of a combination of path-dependent dynamics and a deep internalization of outwardly imposed governing structure.

Keywords

Native nation building; Minnesota Chippewa Tribe; White Earth Nation; White Earth rebuilding process; Constitution of the White Earth Nation; genealogical method; Vincent Pouliot's practice tracing method; new institutionalism; path dependence; critical junctures; internalization

Declaration

I declare that I have worked on this dissertation independently, using the listed sources only. This dissertation has not been used to gain any other academic degree.

Prague, March 19, 2018

Anna Krausová

Acknowledgements

This dissertation could not have been completed if it were not for the support, encouragement, and help of many people. First, I would like to thank my supervisor Doc. PhDr. Miloš Calda for his guidance throughout my doctoral studies. At the Institute of International Studies, there are also some other professors who, for a variety of reasons, deserve my gratitude. These are: doc. PhDr. Michal Kubát, PhD., PhDr. Jaroslav Kučera, CSc., doc. PhDr. Jiří Vykoukal, CSc., and PhDr. Kryštof Kozák, PhD. I was fortunate to receive funding to support my research. I was awarded a grant from the Charles University Grant Agency (research project no. 324815) which allowed me to conduct archival research at the National Archives and Records Administration in Kansas City, Missouri. My thanks go to Lori Cox-Paul, Director of Archival Operations, for safeguarding seven microfilm reels from the Minnesota Historical Society for my use at the archives. I am also grateful to the archivist Joyce Burner who identified all the requested boxes and made them available to me. I was granted the "Social Science Researcher Exemption" which allowed me unrestricted access to the more recent records (after 1940) with access restrictions due to privacy concerns. The access to both restricted and unrestricted documents in Record Group 75, Records of the Bureau of Indian Affairs, gave me opportunity to analyze hitherto unknown documents and contribute empirically as well as theoretically to the present state of knowledge of the White Earth Nation. Last but not least, I am eternally indebted to my parents for everything they have done for me. Without them, none of this would be possible.

Abbreviations

BIA	Bureau of Indian Affairs
CWEN	Constitution of the White Earth Nation
IRA	Indian Reorganization Act
MCT	Minnesota Chippewa Tribe
NARA	National Archives and Records Administration
NCAI	National Congress of American Indians
TEC	Tribal Executive Committee

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1. INTRODUCTION

Native nations are distinct political entities within the territorial limits of the United States. In spite of that, they were of marginal interest to political scientists well into the 1980s. Until then, the existence of Native governing structures was disregarded, same as their role as autonomous units within the United States. A shift towards exploring Native American nations from the perspective of their separate political status was brought about by scholars' interest in the phenomenon, known as Native nation building. In the last three decades, this phenomenon has become synonymous with extensive revitalization of Native governing systems. The term Native "nation building," or more precisely "nation rebuilding" means a widespread reform of Native American self-government connected with a revitalization of Native cultures. The substance of this revitalization is the restoration of Native peoples' ability to govern themselves effectively through self-governing institutions rooted in Native culture. A culturally embedded governing reform is of strategic importance because it guarantees continuing existence of a Native nation and prevents unidirectional integration tendencies of the U.S. government. The form of most contemporary tribal governments is in part derived from Western models and does not culturally match Native governing systems. Yet, the majority of Native reformers do not find it desirable to return completely to traditional social and political structures because these existed in totally different political and economic environments. For the most part, Native nations do not decide between two extreme possibilities, i.e. between a Western-style government and a traditional form of Native government. Many Native governments undergoing a reform process prefer a democratic form of government with separate executive, legislative, and judicial branches. At the same time, they incorporate traditional forms of government, like various councils, into the institutional structure. In their constitutions, they entrench foundational principles, which represent sets of beliefs, rules, and values, rooted in Native tradition and culture.

The need for tribal government reform in many Native nations stems from the fact that their outdated constitutions are ill-equipped to utilize the accumulated statutory possibilities and cannot adequately respond to intergovernmental demands. Tribal constitutions created under the Indian Reorganization Act (IRA) of 1934¹ without the

¹ The Wheeler-Howard Act (The Indian Reorganization Act), 48 Stat. 984–988 (1934) (codified as amended at 25 U.S.C. § 461 et seq.).

input from Native people have many structural weaknesses which frequently persist in their revised forms.

Undoubtedly, issues of Native American governance fall within political science research, yet mainstream political science has largely neglected Native nations. This neglect is not perhaps caused by the lack of interest in Native nations, rather by ambiguity and inconsistency in understanding their political status. Legal and political status of Native nations stems from their relationship to federal government. The U.S. government recognizes Native nations as political entities and situates Indian law and policy within this frame of reference.² But there is a lack of consensus among scholars over whether Native nations have been incorporated into the U.S. political system.³ Regardless of contradictions and inconsistencies in Indian law and policy the fact remains that Native nations occupy a unique position within the United States. The continuing existence of their political structures is a crucial aspect of tribal inherent sovereignty.

The great diversity of Native nations, with their unique histories, cultures, intergovernmental relations, and political structures, requires case-specific studies of Native nation building. In-depth studies of individual cases may reveal unique features and outcomes leading to the restoration of Native nations' ability to efficiently rule themselves through institutions of self-government of their own design. Because contemporary Native governments follow different paths of institutional development, they find themselves at different stages in their rebuilding process. Tribes face many obstacles when undertaking government reform and many Native reform efforts fail. It is not uncommon that Native nations go through constitutional reform process several times.

Because political structures of Native nations started to be studied relatively recently, there is a lack of research that places the process of development and transformation of Native American governing institutions into a broader historical

² See generally Nell Jessup Newton (ed.), *Cohen's Handbook of Federal Indian Law* (Newark, NJ: LexisNexis, 2005).

³ Robert N. Clinton argues that federal plenary power over Indian tribes is illegitimate and lacks constitutional or historical basis. He aptly points out that Indians never delegated power to the U.S. government except for tribe-specific agreements contained in treaties. Unlike Clinton, Richard A. Monette believes that treaties between Indian tribes and the United States may be considered as a basis for the incorporation of tribes into federalism. Robert N. Clinton, "There is No Federal Supremacy Clause for Indian Tribes," *Arizona State Law Journal* 34 (2002), pp. 113–260. Richard A. Monette, "New Federalism for Indian Tribes: The Relationship between the United States and Tribes in Light of our Federalism and Republican Democracy," *University of Toledo Law Review* 25 (1994), pp. 617–72.

context. Literature on the workings of tribal governments tends to be either too general or bounded in some delimited period in the past.⁴ Authors generally pay little attention to the temporal scope, in which causal outcomes were unfolding in the context of Native actors' actions and their often difficult decision making when faced with complex internal problems and integrative mechanisms of Indian policy. Political science theories are too rarely applied to Native American nation building even though they may be useful when researchers take into consideration the different nature of Native political world.

In my dissertation I focus on the rebuilding process of the White Earth Nation located in northwestern Minnesota. I trace the development of White Earth governance and constitutionalism during the twentieth century and the 2010s in order to get insight into successful and unsuccessful phases of the revitalization process, including the present state of White Earth institutional stalemate. The purpose of this study is twofold. First, to understand the meanings connected with Anishinaabe governing practices and to explain how these practices together with external factors of changing federal Indian policy influenced the formation, preservation, and transformation of IRA governing institutions. And second, to explain how the institutional structure, which the White Earth Anishinaabeg inherited from the past, excluded certain political alternatives and effectively foreclosed possible paths of historical development. Using the wide temporal framework allows to identify both the effects of exogenous factors responsible for radical changes as well as small incremental changes caused by slow endogenous development. This conception of the White Earth institutional development as a long term slow moving process allows to study not only the last phase of White Earth reform efforts culminating in the adoption of the Constitution of the White Earth Nation in 2013. A retrospective look into a deeper past shows how the way of political organizing of the Minnesota Anishinaabeg in 1913 affected the creation of a joint government of six Anishinaabe reservations under a single constitution. On the basis of archival research, which provided new empirical material for historical reconstruction of the White Earth revitalization process, it is possible to find answers to the following questions. Through what dynamics the White Earth government came into being? How has it been maintained and transformed? How and why the present stalemate in White Earth governance happened?

⁴ Details will be discussed in the literature review (Chapter 2).

The scarce secondary literature that deals with the White Earth government as part of the pre-IRA General Council of the Chippewa and with the later IRA arrangement of the Minnesota Chippewa Tribe (MCT) differs in the amount of detail and depth of insight into political processes around the formation of these structures. The relevancy of individual works from the perspective of my study's purpose is discussed in the chapter on literature review. In spite of the fact that these works provide valuable background information and a basic characterization of both types of governing arrangements, they are incomplete as regards the analysis of the role of the Bureau of Indian Affairs (BIA)⁵, mainly in the period of the implementation of the Indian reorganization policy (1934 – 1942). No study assesses BIA field officials' measure of involvement in the process of drafting and adopting the MCT Constitution in 1935 and 1936. Events surrounding the adoption of this constitution are extremely important because the decision to establish a joint governing body for six Anishinaabe reservations had lasting consequences for the White Earth Nation. This decision precluded other institutional options and activated self-reinforcing processes that were preventing change.

In my dissertation I use a case-based research strategy and combine principles of explanatory and interpretive research. To shed light on the White Earth rebuilding process, I designed a case-specific theoretical framework which eclectically uses a combination of analytic tools of new institutionalism, genealogical method, Vincent Pouliot's practice tracing method, and Native American studies perspectives. This theoretical framework best fits my understanding of the White Earth nation building as a long-term process filled with practices forming a basic constitutive process of social life and policy. Specifically, the practice tracing method allows to join unique local causality with analytic generality and to transcend the dichotomy between interpretation and explanation. Concentrating on practices reveals meanings which actors attribute to their social reality, including the exercise of governmental authority. Secondary interpretation that reconstructs the meanings of Native actors' actions is necessary for understanding the chain of events connected with the outcome of the White Earth government reform of 2013. The answer to the question of how and why the present stalemate in White Earth governance came into being lies in causal explanation which

⁵ In order to avoid unnecessary confusion when using different terms for the same organization, I consistently use the term the Bureau of Indian Affairs that in 1947 replaced the former name, the Office of Indian Affairs or the Indian Office.

utilizes theoretical thoughts about path dependence and causal links between temporally distant events.

The unit of analysis in my dissertation is the White Earth Nation which I do not understand strictly territorially but in the sense of polity – meaning governance, decision making, patterns of order and authority of a group of people united by shared history, values, practices and cultural identity. The White Earth Nation encompasses not only the White Earth Anishinaabeg living within the bounds of the White Earth reservation but all citizens of this nation living in urban enclaves throughout the United States. The time horizon (1910s – 2010s) within which I place the unit of analysis is sufficiently long to capture the development of a sociopolitical process characterized by a long time delay between the cause and outcome.

Tribal sovereignty and tribal self-determination are two key concepts that fundamentally affect a Native nation's ability to form its own governing structure and implement policy on the basis of commonly shared values. In spite of that, I do not treat them as variables in the true sense of the word because their meaning and scope changed both in terms of federal Indian policy and Native actors' perspectives during the examined time period. Tribal sovereignty means that Native American nations have internal sovereignty but they are not sovereigns in the international context. Their sovereignty is inherent, pre- or extraconstitutional because it predates and exists outside the U.S. Constitution.⁶ Article I, section 8, clause 3 of the Constitution empowers Congress to "regulate commerce with foreign nations, [...] states, [...] and with the Indian tribes but it does not define or delimit tribal sovereignty."⁷ The United States has recognized tribal internal sovereignty, to a greater or lesser extent, since the Supreme Court decisions known as the Marshall trilogy of the 1820s and 1830s.⁸ At the time of

⁶ David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (University of Oklahoma Press, 2001), p. 5.

⁷ *Ibid.*, p. 9.

⁸ The Marshall trilogy are three Supreme Court cases decided by Chief Justice John Marshall. In *Johnson v. M'Intosh* (1823), Marshall reduced the Native right to land to the right of occupancy. In *Cherokee Nation v. Georgia* (1831), Marshall characterized Native nations as "domestic dependent nations" having a relationship with the U.S. government resembling that of a ward to his guardian. While not having the status of foreign nations they still possessed a substantial measure of sovereignty over their internal affairs. In *Worcester v. Georgia* (1832), Marshall acknowledged Native nations as "distinct political communities" with the right to self-government. *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

these rulings, tribes were *de facto* and *de jure* sovereign nations.⁹ But the inconsistent and indeterminate course of Indian policy has led to conflicting lines of precedent and hence either to affirmation or restriction of tribal sovereignty. In my dissertation, from chapter 4 onward, I examine how the White Earth Anishinaabeg, within the constraints of Indian policy, exercised internal sovereignty in practice. This focus on the *de facto* White Earth Anishinaabe sovereignty includes both visible as well as less apparent aspects of the White Earth rebuilding process. By the visible aspects I mean certain endogenous institutional changes in the organization of White Earth government, judiciary, and social services. The less visible aspects of *de facto* sovereignty lie in community building which has preserved certain elements of traditional Anishinaabe culture and governing practices.

Tribal self-determination is a term often used in federal Indian policy yet it is not clearly defined. The very term self-determination is generally understood as peoples' right to determine their own fate.¹⁰ International law distinguishes between the right to external self-determination and the right to internal self-determination. The first concerns the right of sovereign states to carry out external political roles in the international arena. The second refers to peoples' right to pursue their "political, economic, social, and cultural development within the framework of an existing state" provided that its territorial integrity is respected.¹¹ Native American nations are entitled to the right of self-determination within their quasi-sovereign status. At a theoretical level, tribal self-determination means "the ability of an Indian tribe to 'determine' its identity, or in other words, to create its own identity through defining and affirming its cultural values."¹² In practice, tribal self-determination means that a Native nation is able to "determine its own governmental structure and implement the policies that will effectuate its broader tribal values."¹³ Acts of tribal self-determination are part of processes guided by Native people's will to change their ill-suited IRA governing

⁹ David E. Wilkins, "The Manipulation of Indigenous Status: The federal Government as Shape-Shifter," *Stanford Law and Policy Review* 12:2 (2001), p. 223.

¹⁰ Michla Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian Conception," *The American Journal of International Law* 70:1 (1976), pp. 1–27.

¹¹ Saby Ghoshray, "Revisiting the Challenging Landscape of Self-Determination Within the Context of Nation's Right to Sovereignty," *ILSA Journal of International and Comparative Law* 11 (2005), p. 452.

¹² Kevin K. Washburn, "Tribal Self-Determination at the Crossroads," *Connecticut Law Review* 38 (2006), p. 782.

¹³ *Ibid.*

institutions or to extend the scope of their authority, particularly in the sphere of justice administration.

History of federal Indian policy shows that its endorsement of Native inherent sovereign powers is a necessary condition for the recognition of Native peoples' right to internal sovereignty and self-determination. But it is not a sufficient condition. At practical level, only Native people can bring internal tribal sovereignty and self-determination into life because these two depend on Native peoples' belief in their right to determine their own future and on their ability to realize their conviction.

Chapter Overview

In Chapter 2: "Literature Review," I put my research in the context of political science literature about Native nations that recognizes Native nations as separate political entities with internal sovereignty and unique political status. I mention only those works that are either seminal in the field and paved the way for further disciplinary development or those directly related to my research topic. My findings indicate that there are empirical and theoretical gaps in the study of political structures. There is still scarcity of works dealing with the long-term development of tribal governance in individual Native Nations.

Chapter 3: "Methodological and Theoretical Approach" is divided into three parts. In the first part, I focus on the pitfalls of mainstream political science which approaches Native peoples through the perspectives of political ideologies of pluralism, liberalism, multiculturalism, and neoliberalism. These ideologies perpetuate colonial dominance over Native peoples and pose a threat to their survival as separate political entities. Pluralism tends to include Native nations among other American domestic racial minorities and does not offer adequate analytical framework for understanding Native peoples' struggles to maintain their own separate sociopolitical space for the creation of sustainable governments. Neither the liberal approach adequately protects Native peoples' tribally based rights and by imposing external definitions of identity on them it denies their unique political status. The multicultural approach of Will Kymlicka distinguishes between "national minorities" and "ethnic groups." Even though Kymlicka includes Native nations into "national minorities" and recognizes their rightful claim to nation building, he insists on limiting ethnocultural diversity by the principles of liberal democracies. Preconstitutional status and internal sovereignty entitle Native American

governments to have policies, procedures, and rules which are inconsistent with those of a liberal democracy. The shift to neoliberalism with its emphasis on economic policies, competitiveness, efficiency, and delegitimizing claims on state caused a stagnation of self-determination policy. In the second part, I propose a case-specific theoretical framework that was designed for the purpose of studying the White Earth rebuilding process but it takes into account more general problems of contemporary IRA governments and their constitutions that present a serious obstacle to tribal self-determination. It uses an eclectic combination of Native American studies perspectives, genealogical method, Vincent Pouliot's practice tracing method, and new institutionalist approaches. I apply this framework in the following chapters to illustrate a possible way of interpreting phenomena, which though rooted in the past, have harmful effects on the present.

I use the standardized federal Indian policy time period model and structure the Chapters 4 to 7 accordingly. This model provides a framework for tracing the changes in federal Indian policy and their effects on White Earth self-government in individual periods. Each empirical chapter contains a brief introduction, review of federal Indian policy, one to three subchapters dealing with the White Earth Nation, and analytical conclusions.

Chapter 4: "The White Earth Nation in the Pre-Reorganization Period" is important for understanding the influence of early events on later development of White Earth governance. The first part contains a brief historical background of the special situation of the White Earth Reservation in the conditions of Indian allotment policy and its experiment in social engineering. In the second part, I focus on the first Anishinaabe constitutional inter-reservation government, the General Council of the Chippewa (1913 – 1927), which was created as a reaction to the Nelson Act of 1889 and as a defense against violating its protective restrictions. The results of my analysis show what consequences the General Council's existence had for later development of White Earth governance. I understand the creation of the General Council as the first *critical juncture* on the trajectory toward the formation of the MCT in 1936. My analysis of archival data brings evidence of the preservation of certain Anishinaabe governance practices important for maintaining White Earth Anishinaabe cultural continuity.

Chapter 5: "The White Earth Nation in the Reorganization Period" contains findings of specific impacts of the Indian reorganization policy on the White Earth Nation. In the first part, I provide brief contextual information about the turn in Indian

policy from assimilation toward greater respect for Native traditions and recognition of Native nations' right to self-government. Parts 2, 3, and 4 are based on the analysis of archival documents. In the second part, I examine the little known circumstances that led to the formation of the MCT, the joint governing body for six Anishinaabe reservations under a single constitution. I reveal the crucial role which BIA Agency personnel played in the constitution-making process. In the third part, I pinpoint the constraining character of the centralized governing body and its negative consequences for exercising White Earth self-rule. The MCT governing structure was not in agreement with sociohistorical realities of Anishinaabe communities and deprived the constituting bands of their autonomy. In the fourth part, I explain the importance of informal Anishinaabe institutions as an important factor of community building which prevented a complete break up of Anishinaabe sociopolitical life. In the fifth part, I summarize the results of my analysis. I regard the establishment of the MCT as the second *critical juncture* which had its roots in the first *critical juncture*. Initial steps toward the joint governing organization led to further movement in the same direction and initiated path-dependent processes grounded in self-reinforcing dynamics. I characterize this change in Anishinaabe governance as an exogenously caused *displacement* that replaced the pre-existing system of autonomous political units by a culturally alien model. I explain the persistence of the rigid MCT governing structure resistant to change both by the path-dependent mechanism and by the internalization of outwardly imposed rules and regulations.

Chapter 6: "The White Earth Nation in the Termination Period" explores the effects of termination policy on White Earth governance. The termination period, from approximately 1953 to the mid-1960s, had serious lasting consequences on the White Earth Reservation and the MCT as a whole. In the first part, I deal with termination legislation which ended federal benefits and support services to certain tribes (House Concurrent Resolution 108 of 1953) or subjected tribes in five states including Minnesota to criminal and civil jurisdiction (Public Law 280 of 1953). Implementation of the termination policy through the relocation program was aimed at abolishing reservations and moving Native people to cities. The second part is based on analysis of archival sources and uncovers two hidden forms of institutional change, *drift* and *conversion* which affected the operation of the MCT and White Earth governance. The impossibility to update the MCT Constitution, which was out of step with legislative activity of the termination period, created conditions for the proliferation of competing

informal institutions (clientelist relationships) that had subversive effects. This phenomenon caused serious problems in White Earth governance in the following period.

Chapter 7: "The White Earth Nation in the Self-Determination Period" deals with White Earth Anishinaabe efforts to make changes in their governing structure through constitutional reform. The self-determination policy through its two major pieces of legislation, the Indian Self-Determination and Education Assistance Act (1975) and the Tribal Self-Governance Act (1994), created conditions for Native nation building. In the first part, I describe the beginnings of self-determination policy connected with Presidents Johnson's and Nixon's groundbreaking special messages to Congress, heyday from 1970 to 1980, and the gradual stagnation that lasts to the present. In the second part, I trace the incremental changes in White Earth governance connected with broadening of the MCT government's powers, mainly its operation of federal and state programs, on the one hand, and significant court victories, on the other, which confirmed tribal jurisdiction in civil regulatory matters and environmental protection. In the third part, I explain the MCT government's malfunctioning by the processes of *drift* and *conversion* which were behind the changing institutional effects of the outdated MCT government. I focus on two White Earth constitutional reform efforts (1998 and 2007 – 2013) and analyze the causes of their failure.

Chapter 8: "Conclusion" highlights the findings of the previous chapters and contains answers to the research questions raised in the Introduction. I summarize the findings of individual chapters and put them into broader context of Native nation building.

Notes on Terminology

Indians, American Indians, Native Americans, Native peoples

Throughout the dissertation I use the terms *Indians, American Indians, Native Americans* and *Native peoples* interchangeably, when referring to indigenous peoples of the United States collectively. I also use *Indian* and *Native American* as adjectives in various collocations, like federal Indian law, federal Indian policy, Native American nation building, and Native American self-government. Even though somewhat problematic, the terms *Indian, American Indian* and *Native American* are commonly

used by academics, institutions, general public, and Native people themselves. The term *Indian* is a result of a historical error made about the geographic location and functions as a "homogenous ethnic group label"¹⁴ that ignores cultural diversity of native peoples. Nevertheless, *Indian* with or without the modifier American, remains the most common designation in federal Indian law which defines *Indian* as a person meeting two conditions: "that some of the individual's ancestors lived in what is now the United States before its discovery by Europeans, and that the individual is recognized as an Indian by the individual's tribe or community."¹⁵ The term *Native American* has gained in popularity among mainstream academics in recent decades. But some Native scholars have reservations about its usage because it may refer to any person born in the Americas.¹⁶

Anishinaabe, Chippewa, Ojibway/Ojibwe/Ojibwa

Citizens of each Native nation have a specific name by which they call themselves. Since the 1990s, White Earth Nation citizens have returned to their traditional name *Anishinaabeg*, replacing the anglicized corruption *Chippewa* derived from the word *Ojibway/Ojibwe/Ojibwa* used by French traders. The term *Anishinaabe* (noun sg and adj), *Anishinaabeg* (noun pl) can be translated into English as "the original people" or "the Indian people."¹⁷ However, the term *Chippewa* has not completely disappeared. It is officially used by the federal government and remains in the name of the Minnesota Chippewa Tribe, the umbrella organization of the six Minnesota Anishinaabe bands.

Native nations, (American) Indian nations, tribes, band

Native political units are called *Indian tribe*, *(American) Indian nation*, or *Native nation*. No single, all purpose definition of these terms exists and there are different meanings for Native people and for federal law. According to *Cohen's Handbook*, for federal purposes, these terms denote the establishment of a legal relationship between

¹⁴ Duane Champagne, *Social Change and Cultural Continuity Among Native Nations* (Lanham: Altamira Press, 2007), p. 20.

¹⁵ Newton (ed.), *Cohen's Handbook of Federal Indian Law*, pp. 171–72.

¹⁶ David E. Wilkins and Heidi K. Stark, *American Indian Politics and the American Political System*, 4th ed. (Lanham: Rowman & Littlefield, 2017), p. xvi.

¹⁷ Anton Treuer, *The Assassination of Hole in the Day* (St. Paul: Borealis Books, 2011), pp. 217–21. See also Dennis Jones, "The Etymology of Anishinaabe," *Oshkaabewis Native Journal* 2:1 (1995), pp. 43–48.

an indigenous North American group and the United States.¹⁸ Tribes recognized by treaty, statute, administrative process, or other intercourse with the United States are known as federally recognized tribes with legal status as distinct political societies.¹⁹ For Native people the terms tribe and nation are defined by "shared language, rituals, narratives, kinship or clan ties, and a shared relationship to specific land."²⁰ In this sense, the federal understanding of *tribe* and *nation* is in opposition to the tribal one, since a tribe may continue to exist for a Native community regardless of federal recognition. Even though the term *nation* does not quite carry the meaning Native people attribute to their communities, this term is widely accepted by them because it reflects their rejection to be treated as one of the ethnic minorities within the nation state.

The term *band* originally meant a collective of families living together in one location. This loose term historically corresponded with smaller self-governing political units. It was commonly used for Anishinaabe groups scattered over the territory between the latitudes of 42°–50° N and longitudes of 75°–100° W. Today the Anishinaabeg continue to use the band divisions but share a common Anishinaabe identity.²¹ The term *band* remains in common usage, e.g. in the collocation the White Earth Band which suggests that the White Earth Nation is a subunit of a federated arrangement of the Minnesota Chippewa Tribe.

Indian country

The term *Indian country* is commonly defined as country within which Indian laws and customs and federal laws relating to Indians are generally applicable. Congress has adjusted the definition of Indian country and has used an alternative geographic description in some statutes. For example, the Indian Child Welfare Act of 1978 uses the term "reservation" but defines it broadly to mean "Indian country." The Indian Gaming Regulatory Act of 1988 does not use the term "Indian country" directly but uses

¹⁸ Newton (ed.), *Cohen's Handbook of Federal Indian Law*, p. 135.

¹⁹ Ibid., p. 138.

²⁰ Ibid., pp. 136–38.

²¹ See Heidi Kiiwetinepinesiik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," *American Indian Culture and Research Journal* 34:2 (2010), p. 159. See also Peter Jones, *History of the Ojebway Indians: With Especial Reference to Their Conversion to Christianity* (London: AW Bennett, 1861), p. 40.

"Indian lands" which are defined as lands within Indian reservations and any lands held in trust by the United States for the benefit of a tribe or individual Indians.²²

Trust relationship

The concept of federal *trust responsibility* to Indians evolved from early treaties with tribes. In these treaties, the United States obtained the land from tribes, and in return, the United States set aside other reservation lands for those tribes and guaranteed that the federal government would respect tribal sovereignty and provide services to tribes. In 1942 the Supreme Court held that the federal government "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes.²³ Today the *trust doctrine* is one of the cornerstones of Indian law. The term "trust land" refers to land held in trust by the United States for the benefit of a tribe or individual Indian.

Reservation

Reservation is defined as all lands within the boundaries of areas set aside by the U.S. government for the use and occupancy of a tribe or tribes by treaty, statute, executive order, judicial decision, or order of the Secretary of the Interior.²⁴ *Reservation* comprises lands held in trust status by the federal government for the benefit of Indians as well as lands in individual Indian ownership and lands owned by non-Indians.

2. LITERATURE REVIEW

For mainstream U.S. political science, Native nations and their governing structures remain of marginal interest. According to Kennan Ferguson, one of the reasons is that political scientists consider very few Native issues as politically relevant.²⁵ Mainstream political scientists' approach arises from their view of the United States as a polyethnic nation state in which Native nations are simply attributed the position of ethnic

²² Newton (ed.), *Cohen's Handbook of Federal Indian Law*, pp. 182–83.

²³ *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

²⁴ Indian Financing Act of 1974, Public Law 93-262; 25 U.S.C. 1452 (d).

²⁵ Kennan Ferguson, "Why Does Political Science Hate American Indians?," *Perspectives on Politics* 14: 4 (2016), p. 1030.

minorities.²⁶ If political scientists deal with Native peoples as separate sovereign nations then they should admit that the United States is not only a polyethnic but also a multinational state that should be open to bilateral political negotiations. Studying Native nations in this way gives an opportunity to gain insight into social and political practices that are uncommon or neglected in mainstream society. In this chapter, I situate my research in the context of political science literature about Native nations that is written from the perspective that recognizes Native nations as separate political entities with internal sovereignty and unique political status. I review only those works that are either seminal in the field and paved the way for further disciplinary development or those directly related to my research topic.

The study of political systems of Native nations does not have a long history. The beginnings of interdisciplinary research on Native nations are connected with the name of Vine Deloria Jr. (Standing Rock Sioux), author of more than twenty books that served as an intellectual basis for the academic discipline of Native American studies. Vine Deloria Jr. influenced numerous Native scholars in a variety of disciplines, including political science. David Wilkins (Lumbee), one of the first Native American political scientists, who started his academic career in 1990, continued Deloria's intellectual legacy and became one of the leading figures in the field. Some of his groundbreaking works are essential for understanding the relationship between Native nations and the U.S. federal government. These works concern tribal sovereignty and explain how it has been constantly eroded and distorted by the U.S. judiciary.²⁷ In his book *American Indian Politics and the American Political System* (first published in 2002, now in the fourth edition coauthored with Heidi Kiiwetinepinesiiik Stark), Wilkins managed to avoid the Western dichotomy of either/or when presenting federal-based and Native-based perspectives.²⁸ This approach provides Native and non-Native readers with accurate information on a complex subject area covering such topics as federal

²⁶ For an example of this type of research, see Kenneth Janda, Jeffrey M. Berry, Jerry Goldman, Deborah Schildkraut, and Paul Manna, *The Challenge of Democracy: American Government in Global Politics*, 14th ed. (Boston: Cengage Learning, 2017). See also Chapter 3 which deals more extensively with mainstream political theories and their influence on political science and political thinking in the United States.

²⁷ E.g. David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997). Wilkins and Lomawaima, *Uneven Ground*.

²⁸ David E. Wilkins and Heidi K. Stark, *American Indian Politics and the American Political System*, 4th ed. (Lanham: Rowman & Littlefield, 2017).

Indian policy, federal-state-tribal relations, historic and present Indigenous governments and their position in relation to the American political system.

Since about the mid-1980s, a wave of Native nation building has led to an increased scholarly interest in studying the structures of Native governments. These works by Native and non-Native scholars are written from the perspective that recognizes Native nations' sovereignty and their separate political status. In 1986 a research initiative called the Harvard Project on American Indian Economic Development was launched under the direction of sociologist Steven Cornell and economist Joseph Kalt. The Harvard Project, located at the Kennedy School of Government at Harvard University, collaborates with the Native Nations Institute at the University of Arizona and examines contemporary tribal governments to help them achieve social and economic development. This type of research is helpful to Native nations that strive for government reform because it reveals that achieving economic, political, social, and cultural goals is greatly determined by a match between tribal governing structures and Native cultures. Findings of this applied research have been published in a number of books, articles, and reports written by scholars trained in sociology, political science, economy, and law. An example of such a collaborative effort is the edited collection *Rebuilding Native Nations: Strategies for Governance and Development* which offers help to those nations striving to overcome colonial legacies embodied in IRA governments.²⁹ Another useful interdisciplinary work, *American Indian Constitutional Reform and the Rebuilding of Native Nations*, combines tribal leaders' firsthand accounts with scholarly articles and allows tribal reformers learn from the experience of other tribes engaged in constitutional reform.³⁰ It shows that tribal constitutional reform, which involves creating stable and effective governing institutions, is a complicated process that may often end up in a stalemate.

In connection with Native nation building that is currently under way in many Native nations there has appeared a new type of Native legal literature detailing the constitution-making process in individual Native nations. These works, exemplified by *Colonial Entanglement: Constituting a Twenty-First-Century Osage Nation*³¹ and *The*

²⁹ Miriam Jorgensen (ed.), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson: University of Arizona Press, 2007).

³⁰ Eric D. Lemont (ed.), *American Indian Constitutional Reform and the Rebuilding of Native Nations* (Austin: University of Texas Press, 2006).

³¹ Jean Dennison, *Colonial Entanglement: Constituting a Twenty-First-Century Osage Nation* (Chapel Hill: University of North Carolina Press, 2012).

White Earth Nation: Ratification of a Native Democratic Constitution,³² testify to the difficulties involved in tribal reform process that has as its goal establishing a new constitutional government. One of the main problems dealt with in this literature is the specification of basic criteria for citizenship. Even though most people in Native nations do not recognize blood quantum-based standards for citizenship, conflicts over citizenship criteria are often a paralyzing factor in constitutional reform efforts.

Because sociopolitical structures of Native nations started to be studied relatively recently, there is still a paucity of research that traces the process of development and transformation of Native political structures over an extended period of time and on a tribe-specific basis. This gap might be filled by case-specific studies that take into account the great cultural and political diversity of Native nations and their different reactions to colonial pressures and oppressive federal Indian policies. Two excellent examples of political science studies tackling this task are Sharon O'Brien's *American Indian tribal governments*³³ and David Wilkins' *The Navajo Political Experience*.³⁴ The former, through five case studies offers a comparative view on historical and modern governing structures of five Native nations. The latter, traces historical development of the Navajo government and analyzes its contemporary structure and practices.

The continuing development of Native American studies discipline has given rise to the need to ground this discipline on methodological and theoretical approaches that privilege Native perspectives, place Native communities into the center of analyses, and serve their needs. Approaches that are close to Native nation-building goals do not focus merely on a critique of colonial experience. Instead, they are concerned with ways Native people reconsider their relationship to imposed colonial political institutions.³⁵ The interdisciplinary character of Native American studies allows researchers to produce research that benefits Native people and to employ research methods and theories that will achieve this goal.³⁶ This absence of fixed theoretical and

³² Gerald Vizenor and Jill Doerfler, *The White Earth Nation: Ratification of a Native Democratic Constitution* (Lincoln: University of Nebraska Press, 2012).

³³ Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989).

³⁴ David E. Wilkins, *The Navajo Political Experience* (Lanham: Rowman & Littlefield, 2003).

³⁵ Duane Champagne, "Challenges to Native Nation Building in the 21st Century," *Arizona State Law Journal* 34 (2002), pp. 47–54. Duane Champagne, "In Search of Theory and Method in American Indian studies," *The American Indian Quarterly* 31:3 (2007), pp. 353–72.

³⁶ Robert Alexander Innes, "Introduction: Native Studies and Native Cultural Preservation, Revitalization, and Persistence," *American Indian Culture and Research Journal* 34: 2 (2010), pp. 1–9.

methodological approaches gives political scientists an opportunity to utilize theoretical frameworks of their own choice and view the studied problems in new ways.

In studying the White Earth rebuilding process, it is possible to use the methodological potential of Anishinaabe stories.³⁷ The usefulness of stories as theories is in agreement with Joseph A. Maxwell's statement that "a useful theory is one that tells an enlightening story about some phenomenon, one that gives you new insights and broadens your understanding of the phenomenon."³⁸ An example of such a useful theory, I see in Jill Doerfler's essay about citizenship criteria, the main contested issue of the White Earth constitutional reform.³⁹ Doerfler shows how White Earth writer Ignatia Broker in her narrative *Night Flying Woman* uses the story as a tool to assert the Anishinaabe conception of identity as opposed to blood quantum requirements.

The rebuilding process of Native governance on the White Earth Reservation represents a path leading to the continuing existence of White Earth Anishinaabeg as a nation. It is a struggle for sovereignty and self-determination, ideals implicit in histories of Anishinaabe authors of the mid-nineteenth century. Works by William W. Warren, George Copway, and Peter Jones contain valuable information about historical forms of Anishinaabe social structure and governance. George Copway's *The Traditional History and Characteristic Sketches of the Ojibway Nation*, Peter Jones' *History of the Ojebway Indians; With Especial Reference to Their Conversion to Christianity* and William W. Warren's *History of the Ojibway Nation* were motivated by the effort to preserve traditional Anishinaabe knowledges and pass them to future generations.⁴⁰ Warren's book, first published thirty-two years after the author's death, is one of the earliest and most influential works written about the Anishinaabeg. Warren drew solely on Native

Chris Andersen and Jean M. O'Brien (eds.), *Sources and Methods in Indigenous Studies* (Abingdon: Routledge, 2016).

³⁷ Jill Doerfler, Niigaanwewidam James Sinclair, and Heidi Kiiwetinewinewisiik Stark (eds.), *Centering Anishinaabeg Studies: Understanding the World Through Stories* (East Lansing: Michigan State University Press, 2013). Editors of the anthology propose to employ Anishinaabe stories as methodological and theoretical frameworks when dealing with a variety of problems, concerned for example with law, government, land, social relations, community, identity, and culture.

³⁸ Joseph A. Maxwell, *Qualitative Research Design: An Interactive Approach* (London: Sage, 2012), p. 49.

³⁹ Jill Doerfler, "A Philosophy for Living: Ignatia Broker and Constitutional Reform among the White Earth Anishinaabeg," in Doerfler, Sinclair, and Stark (eds.), *Centering Anishinaabeg Studies*, pp. 173–89.

⁴⁰ George Copway, *The Traditional History and Characteristic Sketches of the Ojibway Nation* (Boston: Benjamin B. Mussey & Co., 1851). Peter Jones, *History of the Ojebway Indians; With Especial Reference to Their Conversion to Christianity* (London: A.W. Bennett, 1861). William Whipple Warren, *History of the Ojibway Nation* (St. Paul: Minnesota Historical Society, 1885).

sources and reconstructed a five-hundred-year-old history of the Anishinaabeg based on a migration story recited during a midewiwin ritual.

Another work that is written from Native perspective and draws mostly on Anishinaabe sources is a more contemporary book *To Be the Main Leaders of Our People: A History of Minnesota Ojibwe Politics, 1825 – 1898* by Rebecca Kugel.⁴¹ In this political history of the Minnesota Anishinaabeg, the author devotes a lot of space to Anishinaabe bands that in 1868 were relocated to the White Earth Reservation with which they finally connected their identity. Traditional governing patterns that included both "civil leaders" and "warriors" were considered negatively as destructive factionalism by non-Native observers. Kugel shows that for the Anishinaabeg this division was natural and contributed to maintaining balance in the community and ensuring survival. It was this plurality of leadership roles that prevented outsiders from taking complete control over the Anishinaabe culture. This finding is in clear contradiction with the non-Native perspective of ethnohistorian Harold Hickerson who saw the Anishinaabe culture in disarray as a result of new conditions imposed by Euro-Americans.⁴² According to Kugel, the White Earth Anishinaabeg were able to successfully cope even with missionary practices of the nineteenth century which were aimed at transformation of Native culture. By incorporating values of the bimaadiziwin philosophy into their approach to Christianity, the White Earth Anishinaabeg created a semiautonomous space in which traditional ways of life based on shared ethics and subsistence were maintained.⁴³

A detailed study of historian Melissa L. Meyer *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920* chronologically succeeds Kugel's political history.⁴⁴ Meyer shows that the passage of the White Earth Reservation from a "region of refuge" into a "dependent periphery" as a consequence of allotment policy and the expansion of market capitalism caused a change in the conception of leadership factions connected with the terms full-blood and mixed-blood. These terms that formally reflected rather different worldviews and

⁴¹ Rebecca Kugel, *To Be the Main Leaders of Our People: A History of Minnesota Ojibwe Politics, 1825-1898* (East Lansing: Michigan State University Press, 1998).

⁴² Harold Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory* (New York: Holt, Rinehart and Winston, 1970), p. 17.

⁴³ Michael D. McNally, *Ojibwe Singers: Hymns, Grief, and a Native Culture in Motion* (St. Paul: Minnesota Historical Society Press, 2009), p. 96.

⁴⁴ Melissa L. Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920* (Lincoln: University of Nebraska Press, 1999).

attitudes to economic development than actual ethnic differences, in the early twentieth century gained political meaning as a result of disputes among conservative, subsistence-oriented Anishinaabeg and those who prioritized capitalistic values. In spite of political conflict, the White Earth Anishinaabeg did not constitute polarized ethnic groups but a unified identity with strong ties to the reservation. In face of economic and cultural pressures, they were not passive recipients of externally imposed changes but actively adapted in order to ensure their continuing cultural survival.

The question of the White Earth Nation's survival is present in Jill Doerfler's exploration of identity and citizenship. In her book *Those Who Belong: Identity, Family, Blood, and Citizenship among the White Earth Anishinaabeg*, the author connects the revitalization of the White Earth Nation with the need to change federally imposed membership rules.⁴⁵ Many White Earth Anishinaabeg regard the racial criteria that require the minimum of "one quarter degree Minnesota Chippewa Indian blood"⁴⁶ as incompatible with their values and conceptions of identity which they understand in terms of cultural practices and kinship. The process of the White Earth constitutional reform of 2007–2013 encompassed serious deliberations on the meaning of the phrase "We the Anishinaabeg" that lies in determining who the White Earth Anishinaabeg are from the perspective of their history, culture, and the sovereign right to make decisions about their future. Gerald Vizenor and Jill Doerfler's book with an introduction by David Wilkins *The White Earth Nation: Ratification of a Native Democratic Constitution* deals with fundamental issues faced by each Native nation when it is engaged in creating a constitutional document that should reflect foundational values in which national identity is rooted.⁴⁷ The book provides valuable information about the complicated process motivated by White Earth Anishinaabe efforts to liberate themselves from colonial legacies that has burdened not only the operation of their government but also the mental world of individuals. At the level of governing institutions, decolonization consists in institutionalizing the system of checks and balances, the composition of which forms the core and the meaning of the Constitution. In the mental world, decolonization can be seen as getting rid of psychological

⁴⁵ Jill Doerfler, *Those Who Belong: Identity, Family, Blood, and Citizenship Among the White Earth Anishinaabeg* (East Lansing: Michigan State University Press, 2015).

⁴⁶ Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. Minnesota Chippewa Tribe and United States Office of Indian Affairs, (1964; amended 1972 and 2006).

⁴⁷ Vizenor and Doerfler, *The White Earth Nation*.

internalization of colonial oppression by rejecting unnatural membership/citizenship rules. The book was published in 2012 and therefore could not anticipate events of 2014–2016 which prevented the implementation of the new constitution and changed the result of the constitutional reform. Nonetheless, the book is an important testimony to the significance of the White Earth reform effort which represents an evolutionary step in the White Earth rebuilding process. The Constitution of the White Earth Nation remains a unique document reflecting culture, values, and beliefs of the White Earth Anishinaabeg.

What follows from this literature review is twofold: First, Native (or more specifically Anishinaabe) nation rebuilding is a serious and complicated political matter and deserves attention by political scientists. Second, there are still empirical and theoretical gaps in the study of political structures of Native nations despite an extensive secondary literature written by Native and non-Native scholars. This gives scholars an opportunity to contribute to the knowledge of Native nations and their political structures by analyzing hitherto unknown archival materials and by theory development. I believe that the inclusion of Native political issues into political science may lead to the development of new theories and refinement of old ones when political scientists enrich their established worldviews by Native perspectives and philosophies. Indigenous topics provide an opportunity to extend the scope of study of political science. The next chapter deals with the matters of theory in more detail.

3. METHODOLOGICAL AND THEORETICAL APPROACH

By methodology I understand a plan of how to proceed from empirical research findings to producing outcomes.⁴⁸ In my dissertation I use a case-based research design which allows to focus on the dynamics of the case understood as a hole.⁴⁹ In the first part of this chapter, I focus on mainstream political ideologies of pluralism, liberalism, multiculturalism, and neoliberalism that have shaped political thinking in the United States since the nineteenth century to the present. These ideologies create an image of American society in which rights and privileges of minority groups are respected,

⁴⁸ Perri 6 and Christine Bellamy, *Principles of Methodology: Research Design in Social Science* (London: Sage, 2011).

⁴⁹ Ibid., p. 104.

whereas Indigenous rights based on treaties and trust responsibility are conceived as those that violate basic principles of American democracy. In the second part, I call attention to the as yet unused potential of certain theoretical approaches to the study of Native nations' political systems. A theoretical framework created by eclectic selection of analytic tools of new institutionalism, genealogical method, Vincent Pouliot's practice tracing method, and Native American studies perspectives allows to shed light on many aspects of the White Earth rebuilding process that proceeds in the context of ongoing colonial relationships.

3.1 The Pitfalls of Mainstream Political Theory

Approaches of American political scientists to the study of Native politics reflect the fact that American political science does not take Native politics seriously because it does not take settler colonialism seriously.⁵⁰ For Native people, the reality of settler colonialism lies in the endurance of institutionalized forms of economic, political, and cultural dominance through which the nation state preserves the legacies of the colonial era. It is therefore important that mainstream political scientists "not only view politics, knowledge systems, and history from the perspective of [Native peoples but also] recognize the politics of settler colonialism and Indigenous resistance as *ongoing* rather than merely historical."⁵¹ Native resistance to U.S. power structures that politically constrain Native peoples has a variety of forms but a single goal – to preserve their own cultural distinctiveness and political autonomy despite restrictive conditions. In other words, it is a continuing struggle of Native nations for self-determination. But the idea of Native self-determination defies the frame of cultural and historical experience of U.S. politicians whose thinking very unwillingly gets out of the assimilationist rut. Even "the self-determination era in Indian policy really began not as an independent policy

⁵⁰ Kevin Bruyneel, "Social Science and the Study of Indigenous People's Politics: Contributions, Omissions, and Tensions" in *Oxford Handbook of Indigenous People's Politics*, eds. José Antonio Lucero, Dale Turner, and Donna Lee VanCott. Oxford University Press. Oxford Handbooks Online. 2014-04-01. Date Accessed 2 August 2017.
<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195386653.001.0001/oxfordhb-9780195386653-e-008>.

⁵¹ Nancy D. Wadsworth, "Unsettling Lessons: Teaching Indigenous Politics and Settler Colonialism in Political Science," *PS: Political Science & Politics* 47: 3 (2014), p. 693.

initiative related to American Indians, but as a component of a much broader national initiative."⁵² Socially oriented government initiatives of the 1960s such as the "New Frontier," "Great Society," and "War on Poverty" allowed Native people to participate in social welfare programs under an undefined mass of the American poor. To be eligible for these programs, tribal governments followed a strategy of not emphasizing their political status. American public and social scientists did not consider Native people as distinct nations but as disadvantaged racial minorities or ethnic groups who needed the help of national social welfare programs to integrate into mainstream society.

The tendency to include Native nations among other American domestic racial minorities has been connected with theories of pluralism which flourished in American political science in the 1960s. However, pluralism as an ideal of American politics has its beginnings as early as in the first half of the nineteenth century in sociologically oriented political discussions of the French thinker Alexis de Tocqueville. Tocqueville saw pluralism as a widespread participation of all citizens in politics "that begins in the lowest ranks of the populace and from there spreads through all classes of citizens one after another."⁵³ In the U.S. politics in the first decades of the twentieth century was a prevalent view of the necessity to Americanize all immigrants, which meant their assimilation into the dominant culture. In opposition to the melting pot ideology, which urged the idea of homogenization of all cultural groups into a single mass, Horace M. Kallen created the philosophy of cultural pluralism that considered diverse ethnic and racial groups as beneficial to Western democracy.⁵⁴ Pluralist visions shaped the criticism of the pre-New Deal Indian policy and influenced federal Indian policy in the 1930s and 1940s.⁵⁵ While cultural pluralists sought legal mechanisms applicable to diverse cultural groups, political pluralists strove for recognition of Native peoples' limited sovereignty. At the time of the implementation of Indian reorganization policy attempts to apply Felix Cohen's pluralist models were only partially successful.⁵⁶ Imposing universal constitutional forms of government under the IRA was consistent

⁵² Washburn, "Tribal Self-determination at the Crossroads," p. 787.

⁵³ Alexis de Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (New York: The Library of America, [1835] 2004), p. 278.

⁵⁴ Horace M. Kallen, "Democracy Versus the Melting-Pot," in *Nation*, Feb. 18, 1915, pp. 190–94 and Feb. 25, 1915, pp. 217–20.

⁵⁵ Dalia Tsuk, "The New Deal Origins of American Legal Pluralism," *Florida State University Law Review* 29 (2001), pp. 189–268.

⁵⁶ Dalia Tsuk, "Pluralisms: The Indian New Deal as a Model," *Margins* 1: 2 (2001), pp. 393–449.

with the intention of the colonizing society to transform Native people according to its own vision and speed up assimilation of Native people into the American mainstream. Political science in the 1950s and 1960s saw the United States as composed of competing interest groups that politicians can use as tools to gain political power and to change a governmental policy by supporting interests of a particular group.⁵⁷ Neither interest group theories nor more contemporary variants of pluralism offer adequate analytical and interpretive frameworks for understanding Native peoples' struggles to maintain their own separate sociopolitical space, in which they strive to create self-sufficient, politically and economically sustainable governments in face of continuing pressures of ongoing settler colonialism.

Even though pluralism has been losing in popularity since the 1970s, it remains a general public philosophy containing widely accepted understanding of the U.S. polity and its organization. In liberal democracies like the United States, pluralism and multiculturalism are part of liberal ideology which is considered to be the most plausible reaction to cultural diversity because it is based on the idea of equality of all citizens. But the liberal approach does not adequately protect Native people and their tribally based rights. It imposes external definitions of identity on them and in so doing denies their unique political status and transforms them into ethnic minorities. In this way, liberal policies whittle down Native sovereignty and keep Native people in the state of internal colonialism.

A view of American society as a multiethnic conglomerate permeates most past and current literature on the U.S. political system. A current example of applying pluralist paradigm on Native Americans can be found in the numerous editions of *The Challenge of Democracy: American Government in Global Politics*.⁵⁸ Authors of this widely circulated introductory text on the U.S. political system disregard the existence of tribal governments and define the American intergovernmental system as the "overall collection of national, state, and local governments."⁵⁹

In contrast with pluralist tendencies to ignore the distinction between Native nations and ethnic minorities, Will Kymlicka in his multicultural approach clearly

⁵⁷ Theodore Lowi, "The Public Philosophy: Interest-Group Liberalism," *American Political Science Review* 61: 1 (1967), pp. 5–24. Avigail Eisenberg, "Reconstructing Political Pluralism" in *The Political Theory Reader*, ed. Paul Schumaker (Oxford: Blackwell Publishing, 2010), p. 18.

⁵⁸ Janda, Berry, Goldman, Schildkraut, and Manna, *The Challenge of Democracy*.

⁵⁹ *Ibid.*, p. 99.

distinguishes between what he calls "national minorities" and "ethnic groups."⁶⁰ Kymlicka correctly does not include Native nations into a broad category of ethnic groups because these consist of migrants who voluntarily left their national communities and agreed with their integration into the larger society. While ethnic minorities strive for the recognition of their ethnic identity, their goal is not a separate national existence and self-government which are the priorities of Native nations. Kymlicka's theory recognizes Native nations' rightful claim to nation building and "societal culture" which includes "not just shared memories and values, but also common institutions and practices."⁶¹ While Kymlicka's typology of minority groups is reasonable, his theorizing does not provide useful tools for explaining and understanding Native American nation building because of his insistence to limit ethnocultural diversity by the principles of liberal democracies. Even though many Native nations prefer that their governments function according to democratic principles, other rely on the quality of the leadership rather than on the type of governmental system.⁶² Due to their preconstitutional status and internal sovereignty, Native American governments can have policies, procedures, and rules which are inconsistent with those of a liberal democracy.⁶³

Since the 1980s, ideas of neoliberalism implemented by the U.S. government initiated a departure from social welfare state. In federal Indian policy, this shift meant a stagnation of self-determination initiatives. Presidential administrations have continued the rhetoric of self-determination started by President Nixon in 1970 but as Kevin K. Washburn points out, since the mid-1990s there has been a surprising lack of legislation related to self-determination.⁶⁴ This situation is connected with the turn to neoliberalism and its emphasis on economic policies, competitiveness, efficiency, and delegitimizing claims on state. Liberal policy included Native people as citizens of the United States and guaranteed them civil rights as part of greater legal protection of minority groups. The recognition of Native people as capable citizens did not disrupt colonial

⁶⁰ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 10.

⁶¹ Ibid., p. 76.

⁶² Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, "The Concept of Governance and its Implications for First Nations," Joint Occasional Papers on Native Affairs, No. 2004-02, Native Nations Institute for Leadership, Management and Policy. 2004. Date Accessed 2 August 2017. Available at <http://caid.ca/JopGovCon2004.pdf>.

⁶³ Angela R. Riley, "Good (Native) Governance," *Columbia Law Review* 107 (2007), pp. 1049–1125.

⁶⁴ Washburn, "Tribal Self-determination at the Crossroads."

relationships and did not lead to formal decolonization; in neoliberal form this recognition was challenged by introducing the "figure of the incapable citizen."⁶⁵ According to Strakosch, neoliberal practices of inclusion or temporary exclusion keep Native people in an ambivalent position of being both inside and outside the settler colonial order but always under the control of governmental policy.⁶⁶ Neoliberalism forces Native people to constantly prove their capacity of human improvement which is assessed by economic criteria. An example of evaluating Native peoples on the basis of their economic capability is Bordewich's book *Killing the White Man's Indian*.⁶⁷ Bordewich's appeal for abolishing Native special rights, even though over twenty years old, remains tacit among many American policymakers and should not be taken lightly by political scientists. The attention of political scientists should also be turned to forms of Native resistance to neoliberal colonial practices aimed at converting Native nationhood into minority status.

3.2 Toward a Case-Specific Theoretical Framework

In this part, my aim is to situate the phenomenon of Native American nation building in a theoretical framework that will allow to understand what happens in the political space in which Native people are the main actors of the decolonization process. The political space in which Native people promote and defend their sovereignty by creating their own governments is what Kevin Bruyneel calls "the third space of sovereignty."⁶⁸ In spite of the fact that political maneuvering space of Native nations is constrained by the Congressional plenary power, Native people are not entirely helpless and they have always found ways to use inconsistency and indeterminacy of federal Indian policy to put elements of their internal sovereignty into practice.

In my research I hold the view that theory plays a substantial role in the research process. I understand theory in the sense of David J. Flinders and Geoffrey E. Mills as

⁶⁵ Elizabeth Strakosch, *Neoliberal Indigenous Policy: Settler Colonialism and the 'Post-Welfare' State* (Basingstoke: Palgrave Macmillan, 2015), p. 7.

⁶⁶ Ibid.

⁶⁷ Fergus M. Bordewich, *Killing the White Man's Indian: Reinventing Native Americans at the End of the Twentieth Century* (New York: Doubleday, 1996).

⁶⁸ Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007).

"any general set of ideas that guide action."⁶⁹ The phenomenon of Native American nation building does not fit neatly into any single research tradition. For this reason, I espouse the intellectual stance of analytic eclecticism which supports a selective use of theories, analytical concepts, and methods in pragmatic ways. Analytic eclecticism allows to create a flexible framework organized around a specific research problem which itself guides the construction of this framework.⁷⁰ My approach combines perspectives and goals of Native American studies with appropriate political science concepts and theoretical approaches. I share with Native American studies the recognition of Native Nations as active political entities organized around common cultural values and worldviews. The three goals of Native American studies formulated by Robert Alexander Innes⁷¹ are worth adopting by researchers studying Native Nations:

1. To access, understand, and convey Native cultural perspective(s).
2. To conduct research that benefits Native people and/or communities.
3. To employ research methods and theories that will achieve these goals.

The case-specific theoretical framework I propose here was created on the basis of my extensive archival research conducted for the purpose of studying the White Earth nation-building process. My reading of archival documents revealed a connection between past events and the difficulties the White Earth Anishinaabeg face when they strive for government reform. I found out that many aspects of the studied process and relationships among key events in a historical sequence can be interpreted and explained using a combination of genealogical method, Vincent Pouliot's practice tracing method, and analytic tools of new institutionalism. All three approaches share the view that it is important to situate studied phenomena into their historical contexts. Because most aspects of the Native nation-building process are unavailable for direct researcher observation, historical reconstruction from archival documents is necessary.

Genealogical method encourages to question official accounts and shows that the heritage of colonial dominance exerts influence on Native people not only in the visible economic and sociopolitical spheres. The power of this dominance works also subtly in

⁶⁹ David J. Flinders and Geoffrey E. Mills (eds.), *Theory and Concepts in Qualitative Research: Perspectives from the Field* (New York: Teachers College Press, 1993), p. xii.

⁷⁰ Rudra Sil and Peter J. Katzenstein, "Analytic Eclecticism in the Study of World Politics: Reconfiguring Problems and Mechanisms Across Research Traditions," *Perspectives on Politics* 8 (2010), pp. 411–31.

⁷¹ Innes, "Introduction," p. 2.

the mental world of the colonized through skilful manipulation of Native peoples' decision making presenting it as their own free choice. Genealogical method allows to investigate how outwardly imposed changes and regulations become internalized, threaten community cohesion, and paralyze the reform process. Genealogy reveals power relations that imposed alien political institutions to Native people, questions the legitimacy of these arrangements and does not seek to preserve the status quo. The strength of genealogy lies in its ability to bring Native political systems out of the margins of knowledge and highlight what Michel Foucault called the "insurrection of subjugated knowledges."⁷² Foucault's genealogy is an interpretive method that Foucault defined as a "union of erudite knowledge and local memories which allows us to establish a historical knowledge of struggles and to make use of this knowledge tactically today."⁷³ The goal of genealogical approach is not to search for causal relations. Evidence from archival documents is used selectively to help understand the problem arising from historical formation of the imposed colonial governing system in which the White Earth Anishinaabeg have been trapped.

Practice tracing method developed by Vincent Pouliot focuses on social processes and is attentive to time order.⁷⁴ Using this method it is possible to get beyond the dichotomy of explanation/interpretation. The method fits the internally complex case of White Earth nation building which is a process unfolding over an extensive time period. Practice tracing is based on a view that social causality is to be established locally but with the need to allow producing analytically general insights. According to Pouliot, practices are socially meaningful and organized patterns of activities in a given social context.⁷⁵ What makes practices useful is that they are both particular, contextually embedded actions, and general, patterns of actions.⁷⁶ Practices are causal in the sense that they have social effects. The explanation of causal effects of practices stems from previous interpretive understanding what these practices mean in the local context. To gain insight into the world of Anishinaabe social practices means to understand the meaning of beliefs and worldviews from within the Native community. The meaning

⁷² Michel Foucault and Colin Gordon, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon Books, 1980), p. 81.

⁷³ Ibid., p. 83.

⁷⁴ Vincent Pouliot, "Practice Tracing" in Andrew Bennett and Jeffrey T. Checkel (eds.), *Process Tracing* (Cambridge University Press, 2014), pp. 237–59.

⁷⁵ Ibid., p. 241.

⁷⁶ Ibid., p. 258.

Native actors attribute to their practices is primary interpretation. An analysis of the relation of meanings to actions is a matter of secondary interpretation which is the reconstruction of Native actors' primary interpretations.⁷⁷ A deep insight into Native practices is not possible without the knowledge of Native philosophy. Anishinaabe philosophy is practical philosophy⁷⁸ in the true sense of the word, because it puts ethical principles into practice in social and political life.

Using practice tracing I explore the links between two layers of social processes. One layer involves community building through organized practices embedded in the Anishinaabe way of life and philosophy. These customary and perhaps unconscious activities form the initial stage and an essential part of the second layer, that of nation building. This second layer consists of conscious activities with ambitions to create stable, fair, and effective governing institutions. Throughout the White Earth history, interactions between the two layers of social processes always included care for relationships in the community and efforts to maintain community cohesion.

Ways in which institutions embody values and power relations belong to the sphere of interest of new institutionalism which according to Vivien Lowndes and Mark Roberts is applicable not only to Western liberal democracies.⁷⁹ New institutionalism offers a set of conceptual tools, some of which are useful for analyzing past and present tribal governance. Studying the White Earth rebuilding process is a historically oriented analysis of a complex system in which the White Earth band as part of the MCT is in a dependent position to the dominating bureaucratic institution of the BIA. Colonial dominance exercised through this institution is the main exogenous influence which fundamentally shaped the MCT government structure. When discussing the significance of exogenous influences we must also take into account their transmitting through internal forces. The imposed form of government shaped norms, values, beliefs, and interests which were not compatible with Anishinaabe culture. By internalizing an alien set of ideas the Anishinaabeg contributed to their own oppression.

⁷⁷ Perri 6 and Bellamy define primary interpretations as actors' understanding of their world, their problems, and their relations with others. Secondary interpretations are researchers' reconstructions of actors' primary interpretations. See Perri 6 and Bellamy, *Principles of Methodology*, pp. 232–34.

⁷⁸ The goal of practical philosophy, in contrast with theoretical philosophy, is not simply to know the truth but to apply what is good and right to specific problems of moral and political life. In this way, practical philosophy modifies actions and institutions in preferred directions. See Alan Gewirth, "Practical Philosophy, Civil Liberties, and Poverty," *The Monist* 67:4 (1984), p. 550.

⁷⁹ Vivien Lowndes, and Mark Roberts, *Why Institutions Matter: The New Institutionalism in Political Science* (Basingstoke: Palgrave Macmillan, 2013), p. 6.

Native nation building is a slow-moving process that unfolds over long periods of time, and like other long term sociopolitical process, it is susceptible to path dependence. Historical variant of new institutionalism focuses on how previous choices of specific institutional designs affect later decision making of actors and produce a path-dependent process.⁸⁰ Path dependence means that events that occurred at an earlier stage constrain the range of events that appear next. These earlier events may be relatively unimportant but they can have disproportionately large effects on events that appear later in a sequence.⁸¹ A characteristic feature of path dependence is self-reinforcement or positive feedback that maintains formerly established institutional procedures on the same path and prevents other alternatives from being put into practice. Politics exercised by the MCT government created under the IRA is prone to positive feedback because it is entrenched in federal legislation and backed up by the BIA's coercive power which delimits the maneuvering space of Native actors. Another aspect that strengthens the tendency to positive feedback are BIA-imposed procedural obstacles which effectively prevent later changes of the institutional arrangement. Pervasive BIA control contributed to the internalization of the imposed political style as BIA-sanctioned tribal representatives became more familiar and comfortable with their roles and positions within the system. With the help of path dependence we can explain why the MCT institutional structure persists even though it is inefficient and most individuals and groups desire to change it. The reproduction of this institutional arrangement, from which only a small section of the White Earth Anishinaabeg has been benefitting, has disadvantaged the majority of the reservation population.

The conception of institutions as "processes" rather than "things"⁸² suggests that institutions undergo development that involves both continuity and change. Within a wide temporal framework, change can be characterized by *critical junctures* which Ruth and David Collier define as "major watersheds in political life" that "establish certain directions of change and foreclose others in a way that shapes politics for years to come."⁸³ These junctures are termed "critical" because after selecting a particular institutional arrangement it becomes progressively more difficult to return to previously

⁸⁰ Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton and Oxford: Princeton University Press, 2004).

⁸¹ Ibid.

⁸² Vivien Lowndes, "The Institutional Approach" in *Theory and Methods in Political Science*, eds. David Marsh, and Gerry Stoker, 3rd ed. (Basingstoke: Palgrave Macmillan. 2010), p. 68.

⁸³ Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (Princeton: Princeton University Press, 1991), p. 27.

rejected alternatives.⁸⁴ The importance of a *critical juncture* can be assessed through counterfactual analysis which shows what outcome would be achieved by selecting another alternative.⁸⁵ I consider the adoption of the MCT constitutional government under the IRA as a *critical juncture* point, in which Anishinaabe governance was changed by an exogenous influence, which using Kathleen Thelen's and James Mahoney's terminology, might be considered as *displacement*. Thelen and Mahoney define displacement as replacing existing rules by new ones.⁸⁶ In the termination period, with the change in federal Indian policy, two hidden forms of institutional change appeared in the MCT government.⁸⁷ *Drift* occurred as the result of sociopolitical changes which altered the effects of the MCT governing institutions. Hacker, Pierson and Thelen define *drift* as the failure of "decision makers to update formal rules when shifting circumstances change the social effects of those rules."⁸⁸ The other form of hidden institutional change, *conversion*, happened when tribal representatives reinterpreted existing rules to serve new ends as a matter of political expediency.⁸⁹

Understanding political institutions as sets of rules includes not only formal procedures and practices but also informal conventions, customs, practices, and traditions. In the context of colonial dominance responsible for imposed change of tribal governance, the role of informal institutions is indispensable. For this reason we should not understand the imposed institutional change as a complete break up of Native sociopolitical life. Duane Champagne points out the significance of sociopolitical processes which remain hidden under the surface of IRA government rules and bylaws.⁹⁰ Historical institutionalism with its focus on the role of informal institutions allows to examine Native social practices as processes that have causal force. For example, we can explain causal effects of Anishinaabe wild rice industry based on understanding the relationship between this practice and its social meaning. Informal institutions, mainly traditional subsistence practices and socially shared rules, are the

⁸⁴ James Mahoney, "Path dependence in historical sociology," *Theory and Society* 29:4 (2000), p. 513.

⁸⁵ Ibid.

⁸⁶ James Mahoney and Kathleen Thelen (eds.), *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010), p.16.

⁸⁷ For a more detailed account, see the section 6.3 Analytical Conclusions.

⁸⁸ Jacob S. Hacker, Paul Pierson, and Kathleen Thelen, "Drift and Conversion: Hidden Faces of Institutional Change" in *Advances in Comparative-Historical Analysis*, eds. James Mahoney and Kathleen Thelen, (Cambridge: Cambridge University Press, 2015), p. 184.

⁸⁹ Ibid., pp. 185–208.

⁹⁰ Duane Champagne, *Notes From the Center of Turtle Island* (Lanham: Rowman Altamira, 2010), p. 13.

source of endogenous changes in Anishinaabe society and lead to nation-building efforts.

3.3 A Note on Sources

Local causal relations are inferred through the interpretation of contextual data obtained from archival documents and historical and contemporary periodicals. My data come from the research conducted at the National Archives (NARA) in Kansas City, Missouri, and from the study of archival newspapers made available by the Minnesota Historical Society in Minneapolis. The NARA collections I studied are archived as record group 75 and contain Records of the Bureau of Indian Affairs, Consolidated Chippewa Agency and Minneapolis Area Office. The NARA provided extensive archival material from the period between 1910s and 1960s. I was fortunate to receive exception for access to records containing privacy-restricted data. Even though archival materials never provide complete information due to archival mistakes (misfiled and missing materials), I was able to amass a surprising wealth of archival data that have not yet been analyzed by scholars. I reconstruct background knowledge from reports, memoranda, surveys, circulars, speeches, tribal government administration and operation records, meeting minutes, resolutions, codes, correspondence, and tribal newspapers. Tribal newspapers, *The Minnesota Chippewa Bulletin* (November 1938 – April 1947) and *The Consolidated Chippewa Newsletter* (May 1947 – September 1954) were published by employees of the Consolidated Chippewa Agency. These documents, written primarily by BIA officials, were not intended to present Anishinaabe perspective. Yet, they provide evidence of White Earth Anishinaabe critical attitudes to tribal governance controlled by the BIA which was taking advantage of power ambitions of some tribal representatives. Many documents are burdened by bias which is possible to filter out by gathering reliable information about the authors of these documents. Due to unavailability of archival data from the mid-1960s, valuable sources of information were articles in a number of Anishinaabe newspapers: independent newspapers *Ojibwe News* (1988–2009); newspapers published by the White Earth Tribal Council - *The Anishinaabe Journal* (early 1970s), *Anishinaabe Dee-Bah-Gee-Mo-Win* (1979–1991), *The Anishinaabeg Today* (1996– present); Native American monthly *The Circle* (1976–present) published in Minneapolis. I supplemented

newspaper sources by data from court cases, Congressional hearings, correspondence, and tribal and federal documents.

In my research I proceed inductively: I start with the data, which I then use to account for the studied problem. I analyze the data through the combined lens of Native American studies, genealogy, practice tracing, and new institutionalism. A retrospective search for causes of the White Earth government reform stalemate provides empirical evidence for placing the starting point of my analysis into the end of the nineteenth century and the first decades of the twentieth century. From this point I move on chronologically and focus on key events in the White Earth rebuilding process.

4. THE WHITE EARTH NATION IN THE PRE-REORGANIZATION PERIOD

Understanding the influence of more distant events in the past on events that appeared later and significantly affected the result of the White Earth rebuilding process requires the knowledge of the White Earth pre-reorganization history. The first part of this chapter contains a brief historical background of the beginnings, development, and decline of the White Earth Reservation in the context of federal allotment policy and its impact on political organizing of Minnesota Anishinaabe reservations. In the second part, I analyze a fourteen-year period of the first inter-reservation constitutional government, called the General Council of the Chippewa. Archival data from the early twentieth century are fragmentary, yet they provide a more or less faithful picture of how factionally divided White Earth Anishinaabeg strove for asserting their treaty rights in the limits of their ward/guardian status. Focusing on practices reveals Anishinaabe meanings behind their decision making and actions. In the third part, I discuss the significance and implications of the General Council in regard to the later formation of the Minnesota Chippewa Tribe. I argue that the Nelson Act of 1889 was a watershed that led to the creation of the General Council in 1913. The establishment of this constitutional government represented the first *critical juncture* that directed the later institutional development of Anishinaabe reservations toward federalized arrangement.

4.1 Historical Background in Brief

In this section I limit myself to the information that involves the necessary historical context in which the White Earth nationhood was developing and the White Earth constitutionalism came into being.

The Anishinaabeg who currently live on the White Earth Reservation in northwestern Minnesota are part of a nation that according to Anishinaabe tradition occupied the Atlantic coast north of St. Lawrence River in the period around the mid-fourteenth century.⁹¹ From here they migrated through a vast geographic region of the United States and Canada from the Great Lakes to the prairies of North Dakota. At the end of the seventeenth and the beginning of the eighteenth century, some of the Anishinaabeg arrived in northern Minnesota. In 1868, the Anishinaabe groups dwelling along the upper Mississippi River were relocated over a hundred miles westward to the White Earth Reservation which the U.S. government had established under the 1867 Treaty with the Mississippi bands.

The White Earth Reservation became a new home both for the Anishinaabe Mississippi bands as well as for an ethnically and linguistically diverse population that by the early 1800s arose from mixed marriages between Euroamerican fur traders and the Anishinaabeg in the Western Great Lakes area. Both Anishinaabe ethnic groups accepted the White Earth Reservation as their homeland with which they connected their identity. Social and political structures that came into being on the reservation reflected a clash of economic ethics of the more market oriented mixed-blood Anishinaabeg and traditional oriented hereditary leaders of full-blood Mississippi bands who were cautious in their approach to economic changes. Nonetheless, the nascent economic structure based on a combination of traditional subsistence patterns and elements of market economy had a potential to satisfy the living needs of residents with different ways of life.⁹²

In the last decades of the nineteenth century the life of people on the White Earth Reservation and other Minnesota Anishinaabe reservations was affected by expansion of market capitalism accompanied by increasing pressure on opening reservation lands to Euroamerican settlers' business interests. In compliance with the then nation-wide assimilation policy under the Dawes Act of 1887, the White Earth Anishinaabeg were

⁹¹ Warren, *History of the Ojibway Nation*.

⁹² Melissa L. Meyer, *The White Earth Tragedy*, p. 226.

supposed to become independent farmers on allotted plots of 80 to 160 acres. Apart from agricultural lands, the White Earth Reservation comprising 829,440 acres had pine forests which attracted interest of lumber companies. Forested Anishinaabe reservations represented a special situation for the allotment system. The Nelson Act, passed in 1889, was designed to preserve the integrity of the White Earth Reservation landbase. For that reason, there was an effort to concentrate all Anishinaabeg from the various reservations, except for those at the Red Lake, on the White Earth Reservation. There, they were supposed to get allotments protected from sale or alienation for twenty-five years. At last, however, this plan was not carried out completely and many Anishinaabeg stayed on their home reservations.⁹³ Surplus agricultural land left at White Earth after the allotments was not retained for future needs of Native people but sold to white settlers. With the exception of the unallotted Red Lake Reservation, similar land situation prevailed on all Minnesota Anishinaabe reservations. The breakup of the White Earth landbase was completed under legislative amendments of 1906 and 1907 which removed protective restrictions of the Nelson Act. These amendments opened up a path to illegal land transactions and land frauds which deprived the White Earth Reservation of more than ninety percent of its land base.

The continuing pressure of entrepreneurial interests of lumber companies for exploitation of Anishinaabe resources had an impact on reservation government. The Anishinaabe leaders of mixed descent supported the policy of lifting restrictions on allotted lands. Some of them, as lumber companies agents, were involved in illegal land transactions. Conservative leaders saw their exploitative behavior as a threat to Anishinaabe conception of equity and collective reservation interests. Consequently, these ethnic differences that formerly did not play a substantial role in community relationships gained political meaning, leading to deep division among leadership factions not only at White Earth but also at the inter-reservation level. The only shared interest of both factions was the need to preserve the remaining land resources in common ownership of all Anishinaabeg in Minnesota.

On the basis of the Nelson Act, the United States recognized all Anishinaabe bands scattered on reservations in northern Minnesota as one tribe having a share in common property. A provision of the Nelson Act established the Chippewa in Minnesota Fund where money obtained from the sales of ceded land and timber was

⁹³ Ibid., p. 56.

deposited. The U.S. government as a guardian of all Anishinaabe assets mismanaged the Chippewa in Minnesota Fund and the BIA's policy barred the Anishinaabeg from controlling the expenditures from their common fund. To protect themselves against the mismanagement of Anishinaabe assets, in 1913 Anishinaabe leaders created a loose inter-reservation alliance, called the General Council of All the Chippewas in Minnesota.

4.2 The First Constitutional Government of the White Earth Nation as Part of the General Council of the Chippewa

In order to understand the current White Earth institutional stalemate it is necessary to examine the first Anishinaabe constitutional government that represents a starting point on the trajectory leading to the creation of the joint Anishinaabe governing body under the IRA in 1936. In this section, I focus on the short period of the General Council's existence (1913 – 1927) and explore how this first inter-reservation governing body worked. I explore its significance with regard to later development of White Earth governance and efforts at its reform. The General Council was created as a means of coping with consequences of the implementation of allotment policy on Anishinaabe reservations. From the perspective of the goals of later White Earth reform process it might be significant that the General Council connected two different governing approaches by combining elements of traditional Anishinaabe governance and American-style representational system. Nonetheless, the General Council was a relatively open system with flexible governance practices. Studying traditional cultural practices exercised by the General Council is promising in two key areas. First, this focus points to the significance of Anishinaabe beliefs, ideas, norms, and values that guided decision making and actions. And second, it stresses causal meaning of practices for community building and maintaining cultural sovereignty.

Textual analysis of archival documents uncovers historical practices of Anishinaabe governance exercised by the General Council in the social and political conditions of the pre-Indian reorganization period. Even though the documents from this period are incomplete, the General Council's activity left sufficient evidentiary traces in the form of correspondence, proceedings, resolutions and notices. These archival documents disclose to what extent traditional practices of governance survived

the erosive effects of assimilation policy. Of course, these documents were not meant to present Anishinaabe perspective. But after filtering out views and bias of BIA officials, there emerge concerns and fears of the White Earth Anishinaabeg confronted by consequences of enormous land loss and dwindling opportunities to practice their traditional subsistence.

The concept of the general council was well known to Anishinaabe bands since long before the reservation period. The pre-reservation Anishinaabe governance was primarily centered on activities within each band but matters concerning the Anishinaabe nation as a whole were discussed on general councils held for that purpose.⁹⁴ This feature of traditional Anishinaabe governance passed to the later transitional form of the General Council. Another important element of traditional governance that found its way into the transitional structure was consensual decision making which followed a process of time-consuming deliberation open to diverse points of view. The preservation of traditional cultural practices has been crucial for Native American self-determination, the idea by no means supported by Indian policy of the period.

The General Council of the Chippewa, established in 1913, differed substantially from the traditional political arrangement and due to external and internal obstacles it failed to achieve its efficiency. Nonetheless, this inter-reservation government affected the later formation of the Minnesota Chippewa Tribe and preserved certain traditional governance practices that held Anishinaabe community together. The emergence of the first inter-reservation constitutional government was accompanied by deep political division that plagued not only the White Earth Reservation but went across all Anishinaabe reservations. Conservative leaders ("full-bloods") challenged the right of the so called progressives ("mixed-bloods"), founders of the General Council, to represent the White Earth Reservation in the General Council because of their past involvement in land fraud. To weaken the hereditary leadership lines and traditional community ties, the BIA began to recognize elected councils at White Earth where "mixed-bloods" predominated.⁹⁵

In agreement with the BIA's requirements and its willingness to tolerate elected structures resembling U.S. institutions, the General Council of the Chippewa followed a

⁹⁴ Anishinaabe author, Peter Jones, describes a general council meeting in chapter 9 of his *History of the Ojebway Indians*.

⁹⁵ Meyer, *The White Earth Tragedy*, pp. 177–78.

constitutional model and its elective council system operated under a written constitution adopted in May 1913.⁹⁶ The General Council was a decentralized form of government maintaining substantial autonomy of constituting reservations.⁹⁷ Delegates to the General Council were elected by the local councils of the individual reservations, one delegate for each one hundred residents.⁹⁸ The General Council elected an Executive Committee consisting of one member from each reservation. The officials were elected for a one year-term at annual meetings. Their names were taken over from Western terminology, being called president, vice-president, secretary, treasurer, interpreter, and assistant interpreter.

From the perspective of the relationship to the U.S. government, the Minnesota Anishinaabe bands as political entities joined in the General Council of the Chippewa, had a ward to a guardian status.⁹⁹ This guardianship of the federal government was realized through the BIA, which in the period before 1934, typically interfered in the majority of Native affairs. In spite of the fact that BIA officials formally tolerated the General Council's elective structure, they rarely recognized this Council's actions. The attitude of the BIA best sums up a sentence in a letter written by P. R. Wadsworth, the Consolidated Chippewa Agency Superintendent, to the Commissioner of Indian Affairs, Charles Burke, on July 2, 1923: "If we are to give attention to a council by the Chippewas it should be a council called and controlled by us."¹⁰⁰ These words reveal the scope in which external influences of federal Indian policy restricted Native political activities.

The General Council was supposed to represent the constituting reservations before the Department of the Interior and the U.S. Congress in matters concerning all Anishinaabeg in Minnesota as a whole. Different cultural orientations among full-bloods and mixed-bloods strengthened factional division which made the representative

⁹⁶ Constitution of the General Council of All the Chippewas in Minnesota (1913).

⁹⁷ The General Council represented the White Earth Reservation, the Red Lake Reservation, and the several reservations ceded under the provisions of the Nelson Act of 1889. The ceded reservations were the Winnibigoshish, Cass Lake, Leech Lake, Mille Lacs, Fond du Lac, Bois Forte, Grand Portage, White Oak Point, Sandy Lake and other small bands. In 1918 the Red Lake Reservation separated from the General Council and formed its own government. David E. Wilkins, *Documents of Native American Political Development: 1500s to 1933* (New York: Oxford University Press, 2009), pp. 406–9.

⁹⁸ In the 1920s the White Earth Reservation had 70 delegates to the General Council with membership of about 7000 Anishinaabeg. General Council held at Cass Lake, October 31, 1922. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

⁹⁹ Cherokee Nation v. Georgia, 30 U.S. 1, 2 (1831).

¹⁰⁰ P. R. Wadsworth, Superintendent of the Consolidated Chippewa Agency, to Charles Burke, July 2, 1923. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

function of the General Council increasingly difficult. In the first few years after establishing the General Council a single council was in operation but from 1919 individual factions held councils separately. Mixed-blood leaders were more familiar with the political situation than full-blood leaders and thanks to their entrepreneurial activities and experience with U.S. institutions they had a better position in negotiating with BIA officials. Even though the BIA recognized the mixed-blood council as a "regular council" it rarely recognized its resolutions. One of the reasons was that mixed-blood leaders criticized the BIA's past and present activities as illegal, inefficient, and dishonest. They accused the BIA of abuse of power because its services in Minnesota were financed out of the Anishinaabe trust fund and they were "primarily for the benefit" of this institution "with only incidental benefits to the Indians."¹⁰¹ They asked the U.S. President and the Secretary of the Interior to reorganize the BIA but these requests were not dealt with.¹⁰²

BIA field officials did not understand factional disputes inside Anishinaabe communities and their interference was rather disruptive. They used factionalism as a pretext to claim that none of the factions represented the whole tribe. This approach to the General Council's governance reflected the nationwide Indian policy striving for abrogation of Native governing systems. The BIA followed an assimilation strategy devised by former Commissioner of Indian Affairs Thomas J. Morgan. The goal of this strategy was breaking up tribal relations and making Indians "conform to 'the white man's ways,' peaceably if they will, forcibly if they must."¹⁰³

Political divisions within the General Council were overblown by government officials. Factional disputes were not so divisive as BIA officials perceived them. Both factions fully realized that they must join together and cooperate in order to have at least some voice in the management of their funds and affairs.¹⁰⁴ But the BIA did not support these unification efforts. Mixed-blood leaders were of the opinion that the BIA

¹⁰¹ Resolutions of the Mixed-Blood Council, July 10 and 11, 1923. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

¹⁰² Ibid.

¹⁰³ *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior*, 1889 (Washington, D.C.: Government Printing Office, 1889), pp. 3–4, 93–97.

¹⁰⁴ Frank and Theo Beaulieu to the Secretary of the Interior and the Commissioner of Indian Affairs, June 7, 1923. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

deliberately kept the Anishinaabeg divided so that the General Council was not officially recognized by the central office in Washington.¹⁰⁵

Throughout the pre-Indian reorganization period, the BIA effectively managed to prevent the Anishinaabeg from exercising any control over their trust funds. Had the BIA allowed such authority to Native people it would have been a step to real self-government, which definitely was not a goal of assimilation policy. Contrary to the provisions of the Nelson Act of 1889, the Anishinaabe trust fund was used mainly to finance the BIA's operation and the actual needs of reservation Anishinaabeg were neglected. Unbearable social conditions on the White Earth Reservation triggered a wave of protests of poverty-stricken people who were starving, unemployed, and without adequate housing. The BIA was unwilling to face the protests and in July 1922 solved the situation by moving the agency office from White Earth Village to Cass Lake on the Leech Lake Reservation.¹⁰⁶

Within this contextual milieu, full-blood and mixed-blood factions strove to protect Anishinaabe rights and the remaining land base which they perceived as their homeland. Mixed-bloods always identified themselves as "Indians" but their entrepreneurial activities distracted them from daily struggles and troubles of reservation community. They did not have as strong ties to land as full-bloods who still depended on a modified seasonal round.¹⁰⁷ For full-bloods, dependence on land, connected with the practices of wild rice harvesting, making maple sugar, berrying, trapping, hunting, and fishing, was not merely a strategy to survive. It was part of the "circle of life," which did not only relate to material interest in subsistence but had a deeper spiritual meaning. The "circle of life" is one of the translations of the Anishinaabe word *bimaadiziwin* which in the sense of "good life" encompasses aesthetic, moral, and natural meanings and also a mastery of right relations with human

¹⁰⁵ Resolutions of the Mixed-Blood Council, July 10 and 11, 1923. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

¹⁰⁶ Superintendent, Consolidated Chippewa Indian Agency, to Commissioner Burke, October 9, 1923. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

¹⁰⁷ The Anishinaabeg had to adapt their subsistence strategies to allotment and reservation conditions because complete seasonal subsistence was no longer possible due to the diminished land base. They practiced a modified seasonal round that was composed of hunting, fishing, gathering seasonal plants, horticulture, and wage labor. See e.g. Chantal Norrgard, "From Berries to Orchards: Tracing the History of Berrying and Economic Transformation among Lake Superior Ojibwe," *The American Indian Quarterly* 33: 1 (2009).

and other-than-human beings.¹⁰⁸ The Anishinaabeg do not understand *bimaadiziwin* as a religion for which they lack a corresponding word in their language. They see *bimaadiziwin* as a "way of life." Even though the world around them changed, their worldviews remained even after the Anishinaabeg added elements of Christian religion into their value systems.¹⁰⁹

Obtaining subsistence from the land through the seasonal round was for the Anishinaabeg not only in ethical balance with *bimaadiziwin* but it was traditionally a basis of their independence. From the first decades of the twentieth century, seasonal activities were no longer a backbone of Anishinaabe subsistence. After allotment, the White Earth Reservation became checkerboarded with plots owned by Anishinaabeg and Euro-Americans. Subsistence-oriented Anishinaabeg had limited access to areas containing seasonal resources. In spite of that, they did not give up practices connected with the seasonal round because asserting the continuity of their way of life in relation to land gave them a sense of a semiautonomous space even in conditions that were unfavorable to them. It is therefore not surprising that the main concern of full-blood leaders was related to land and the Anishinaabe right to use renewable resources for subsistence in accordance with treaties. They stressed that the Anishinaabeg retained usufructuary rights to hunting, fishing, and gathering on the ceded land under the 1837 Treaty.¹¹⁰ These treaty rights were violated by the State of Minnesota, which established seasons for hunting, and by non-Indian owners who restricted access to lakes and forests.¹¹¹

Topics that full-blood leaders discussed at their council meetings pertained mainly to their concern over ensuring basic material needs of their community so that life on the reservation was at least bearable. The *bimaadiziwin* ethics pervaded these matters. Sharing day-to-day existential struggles and helping those in need were regarded as a virtue. Therefore, full-blood leaders were very cautious about the rights guaranteed by

¹⁰⁸ Michael D. McNally, *Honoring Elders: Aging, Authority, and Ojibwe Religion* (New York: Columbia University Press, 2009).

¹⁰⁹ Michael D. McNally, *Ojibwe Singers*, pp. 61–63.

¹¹⁰ The usufructuary right to land means using the land for survival purposes. Collins English Dictionary defines "usufruct" as "the right to use and derive profit from a piece of property belonging to another, provided that the property itself remains undiminished and uninjured in any way." *Collins English Dictionary* (Glasgow: HarperCollins Publishers, 2000). See Treaty with the Chippewa, July 29, 1837 in Charles J. Kappler, *Indian Affairs: Laws and Treaties*, Volume 2 (Washington: Government Printing Office, 1904).

¹¹¹ General Council Meeting, Cass Lake, July 19, 1922. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

the Nelson Act of 1889. They did not want to waste all the benefits before the end of the fifty-year period during which money from land and timber sales was deposited in the U.S. Treasury and the Anishinaabeg were paid five percent interest as annuities.¹¹² Decision making and actions of full-blood leadership was governed by the sense of responsibility not only to present but also to future generations. Applications of *bimaadiziwin* principles, such as responsibility to the community, ethical human relationships, and proper individual conduct were reflected in governing practices of full-blood leaders. Consensual decision making was well-established and commonplace. Convergence of council members on a common issue helped in generating majority approval of decisions made. Council meetings were open to a plurality of standpoints where every participant had a right to speak and be heard. Protracted deliberations caused that meetings were often lengthy, at times lasting even a few days.¹¹³ Generally, the council did not reach a decision after a single meeting and delegates would return to their reservations to discuss matters in their local councils. Leaders' authority was based on their ability to represent the will and attitude of the people they spoke for. It was a simple and effective democratic process.

Beginning in 1921, the Congress refused to appropriate money from the trust fund for the expenses of the General Council.¹¹⁴ In spite of that, the factionally divided General Council continued to meet until 1927 when it was dissolved. Local community and reservation matters remained in the hands of local councils which held their meetings until the mid-1930s when they were replaced by the new tribal organization under the Indian Reorganization Act of 1934.

4.3 Analytical Conclusions

The General Council of the Chippewa did not come into being simply from the wish of individual reservations to be represented in a joint governing body. It was rather a

¹¹² General Council held at Cass Lake, July 10, 1922. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

¹¹³ Proceedings of the General Council of all Chippewa Indians of Minnesota, July 9, 1918. Box 5, Series 36, Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918–1923, NARA, RG 75.

¹¹⁴ John H. Edwards to the Secretary of the Interior, June 19, 1923. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

reaction to Indian policy and an effort to defend themselves against violations of the Nelson Act by the BIA. For mixed-bloods the General Council embodied a hope for reinstating justice and lawfulness to the Anishinaabeg. They felt uncomfortable with their position as wards of the federal government, whose guardianship role was carried out by the BIA. They had little or no voice in the management of their affairs and they were convinced that they were capable of taking care of themselves without the BIA's encroachment. Conservative oriented leaders saw their participation in this political arrangement in agreement with *bimaadiziwin* principles as *nwenamdanwin* (choice making) and *n'dendowin* (responsibility taking). Their responsibility to the community was manifested in fostering ethical and cooperative relationships. In this way, they exercised internal sovereignty in the process of community building.

The transitional form of the General Council reflects the effort to adjust to the changed political, legal, territorial, and cultural conditions and underpin this governing body by Anishinaabe value system. Considering the later political development of Anishinaabe reservations, the Nelson Act was an antecedent condition that led to the establishment of the General Council which I understand as the first *critical juncture*. This *critical juncture* established the direction of institutional development of Anishinaabe reservations toward federalized arrangement. On this trajectory, the creation of the Minnesota Chippewa Tribe under the Indian Reorganization Act provisions was another *critical juncture* that has shaped political development of constituting reservations for following decades and effectively prevented change.

The failure of the General Council was not caused simply by internal division among the Anishinaabeg. A great share of responsibility for the failure can be attributed to Indian policy implemented by the BIA – a rigid institution that was maintained by self-reinforcing processes aimed at cultural transformation of Native people. The hostility of BIA officials to the General Council could also be caused by the fact that this governing body was not organized as a business council, which the BIA preferred, but as a general-purpose government suggesting a certain continuity with traditional Anishinaabe governance. Despite its short existence, the General Council affected the future direction in the development of the Minnesota Chippewa Tribe. The General Council's significance can be summed up as follows: First, this inter-reservation government preserved certain Anishinaabe governance practices, which would not be entirely forgotten and served as an inspiration and guidance in future reform efforts. Second, the Anishinaabe experience with this form of government created a specific

trajectory of institutional development that fundamentally affected the future way of organizing of Anishinaabe reservations under the Indian Reorganization Act. Third, the General Council represented the beginning of the White Earth Nation's path to modern constitutional government.

5. THE WHITE EARTH NATION IN THE REORGANIZATION PERIOD

The formation of the second constitutional government that joined all Minnesota Anishinaabe reservations (except Red Lake) into a single governing body was connected with the change in federal Indian policy in the 1930s. From the perspective of the recent White Earth constitutional reform (2013), early phases of the process leading to the creation of a federative arrangement of the Minnesota Chippewa Tribe are extremely important. In this chapter, I address the dynamics of creating joint tribal government and explore the processes through which this inefficient and malfunctioning governing organization was maintained. The structure of this chapter, subdivided into five parts, moves from a detailed description to interpretation and analytic explanation. In the first part, I briefly provide contextual information about the change in federal government's approach to Native nations in the latter half of the 1920s and discuss the effects of the Indian Reorganization Act on Native political structures. Based on archival documents, in the second part, I examine the circumstances of accepting the IRA's provisions by the White Earth Anishinaabeg. I focus on the little known history of drafting a constitution for six Anishinaabe reservations and on the role of BIA Agency personnel in the constitution-making process. In the third part, I reveal the weaknesses of the joint governing body and the negative consequences for exercising White Earth self-rule under the centralized, rigid tribal administrative structure. In part four, I show that even under restrictive IRA provisions, informal Anishinaabe institutions, particularly those connected with wild rice economy, continued to play an important role in the White Earth social life and business activities. Their knowledge of wild rice habitat and conservation allowed the Anishinaabeg to enter into intergovernmental relationships with the State of Minnesota in the sphere of environmental protection. In the last part, I explain the institutional change in Anishinaabe governance using a

combination of theoretical approaches of new institutionalism, Foucault's genealogy, and Native American studies. The analysis indicates that early events in the process of forming the Minnesota Chippewa Tribe predetermined the course of institutional development and initiated path-dependent processes grounded in self-reinforcing dynamics. These processes, intensified by the internalization of externally imposed and seemingly freely adopted regulations, maintained the institutional status quo and political division in Anishinaabe communities.

5.1 Indian Policy: From Assimilation to Reorganization

Throughout the late 1920s it became increasingly obvious that the allotment policy failed. A survey of social and economic conditions of American Indians, initiated in 1926 by the Institute for Government Research, documented the scope of this failure. The findings of this scientific research, published in 1928 in an extensive study *The Problem of Indian Administration* popularly called the Meriam Report, brought shocking evidence of desperate social situation and community disorganization on most reservations. During the course of the 1920s, Indian policy became the subject of criticism by a number of reformers, the most influential of whom was John Collier. An effective pressure for reform, however, was not initiated until the publication of the Meriam Report which openly pointed at the crisis in Indian policy. This crisis, brought about by four decades of government effort to culturally transform Native people and eliminate their government structures, triggered a reversal in the attitude toward Native nations and set a new direction in the development of Indian policy.

This new direction was based on a radical reform of Indian policy which crystallized in a favorable political climate at the beginning of Roosevelt's New Deal. In the early 1934, John Collier, the newly appointed Indian commissioner, presented a fifty-two page long bill to Congress.¹¹⁵ The bill was a product of joint efforts of reformists newly appointed to key positions in the Department of the Interior. The main author was Felix S. Cohen, then assistant solicitor of the Interior Department. The final

¹¹⁵ See Elmer R. Rusco, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno and Las Vegas: University of Nevada Press, 2000); Felix S. Cohen, David E. Wilkins, and Lindsay G. Robertson, *On the Drafting of Tribal Constitutions* (Norman: University of Oklahoma Press, 2007); Dalia Tsuk Mitchell, *Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism* (Ithaca: Cornell University Press, 2007).

version of the proposed legislation, enacted as the Indian Reorganization Act on June 18, 1934 did not contain all intended changes of the former four-titled bill because of a negative attitude of the Senate Committee on Indian Affairs, particularly of Senator Wheeler.¹¹⁶ The three comprehensive titles dealing with self-government, education and lands were reduced to mere sections. The fourth title proposing a special system of Indian courts was left out entirely. Even in its reduced form, the IRA was a watershed in the U.S. government's approach to Native nations. Beside ending the allotment policy, the main contribution of the new legislation was its acknowledgement of the inherent right of Native nations to self-government. Unfortunately, the IRA's conception of Native self-government based on the idea of tribal organization did not reflect sociohistorical realities of most Native communities. Channeling political activity into formal institutions of tribal councils was a consolidating process which deprived sub-tribal groups of their autonomy and powers rooted in their former governing structures. But a positive aspect of the new legislation was that it empowered tribal councils to represent their people in negotiations with federal, state, and local governments. Thereby, at least formally, the IRA recognized Native people as political actors in a government-to-government relationship with the U.S. government. This legislation brought positive change into the federal-tribal relationship but it did not create real bilateral relationships because it retained a substantial measure of governmental control over Native people.

5.2 The White Earth Nation at the Crossroads

In the history of Indian policy, the IRA was the first legislation put forward for consideration by Native people prior to its enactment. Ten regional Indian congresses were convened during March and April 1934. The last one, the Great Lakes Indian Congress held on April 23 and 24, 1934 at Hayward, Wisconsin, allowed fifty-six White Earth delegates to familiarize themselves with the contents of the bill and express their opinions, suggestions and comments.¹¹⁷ White Earth delegates expressed the view that it would be desirable if the new legislation gave them real decision-making powers in

¹¹⁶ Rusco, *A Fateful Time*, pp. 253–54.

¹¹⁷ Testimony Taken at Hayward, Wisconsin, April 23 and 24, 1934, Where Indians of Wisconsin, Minnesota, and Michigan Gathered for a Two-Day Conference to Discuss the Wheeler-Howard Bill of Indian Rights. Box 5, Series 38, Testimony Taken at a Conference on the Wheeler-Howard Bill, 1934–1934, NARA, RG 75.

their affairs and control over expenditures from the common Anishinaabe fund. Even though they did not articulate it openly, they connected the adoption of the IRA provisions with the hope for achieving cultural self-determination. For this reason, they urgently called for a reform of the educational system. They were aware of the fact that they could survive as a nation only when their children receive education in the Anishinaabe language and history because acculturation through the English language was depriving them of their ability to lead the Anishinaabe "way of life."

White Earth delegates were generally favorable to the bill. Yet, in the spirit of consensual decision making, most of them had not been authorized by their communities to express a clear position, reserving the right to return home and pass on new findings to their people. They welcomed the changes offered by the New Deal but urged careful consideration of proposed measures because, as one delegate said, "what the Chippewa Indian wants is not a new deal but a square deal."¹¹⁸

Verbatim transcripts of discussions indicate that in their support of the proposed bill, White Earth delegates saw an opportunity to escape the system in which all aspects of their lives were controlled by the BIA. The proposed legislation offered this opportunity because New Dealers envisioned a reform of the U.S. guardianship and a gradual transfer of authorities from the BIA to tribal governments. But this provision did not appear in the final legislation passed as the Indian Reorganization Act on June 18, 1934.¹¹⁹

Under Section 18 of the IRA, tribes could decide by secret ballot whether they accept or reject the provisions of the Act. On October 27, 1934, the White Earth Anishinaabeg accepted the IRA by a margin of 1,122 votes to 245.¹²⁰ Given the early favorable response of White Earth delegates at the Hayward Congress, the voting outcome is not surprising. Nonetheless, it is worth briefly summing up possible reasons

¹¹⁸ Ibid.

¹¹⁹ The proposed legislation planned a gradual and cautious devolution of the BIA's powers to tribal governments. But the final act failed to clarify what powers Indian governments possessed under existing law. To remedy this weakness, Nathan Margold and Felix Cohen from the Office of the Solicitor identified fundamental powers of self-governance in their "Powers of Indian Tribes" opinion. Unfortunately, this document, approved in October 1934, was not distributed to division heads of the BIA who were supposed to determine how powers would be transferred to individual tribal governments. See Elmer R. Rusco, "The Indian Reorganization Act and Indian Self-Government," in Eric D. Lemont (ed.), *American Indian Constitutional Reform and the Rebuilding of Native Nations* (Austin: University of Texas Press, 2006), pp. 49–82.

¹²⁰ Theodore Haas, *Ten Years of Tribal Government under IRA* (Washington, DC: United States Indian Service, 1947), p.16.

that led the White Earth Anishinaabeg to their decision. Those White Earth Anishinaabeg who were living in starving conditions were convinced that they had nothing to lose by accepting the Act. The former governing body, the General Council of the Chippewa, had striven for years to have at least some control over tribal finances and property. Hence, the prospect of self-governance without persistent encroachment of the BIA was so promising that it won over fear of change. The "Facts about the New Indian Reorganization Act" circular, which Collier's office sent out to agencies shortly after the approval of the IRA in Congress, might have influenced many Anishinaabeg to accept the act. The circular concluded with a listing of adverse consequences for tribes that reject the IRA. The White Earth Anishinaabeg perhaps saw as the most serious warning that in case of voting against the IRA's application, the U.S. government would "continue to do as it pleases with their tribal assets."¹²¹

Events that followed after accepting the IRA's provisions, particularly those connected with creating the tribal constitution, might seem perplexing in regard to later efforts of the White Earth Anishinaabeg to reform the reservation government. A problem arose in Anishinaabe reservations around the question of whether the reservations should form a single governing body or organize separately. The BIA office in Washington initially expected that Anishinaabe reservations would organize separately "since the Chippewas in Minnesota do not reside on the same reservation but on several reservations."¹²² This reasoning was based on section 16 of the IRA which stated that "any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize [...], and may adopt an appropriate constitution and bylaws [...]."¹²³ But the view of the Washington office, which identified a reservation with a tribe, did not suit the goals of mixed-blood Anishinaabeg who worked in the Consolidated Chippewa Agency. Jacob Munnell, a Leech Lake Anishinaabe and the Consolidated Chippewa Agency clerk, argued that "the Minnesota Chippewas are one tribe occupying several reservations."¹²⁴ He believed that creating several separate tribal organizations would be

¹²¹ "Facts about the New Indian Reorganization Act: An Explanation and Interpretation of the Wheeler-Howard Bill as Modified, Amended and Passed by Congress." Box 50, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹²² John Collier, Commissioner of Indian Affairs to Frank Clark, June 22, 1935. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹²³ The Indian Reorganization Act, 48 Stat. 984–988 (1934).

¹²⁴ Meeting of Chippewa Delegates to Organize into a General Council, June 27, 1935. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

"somewhat complicated and cumbersome."¹²⁵ The reason was that Minnesota Anishinaabe reservations found themselves in a unique situation due to their joint interest in lands, property, and funds with which only the tribe as a whole could deal. Superintendent M. L. Burns shared Munnell's views and strove to persuade Commissioner Collier that dealing with one tribal government rather than with several reservation governments would save time both to Washington and field employees of the BIA. He underpinned the idea of a single Anishinaabe governing body by Solicitor Nathan Margold's opinion published in Office circular M-27796. In this circular, dated November 7, 1934, Margold expanded the definition of the term "tribe" to include the situation where members of a tribe "are scattered over two or more reservations in which they have property rights."¹²⁶

Undoubtedly, the previous experience with the general council form of government played its part in the process of creating the Anishinaabe government under the IRA. The proceedings of the meeting of Anishinaabe delegates from several reservations held on June 27, 1935 give the impression that the decision to create a joint governing body and adopt a preliminary constitution for Minnesota Anishinaabe bands was unanimous and backed up by shared arguments.¹²⁷ The delegates were convinced that together they could fend off external pressures and assert their claims more effectively. Most delegates had a misguided notion that the new political arrangement under the IRA would be akin to the former General Council. Moreover, Ed Rogers, Anishinaabe attorney from White Earth, persuaded White Earth leaders to agree with the draft constitution that clearly disadvantaged the White Earth Reservation. In 1935, the White Earth Reservation represented more than a half of all Anishinaabeg in Minnesota. The draft constitution was deliberately designed to weaken the White Earth Reservation's influence. Under the new set up, each constituting reservation, regardless of the number of residents, had two representatives in the central executive body. Rogers assured White Earth leaders that their agreement was necessary only for the immediate purpose of adopting the draft constitution so that the Anishinaabeg could politically organize. He promised that they would be able to change the details of the

¹²⁵ Jacob Munnell to M. L. Burns, Superintendent, Consolidated Chippewa Agency, May 14, 1935. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹²⁶ M. L. Burns to John Collier, August 2, 1935. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹²⁷ Meeting of Chippewa Delegates to Organize into a General Council, June 27, 1935. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

constitution a year later, including the number of White Earth representatives in the joint government.¹²⁸ Serious weaknesses of this important meeting were not only the misinformation but also the failure to include representatives from reservation communities espousing different views on organizing. There is evidence that a full-blood group from Pine Point on the White Earth Reservation was not represented at the meeting.¹²⁹ It seems that by limiting the number of delegates, Consolidated Chippewa Agency officers sought to avoid confrontations and secure the delegates' consent with the prearranged plan of tribal organization.

This solution of creating a joint political organization for scattered Anishinaabe reservations that was promoted by employees of Consolidated Chippewa Agency raised objections of certain BIA officials in Washington. After reading meeting minutes from June 27, 1935, acting solicitor Charles Fahy came to the conclusion that Agency officials were not fully aware of legal implications of their decision.¹³⁰ Even though the proposed solution seemed to be consistent with the purposes of the Nelson Act of 1889, Fahy recommended consideration of other alternatives. He pointed out that creating a single governing organization could lead to serious legal difficulties in ensuring local autonomy and local land rights. He proposed a careful analysis of industrial, social, and financial activities undertaken by the Minnesota Anishinaabeg on individual reservations and an assessment of whether these activities would require a central coordination. William Zimmerman, Assistant Commissioner of Indian Affairs, believed that individual Anishinaabe reservations should organize as separate governments possessing all powers vested in tribal governments under section 16 of the IRA.¹³¹ This arrangement would not prevent the Minnesota Anishinaabeg from forming a general federation but such an organization would not have the powers guaranteed to individual reservations.

Archival documents clearly show that the whole process of constitution making was under the BIA supervision. The draft constitution that delegates to the meeting of June 27, 1935 accepted was created by Jacob Munnell, Leech Lake Anishinaabe and Agency clerk. As a model, Munnell used several sample constitutions and by-laws that

¹²⁸ Ibid.

¹²⁹ William Zimmerman to Elmer A. Benson, March 7, 1936. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹³⁰ Memorandum to the Commissioner of Indian Affairs, August 27, 1935. Box 59, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹³¹ William Zimmerman to J. S Monks, July 18, 1935. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

the Washington Office provided upon his request. He adapted a version that seemed to him most applicable to the case of the Minnesota Anishinaabeg. The delegates accepted the draft constitution because they believed that the joint tribal governing structure would work in much the same way as the former General Council. They expected that local reservation and community organizations would maintain their autonomy much like in the past. It seems that Munnell was very well aware of the fact that the Anishinaabeg did not want the social life in their communities to be bound by formal institutional regulations. For this reason he refrained from putting in the constitution any restricting clauses that would dictate how local councils would be managed. In fact, he did not even mention local reservation organizations in the draft constitution. Only upon Assistant Commissioner Zimmerman's recommendation, Article XI dealing with local organizations was added in the final version.¹³² Unfortunately this article was vague and insufficiently expressed the intention to protect independent functioning of reservation councils within the larger MCT structure.

There were two revisions of the draft constitution. The first revision was approved by Anishinaabe delegates at the meeting of November 6, 1935 where the draft was consulted with the Solicitor's Office employees and anthropologists who came among the Minnesota Anishinaabeg to study their situation.¹³³ The name of the governing body was changed from the Tribal Advisory Council to the Tribal Executive Committee which points to the BIA's effort to introduce a higher degree of centralization of governmental power. Another important change concerned the power to make membership rules. Although it seemed that this power was in the hands of the tribal government, the second revision by the BIA made this authority subject to the approval of the Secretary of the Interior. Adding the words "and approved by the Secretary of the Interior," de facto denied the tribe's right to determine its identity. The second revision of the draft had other negative consequences for constituent reservations because it failed to respect the tradition of decentralized Anishinaabe governance. It strengthened the rule-making power of the Tribal Executive Committee and made local councils subordinate to its plenary authority.

¹³² William Zimmerman to M. L. Burns, March 6, 1936. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹³³ Meeting of Chippewa Indian Tribal Delegates of Chippewa Tribal Council to Discuss Constitution Drafted for the Chippewa Tribe, November 6, 1935. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

The constitutional election authorized and called by the Secretary of the Interior was held on each reservation of the Consolidated Chippewa Agency on June 20, 1936. Agency employees had to secure a turnout of at least thirty percent of eligible voters as the Secretarial rules and regulations required. In the last weeks before the elections opposition developed against the Constitution. Archival documents mention a letter called "Warning to the Chippewa Indians of Minnesota" circulated in communities on the White Earth Reservation where full-bloods predominated.¹³⁴ While the official account downplayed the opposition's significance, it did not hide Agency employees' concerns about possible rejection of the Constitution. According to the official data, thirty-one percent, out of 6,662 eligible voters, cast their ballots.¹³⁵ The Constitution and Bylaws of the Minnesota Chippewa Tribe were ratified by a vote of 1,528 for and 544 against and approved by the Secretary of the Interior on July 24, 1936.¹³⁶

5.3 Subsuming the White Earth Nation into the Minnesota Chippewa Tribe: the 1930s and the 1940s

The Constitution of the Minnesota Chippewa Tribe established a federation of six reservations – White Earth, Leech Lake, Fond du Lac, Bois Forte, Grand Portage, Mille Lacs – governed by a central government.¹³⁷ The MCT Constitution instituted a one-branch government and a parliamentary style selection of tribal officials. Each reservation, depending on its size and population, had a number of districts and from each district two tribal delegates were chosen at an annual election.¹³⁸ These delegates

¹³⁴ M. L. Burns to Fred H. Daiker, June 27, 1936. Box 59, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹³⁵ *Ibid.*

¹³⁶ Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. July 24, 1936. <https://www.loc.gov/law/help/american-indian-consts/PDF/36026761.pdf> (accessed January 7, 2016).

¹³⁷ At the time of drafting the MCT Constitution there was an effort to persuade the Red Lake Reservation to join the new tribal government. The Red Lakers conditioned their willingness to join the other bands on a request that their share of the tribal funds would be separated. The other Anishinaabe bands refused this request and the final decision of organizing without the Red Lake was made at the meeting of April 11, 1936. M. L. Burns to John Collier, April 13, 1936, Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹³⁸ The number of districts changed throughout the years. In 1935, the White Earth Reservation had twelve districts and included the Mille Lacs Reservation districts. Notice for Meeting of the Chippewa Indians of Minnesota to be held on June 27, 1935. Box 55, Series 5 Decimal Correspondence File, 1926–1969, NARA, RG 75. When the first version of the MCT Constitution was adopted by the delegates to the meeting of June 27, 1935, the Mille Lacs Reservation was no longer counted as part of the White Earth Reservation and had two Tribal Advisory Council members (called Tribal Executive Committeemen in

chose from each reservation two persons into the Tribal Executive Committee (TEC). This arrangement made the most populous White Earth Reservation underrepresented.¹³⁹ From the total of twelve committeemen, tribal delegates selected four officers – president, vice-president, secretary, and treasurer – who headed the TEC. Once this small group of tribal representatives was elected it started to act independently of reservation councils. The TEC was elected for a one-year term, a period too short for devising and maintaining long-range programs. By concentrating all governmental authority and functions into the TEC, this constitution failed to provide for the creation of an institutional system with a separation of powers among the various branches of government. The centralized executive power did not allow creating an independent judiciary and so the MCT Constitution did not give real guarantees of their rights to reservation citizens.

The greatest weakness of the MCT Constitution was the absence of tribal courts. The circumstances of adopting the constitution were not favorable to creating tribal judiciary. After the enactment of the IRA, Congressional policy promoted tribal self-government but the implementation of the IRA was in the hands of BIA personnel. Even though the IRA allowed the creation of tribal courts and the adoption of law and order codes, Agency superintendent M. L. Burns refused this possibility.¹⁴⁰ He justified his position by arguing that Anishinaabe reservations were broken up by allotments, which meant that lands in Anishinaabe ownership were interspersed by lands owned by the state of Minnesota or non-Indian owners. As a consequence, the clear boundary that previously separated Native from non-Native population no longer existed and this led to jurisdictional dilemmas. Superintendent Burns saw as unpractical to introduce a court system in the joint governing body of six scattered reservations distant tens to hundreds of miles from each other. Instead of creating a tribal court, he recommended a gradual process of extending state jurisdiction over Anishinaabeg on all MCT reservations. It seems that the real reason for Burns' skepticism about establishing tribal court was not motivated only by the aforementioned arguments. The revised law and order regulations

the final version of the MCT Constitution), same number as the other five reservations. In 1939, the power to create or change districts was vested in reservation councils by reservation charters. At that time, the MCT had a total of twenty-nine districts; the White Earth Reservation had eleven districts.

¹³⁹ Statistical data show that in 1936 the White Earth Reservation had approximately 8,000 members and the other five reservations had only 5,000 members altogether. 1936 Annual Statistical Report, Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁴⁰ M. L. Burns to John Collier, April 8, 1935. Box 70, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

of the Department of the Interior prohibited BIA officials from controlling, obstructing and interfering in the operation of Indian courts.¹⁴¹

The superintendent, same as his predecessors in the past, was making decisions about the need and usefulness of a tribal court for trying minor crimes and misdemeanors committed by the Anishinaabeg on their reservations. Furthermore, his claim that none of the reservations of the newly established MCT had ever had a functional court in the past, was unfounded.¹⁴² Annual Reports from the 1880s and 1890s give evidence that the White Earth Reservation as the only Anishinaabe reservation of the later MCT had a functional Court of Indian Offenses which combined Native customs with Western law.¹⁴³ Two to three Anishinaabe judges and a few policemen were subordinated to a BIA agent. Nonetheless, their dispute resolution was acceptable both to the Anishinaabeg and BIA officials.

Rejecting the opportunity to institute a tribal court under the IRA provisions and to enact their own law and order code, weakened self-governance capacities of the MCT and the constituting reservations. In spite of the fact that tribal courts were required to use similar procedures like federal and state courts, federal Indian law allowed these courts some maneuvering space for exercising customary law when solving disputes. Superintendent's authority and decision making in law and order matters on Anishinaabe reservations seriously interfered in internal tribal sovereignty.

The MCT Constitution disregarded Anishinaabe traditions and political experience. This is evident in the preamble that does not express the underlying common vision and goals of the tribal nation. Nowhere does the Constitution define Anishinaabe identity from the perspective of Anishinaabe history, beliefs, and values. Emphasizing conservation and development of tribal resources and property, instead of basic Anishinaabe values, the MCT Constitution resembled rather a business plan than the highest law of the Anishinaabe society. Unlike the phrase "We the People" used in the preamble of the U.S. Constitution, the phrase "We, the Minnesota Chippewa Tribe"

¹⁴¹ Theodore Haas, *Ten Years of Tribal Government under IRA* (Washington, DC: United States Indian Service, 1947), p.10.

¹⁴² M. L. Burns to John Collier, March 7, 1940. Box 70, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁴³ On the White Earth Reservation the Court of Indian Offenses started to function in 1883 when the creation of these courts was authorized by the Commissioner of Indian Affairs. Indian judges worked without financial compensation until 1888 when Congress appropriated money to finance the courts. In the period from 1883 to 1900, the Court of Indian Offenses functioned with a few interruptions because some White Earth agents underestimated the importance of the court and acted as judges themselves. *Annual Report of the Commissioner of Indian Affairs, 1883 – 1900* (Washington, D.C.: Government Printing Office, 1883 – 1900).

is not an expression of a sovereign political entity. The subordination of the MCT's internal sovereignty to the BIA's authority expressed in the words "Chippewa Indians of Minnesota under the Consolidated Chippewa Agency" appears twice in the preamble.¹⁴⁴ Neither version of the constitutional draft contained this wording. Its appearance in the final version of the Constitution indicates the continuing control of the BIA over tribal affairs.

Through specific provisions, the MCT Constitution constrained tribal powers in matters of vital importance. The clauses requiring "Secretarial review" or "Secretarial approval" that the BIA inserted into the final version of the constitution, worked to prevent those tribal ordinances and resolutions that would not accord with the IRA's policy goals. Even though the IRA policy promised the opportunity for self-determination, it did not in fact allow the Minnesota Anishinaabeg to maintain and utilize their own tools to determine their identity. Under the MCT Constitution, Article II, Section 3, the governing body had power to make enrollment rules but because of the Secretarial review requirement, the regulations adopted by the TEC on July 26, 1941 were never approved by the Secretary of the Interior.¹⁴⁵ The membership criteria that the TEC repeatedly tried to institute during the 1940s were disapproved by the Secretary of the Interior because they disregarded the Bureau's requirements of blood-quantum, place of birth, and residence.¹⁴⁶ The conception of blood-quantum was in contradiction with Anishinaabe values embedded in *mino-bimaadiziwin* philosophy. Anishinaabe way of understanding identity has not been based on biological race but on cultural continuity which lies in cultural practices and beliefs handed over to descendants. Ensuring membership in the tribe for descendants and preventing their uprooting was an obligation stemming from *bimaadiziwin* ethics. BIA officials did not understand this moral obligation to take care for future generations.

In spite of the fact that interfering in internal tribal affairs was temporarily reduced at the outset of the New Deal policy, the ability of the TEC to govern and assert tribal interests was still under the control of Agency field personnel. Agency officers were taking part in regular meetings of the TEC not merely as observers. They were

¹⁴⁴ Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. July 24, 1936. <https://www.loc.gov/law/help/american-indian-consts/PDF/36026761.pdf> (accessed January 7, 2016).

¹⁴⁵ Rules Governing the Qualifications for Enrollment in the Minnesota Chippewa Tribe, July 26, 1941. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁴⁶ William Zimmerman to Francis J. Scott, April 7, 1944. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75. See also Doerfler, *Those Who Belong*, pp. 41–44.

instructed by the BIA not to give the impression that they were dominating or monopolizing the meetings.¹⁴⁷ In fact, they were the ones who were making decisions as to the appropriateness and efficiency of proposed resolutions and ordinances. By taking control over tribal practices and legislative activities, the BIA was deliberately eliminating Native governing practices and in so doing it strengthened the idea that the new tribal arrangement lacked traditional roots.

The autonomy of individual reservations was substantially limited by centralizing power in the TEC. From the time the MCT was formed, the White Earth Reservation struggled to come to terms with the loss of its autonomy and with its new position as a business sub-unit within the chartered corporation of the MCT. The charter, by which all matters of the MCT were governed, played a primary role in the new governing organization where economic aspects predominated over sociopolitical ones. The White Earth Reservation, like the other five reservations, had its own reservation council which was established to allow each band to govern itself in local matters. The White Earth Reservation Council was composed of nine members – chairman, vice-chairman, secretary, treasurer, and five councilmen. The term of office of reservation councilmen, same as the TEC members, was one year. Reservation representatives were frequently reelected, only their respective functions sometimes changed.

The White Earth Reservation Council functioned under the White Earth Charter ratified in a majority vote election on February 22, 1939.¹⁴⁸ The majority of White Earth Reservation voters refused to cast their ballots at the sub-charter elections in protest against the lack of real powers guaranteed by the sub-charter. Nonetheless, the White Earth Reservation received the sub-charter despite the small voter turnout of 298 voters with 253 votes for and 45 against.¹⁴⁹ Behind the small voter turnout was not lack of interest and initiative that BIA officials often ascribed to the White Earth Anishinaabeg but the experience that their representatives' decision making had no weight because it was habitually foiled by Agency officials who disapproved all resolutions which they

¹⁴⁷ Memorandum, Coordination of Activities of Regional and Agency Officials and the Indian Tribal Councils of the Great Lakes Area, June 8, 1938. Box 27, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁴⁸ Charter of Organization of the White Earth Band of Chippewa Indians, February 22, 1939. Microfiche. Honolulu: Law Library Microform Consortium.

¹⁴⁹ Minnesota Chippewa Tribal Executive Committee Meeting, May 6, 7, 8, and 9, 1939, Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

found inappropriate.¹⁵⁰ From the outset, it was clear to the White Earth Anishinaabeg that the sub-charter would not serve the intended purpose of decentralizing the TEC powers and that it would not give them autonomy in decision making over local matters.

Under the White Earth Charter of Organization, the MCT delegated power to the White Earth Council to administer tribal lands on the White Earth Reservation. In practice, however, this authority could "be superseded by the future action of the Executive Committee."¹⁵¹ The administration of various types of reservation lands under the jurisdiction of the MCT was governed by the Land Management Laws adopted by the TEC on February 10, 1940. These laws authorized each reservation council to create a Land Board which was charged with such duties as administering, leasing, subdividing, and allotting lands within the reservation.¹⁵² In 1947, however, the TEC used its plenary authority to deprive the White Earth Reservation Council of its power to administer tribal lands on the White Earth Reservation, thus preventing reservation members from conducting private enterprise.¹⁵³ The TEC similarly misused its power when it was selling buildings and other assets on the White Earth Reservation without crediting the money received from the sales to the White Earth Reservation Council fund.¹⁵⁴

Even as early as in 1939, the TEC was aware of the need to clarify and adjust tribal and band functions within the MCT structure. It was clear that the MCT Constitution and reservation charters were not efficient tools of self-government at either tribal or reservation levels. Throughout the 1940s, the TEC made a number of unsuccessful attempts to amend the MCT Constitution. The proposed amendments concerned extending the term of office from one year to three years, instituting staggered election terms, and strengthening reservation powers.¹⁵⁵ These attempts repeatedly failed because the TEC was not able to meet the provision in Article XVIII

¹⁵⁰ Niles Beaupre to Frank Broker, February 25, 1939. Box 72, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁵¹ Resolution No. XXXVIII, June 5, 6, and 7, 1939. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁵² Land Management Laws, Minnesota Chippewa Tribe, February 10, 1940. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁵³ Special Joint Meeting White Earth Reservation Council and Land Board, May 2, 1947. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁵⁴ Meeting White Earth Reservation Council and Land Board, September 4, 1946. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁵⁵ In the 1940s, the TEC drafted amendments to the MCT Constitution and By-Laws in 1944, 1946, and 1949. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

of the MCT Constitution, which required that a request to call a Secretarial election was made by at least two-thirds of the Tribal Executive Committeemen.¹⁵⁶

5.4 Practicing the Transformed Seasonal Round

Even though the MCT governing structure left no space for Anishinaabe governing practices, the social life of White Earth Anishinaabeg remained structured by informal institutions with unwritten but firmly established rules. The seasonal round was still part of Anishinaabe subsistence but it was limited by Minnesota's game and conservation legislation on the one hand and transformed by social, political, and economic changes on the other. During the Great Depression, wage labor in the New Deal programs of the Indian Division of the Civilian Conservation Corps (CCC-ID) and the Works Progress Administration (WPA) became part of the Anishinaabe seasonal round. Beside fire prevention and suppression, reforestation of cutover lands, road and bridge construction, CCC-ID programs also included construction of campsites on the shores of wild rice lakes. Anishinaabeg used these campsites for the purposes of harvesting and processing wild rice in late summer.

In the early 1930s the pressure of growing market demand for wild rice and widespread poverty on Anishinaabe reservations caused that wild rice not only nourished the Anishinaabeg but also became a source of modest income. Wild rice economy helped to maintain community cohesion and strengthened Anishinaabe identity. The income potential of wild rice did not diminish cultural meaning of this plant which in the Anishinaabe perception remained the most sacred food growing on water. Therefore, the activities connected with wild rice harvesting were ceremonial in nature and whole families participated in these annual events. One of BIA observers described in detail careful and responsible way the Anishinaabeg handled this plant of vital importance.¹⁵⁷ He noticed that white settlers who owned plots on the opposite side of the lake harvested all rice before it was ripe and deprived themselves of the next year's crop. In contrast, the Anishinaabeg let enough ripe kernels fall into the water to allow proper reseeding. The report of this observer published in the national magazine *Indians at Work* reflects both social and ecological dimension of Anishinaabe wild rice

¹⁵⁶ Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. July 24, 1936. <https://www.loc.gov/law/help/american-indian-consts/PDF/36026761.pdf> (accessed January 7, 2016).

¹⁵⁷ *Indians at Work*, vol. 4, no. 4 (October 1, 1936), p. 17.

harvesting. For the Anishinaabeg, ecological relationship to gifts of the land was natural because it stemmed from Anishinaabe worldviews and beliefs rooted in the philosophy of mino-bimaadiziwin.

It was the ecological aspect of Anishinaabe wild rice industry which caused that the state of Minnesota started to see the Anishinaabeg as experts in wild rice harvesting and reproduction. The emergence of commercial potential of wild rice led in 1931 to the adoption of state legislation that prohibited harvesting with machinery.¹⁵⁸ In the course of the 1930s, however, this ban was continually violated. The Minnesota State Conservation Commission wanted the Anishinaabeg to continue harvesting wild rice because their traditional methods did not damage wild rice stands.¹⁵⁹ These methods included harvesting wild rice at the right stage of ripeness, careful parching and threshing. The Anishinaabeg preferred a more laborious method of threshing by feet to a rather destructive machine threshing.

The Minnesota State Conservation Commission did not have enough factual information of proper procedures of growing wild rice on the rice lakes. Therefore, Anishinaabeg as natural conservationists, could enter into intergovernmental relationships with the state of Minnesota in matters of environmental protection. On February 13, 1939 the MCT delegation appeared at the hearing before the Game and Fish Committee in the Minnesota House of Representatives where a bill regarding protection of wild rice stands was discussed.¹⁶⁰ William Madison, a hereditary Chief of the Mississippi Band of White Earth Anishinaabeg and a member of the Twin Cities Chippewa Council, formulated the position of the Minnesota Anishinaabeg on the unacceptable incursions of non-Indians into natural wild rice habitat, including the manner of remedy, which formed a basis for a bill. Joseph Prifrel Jr., Minnesota State Representative, who started his term of office in 1939, expeditiously pushed the bill through state legislature. The Act of April 13, 1939 permitted using only traditional Indian methods in wild rice harvesting, which were non-destructive to the rice fields and allowed natural reseeding. This legislation guaranteed Minnesota "Indians the exclusive

¹⁵⁸ Act of April 25, 1931, ch. 373, 1931 Minn. Laws 480.

¹⁵⁹ Information of Value in Determining the Potential Volume of Business of the Chippewa Indian Cooperative Marketing Association, undated document, circa 1935. Box 44, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁶⁰ John H. Hougén to Louis Enstrom, February 15, 1939. Box 35, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

right to harvest the wild rice crop upon all public waters within the original boundaries" of their reservations.¹⁶¹

Experience with selling wild rice to buyers and representatives of big corporations motivated Anishinaabe leaders to establish a tribally owned cooperative that would buy wild rice from Anishinaabe harvesters at a higher price than outside buyers. These cooperative efforts were encouraged by the federal government in the IRA and other legislation. The Chippewa Indian Cooperative Marketing Association started operating in 1935 after the Act of August 15, 1935 approved the sum of 100,000 dollars that could be loaned to the association for business purposes.¹⁶² The main purpose of the Cooperative was to induce the Anishinaabeg to market their products through this organization.¹⁶³ All MCT Anishinaabeg who sold their products to the Cooperative automatically became its members, had a share in the dividends, and could vote in the board of directors elections. Beside wild rice, the association also bought berries, herbs, maple sugar, fish, furs, wood and forestry products, and products of Indian arts and crafts. Even though the Cooperative was headquartered in Cass Lake, about one hundred miles from the White Earth Reservation, White Earth Anishinaabeg were eager to participate in the joint business organization because in the conditions of limited wage opportunities, the Cooperative offered a chance to improve their economic situation.

In the article "Chippewa Indians Undertake Cooperation" BIA credit agent described the Cooperative as an organization that elected its own Indian officers and appointed an Indian manager.¹⁶⁴ This statement was formally true but real powers of the board of directors and those of the manager were limited by a clause that the BIA added to the Articles of Incorporation and By-Laws of the Chippewa Indian Cooperative Marketing Association: "the association to be governed by rules and regulations prescribed by the Secretary of the Interior."¹⁶⁵ From the beginning, the Cooperative struggled with problems caused by bureaucratic interference of the Agency

¹⁶¹ Act of April 13, 1939, ch. 231, 1939 Minn. Laws 381.

¹⁶² 49 Stat. 654 (1935).

¹⁶³ Articles of Incorporation of the Chippewa Indian Cooperative Marketing Association, undated document, circa 1935. Box 44, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁶⁴ S. N. McKinsey, "Chippewa Indians Undertake Cooperation," *Indians at Work*, vol. 4, no. 16 (April 1, 1937), p. 12–13.

¹⁶⁵ By-Laws of the Chippewa Indian Cooperative Marketing Association, June 13, 1936. Box 44, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

superintendent. The administrative inertia with which the BIA exercised its supervision did not allow Anishinaabe directors to form and apply strategies necessary for proper functioning of the Cooperative. The Agency superintendent deliberately delayed approval of loans on which the success of the Cooperative depended.¹⁶⁶ Anishinaabe directors of the Cooperative saw in the BIA practices an effort of the federal government to question Anishinaabe management abilities. In 1938, Archie Libby, president and manager of the Cooperative, who faced personal attacks from BIA officials, commented on the BIA's interference into personnel policy of the Cooperative: "if we let the Government run our Association, they will feel that we are not capable of handling our own affairs."¹⁶⁷ Anishinaabe leaders did not regard the Cooperative as merely a profit-making organization but as an opportunity to prove to the government that the Anishinaabeg were able to effectively use their own resources and manage their own affairs without external interference. With the change of federal Indian policy inaugurated by the IRA, the status of the Minnesota Anishinaabeg as wards of the federal government formally changed to the quasi-sovereign status but in practice exercising their *de facto* sovereignty was continually denied them.

From the beginning, the Cooperative was doomed to failure because its operation depended on the availability of funds for purchasing of products, many of them seasonal. The rules and regulations of the Department of the Interior were obstacles in the way of receiving funds when needed. The Anishinaabe management wrote a petition listing all the grievances against the Department of the Interior in hope that improved cooperation with the Department would eliminate the problems and allow the Cooperative to continue.¹⁶⁸ In spite of these efforts and the interest of the MCT Anishinaabeg in its continued operation, the Cooperative became defunct in 1939 and the MCT purchased its assets for 5,000 dollars.¹⁶⁹

In the same year, the buildings and stocks of the defunct Cooperative were used by the newly launched Wild Rice Arts and Crafts Corporate Enterprise that partly

¹⁶⁶ Archie Libby to John Collier, May 27, 1938. Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁶⁷ Archie Libby to Alex Moose, September 13, 1938. Box 109, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁶⁸ Archie Libby to Steve Brown, March 19, 1938. Box 109, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁶⁹ F. J. Scott to John Collier, December 12, 1940. Box 155, Series 140, Tribal Manager's Subject Files, 1918–1953, NARA, RG 75.

replaced the function of the Cooperative.¹⁷⁰ The Enterprise had an advantage over the former Cooperative in that it started with a small capital. Originally it dealt only with wild rice production, in 1940 it added arts and crafts, and in 1942 it traded also maple sugar and syrup.¹⁷¹ During war time, the operation of the Enterprise was made possible due to an increased demand for agricultural products.

These tribal economic activities did not damage the structure of White Earth community life and became part of the transformed seasonal round. Because of their social and cultural aspects, principles connected with wild rice economy remained a center of Anishinaabe social life. Human relationships and behavior among individuals were shaped by mutual interconnectedness in which help and care were extended to include not only close relatives. The Tribal Executive Committee was aware of the fact that rice lakes meant lasting benefit to a large number of the Minnesota Anishinaabeg. Because most lands adjacent to rice lakes on the White Earth Reservation were either in the ownership of the state or in private ownership, the Anishinaabeg did not have access to many rice beds. For this reason, the Tribal Executive Committee bought plots of land bordering on selected lakes for establishing camp sites.¹⁷² In 1935, the Tribal Executive Committee decided to invest money from the MCT trust fund into the purchase of 4,450 acres of land adjacent to Rice Lake, one of the largest lakes on the White Earth Reservation. In 1942, the title to this land, which became Wild Rice Lake Indian Reserve under the Act of July 24, 1935, passed to the United States for the exclusive use and benefit of the Minnesota Anishinaabeg.¹⁷³ Anishinaabe involvement in the sphere of environmental protection and related legislation as well as in the sphere of business activities shows that the White Earth Anishinaabeg were not passive participants in the process of economic changes.

¹⁷⁰ *Minnesota Chippewa Bulletin*, September 20, 1941. Box 440, Series 12: Agency Publications, 1923-1954, NARA, RG 75.

¹⁷¹ *Minnesota Chippewa Bulletin*, May 22, 1942. Box 440, Series 12: Agency Publications, 1923-1954, NARA, RG 75.

¹⁷² *Minnesota Chippewa Bulletin*, August 21, 1940. Box 440, Series 12: Agency Publications, 1923-1954, NARA, RG 75.

¹⁷³ *Minnesota Chippewa Bulletin*, January 20, 1943. Box 440, Series 12: Agency Publications, 1923-1954, NARA, RG 75. Act of July 24, 1935 (49 Stat. 496).

5.5 Analytical Conclusions

The dynamics through which the MCT institutional arrangement came into being were connected with the change of federal Indian policy in the 1930s implemented under the IRA of 1934. I regard the establishment of the federative governing structure of the MCT as the second *critical juncture* which set the course of institutional development for the rest of the twentieth century and influenced the outcome of the White Earth reform process eighty years later. The decision made at the second *critical juncture* created conditions for path dependency, in which the mechanisms of institutional reproduction made the MCT institutional pattern resistant to change.

I place the period of this *critical juncture* between June 27, 1935 and June 20, 1936. At the meeting of June 27, 1935, selected Anishinaabe delegates were convened by Agency employees to decide on the future form of governing organization for Anishinaabe reservations. On June 20, 1936 the MCT constitution was ratified in a general election on each of the six reservations. The second *critical juncture* was a relatively quick change. This one-year period embodied a lot of uncertainty and diverse understanding of the IRA by BIA top employees and field workers. The unique situation of Anishinaabe reservations involved a lot of discussion on possible ways of organizing. Because there were open possibilities for adopting one of the alternatives during this period, certain factors had greater impact on the process of decision making than those in the periods preceding and following the *critical juncture*. These factors were mainly unpredictability of the effects of implementing the IRA, the influence of decisions made in the first *critical juncture*, uncertainty, misleading and insufficient information, influence of interactive circumstances, and underestimating the impact of seemingly unimportant choices. Mixed-blood leaders, some of whom were BIA Agency employees had a vague idea of reorganization policy goals and of the scope of powers newly granted to tribal self-government. Moreover, White Earth leaders, both full-bloods and mixed-bloods did not anticipate a loss of reservation autonomy under the umbrella governing structure of the MCT. Undoubtedly, influential mixed-blood Anishinaabeg preferred creating self-government that would join all Anishinaabe reservations. Political steps in this direction had its roots in the first *critical juncture*. For this reason, their decision making in 1935 was influenced by a trend initiated with the creation of the General Council of the Chippewa in 1913. Choosing other alternatives was therefore

limited by the decision made more than twenty years ago and by the "one-council" idea. Decisions that were supposed to rest on majority consent of Anishinaabe residents of the six reservations were based on insufficient information about the implications of the institutional change that led to the creation of a centralized, rigid political structure. The meeting of June 27, 1935 gave the false impression that the delegates represented all reservation communities and followed the wish of the majority. In fact, delegates from communities that disagreed with the proposed arrangement were not represented. The final consent with the proposed federative arrangement of the six Anishinaabe reservations was a result of interactive circumstances in which individual decisions were influenced by arguments of prominent mixed-blood Anishinaabeg and the memory of the past based on historical experience with the General Council of the Chippewa. Some choices made before the adoption of the MCT Constitution were not considered important by Anishinaabe delegates. In fact these decisions were crucial and influenced the course of political development of all Anishinaabe reservations within the MCT.

Initial steps toward the joint governing organization made at the meeting of June 27, 1935 encouraged further movement in the same direction and initiated path-dependent processes grounded in self-reinforcing dynamics. The impact of these early steps was greater than the impact of later steps that questioned the appropriateness of the chosen institutional arrangement. The decision resting on dubious consensus of Anishinaabe delegates had greater influence on the form of governing structure than the alternative of separate reservation governments that some BIA experts recommended.

The MCT constitution was the result of BIA's effort to graft political and economic institutions of American society on to tribal self-government and did not reflect any effort to preserve Native culture. In the period of the second *critical juncture*, Anishinaabe representatives selected an institutional arrangement that they imagined as a more decentralized system, distributing rather than concentrating power. Contrary to their expectations, the new political entity eliminated the autonomy of individual reservations by subordinating their needs to the interests of the Tribal Executive Committee and the continuing BIA supervision. The IRA did not enact devolving Bureau functions to tribal governments as the original draft bill proposed. As a consequence, regional and local offices of the BIA exercised their control over tribal governments with unchanged administrative inertia. This way of exercising power was easily reproducible in the MCT government because the BIA took advantage of power ambitions of some mixed-blood Anishinaabeg and their willingness to preserve the

institutional status quo. Anishinaabe actors, who were allocated political power, were not able to promote interests of reservation communities because these interests remained subject to BIA field personnel supervision and approval. These hidden power asymmetries were behind political activities of Anishinaabe representatives both at tribal and reservation levels and their increase with the passage of time went hand in hand with the operation of self-reinforcing processes. These mechanisms of institutional reproduction were in accord with mechanisms of political and economic integration which served acculturating goals of Indian policy.

The governing structure of the MCT differed substantially from the previous system of governance. This relatively fast change in Anishinaabe governance can be characterized as an exogenously caused *displacement* that replaced the pre-existing system of autonomous political units by a culturally alien model. Once the new governing institution was set up, it started to change the power structure inside the Anishinaabe society. In the hierarchy of the Indian Affairs, tribal government became subordinated in relation to the Agency superintendent and other Agency employees. The position of mixed-blood actors was strengthened at the expense of full-blood leaders who did not benefit from the new arrangement. The advantaged group supported the institutional reproduction and had no interest to make any changes even though it was clear that the new form of government was less efficient and less functional than previously available alternatives. This internalization of the imposed structure played a significant role in maintaining the institutional status quo. It shaped the way of thinking and behavior of Anishinaabe actors who adopted values and ideational sets of the colonizer, including self-interested individualism, competitiveness, and materialistic goals.

Like all constitutions created under the IRA provisions, the MCT constitution contained certain restrictive clauses that subordinated decision making of tribal representatives to the review of the superintendent or to Secretarial approval. The governing institution of the MCT was deliberately created in such a way that made it difficult to change. The most restrictive procedural obstacle that BIA inserted into the MCT constitution was the provision for amending or revoking the constitution. It was possible to initiate this procedure only by the request of at least two-thirds of the Tribal Executive Committeemen made to the Secretary of the Interior whose duty was to call an election. If approved in a majority vote of the qualified voters of the tribe, the amendment or revoking the constitution would be subject to the approval of the

Secretary of the Interior. Because Tribal Executive Committeemen were composed of a diverse set of actors representing different goals and interests of the six member reservations, finding common ground was difficult. These provisions strengthened the institutional status quo and prevented later changes.

New institutionalism, with its focus not only on formal institutions but also on informal conventions, customs, and practices, allows to see the role of informal forms of Anishinaabe social and political life as a source of internal sovereignty and a defense against external interference. Informal institutions, mainly traditional subsistence practices, remained an important factor of community building and prevented a complete break up of Anishinaabe sociopolitical life.

My analysis shows that it is possible to identify sources and consequences of path dependence not only in the institutional apparatus of the BIA but also in the MCT governing structure which was imposed on the Anishinaabeg. Path dependence offers explanation for persistence of the MCT government even though it was inefficient and culturally inappropriate. Understanding the persistence of inefficient MCT institutions is also possible through genealogical method which reveals how outwardly imposed rules and regulations become internalized. Complementing the institutional analysis by Foucault's genealogy produces a more nuanced understanding of institutional dynamics. It adds to the structural focus of new institutionalism the level of complex decision making of Anishinaabe actors and sheds light on choices made. Reading archival documents through the lens of Foucault's genealogy, which encourages reassessment and questioning of official accounts, does not put the White Earth Anishinaabeg into the position of passive recipients of imposed changes. In the late 1930s the resistance of the White Earth Anishinaabeg to the MCT Constitution and to the White Earth sub-charter did not yet become a catalyst of government reform but it pointed the way to later more open opposition and led to realization that submissiveness can never bring about any improvement.

6. THE WHITE EARTH NATION IN THE TERMINATION PERIOD

The termination period is neglected by scholars concerned with Native nation-building topics. This is probably because the architects of termination had no interest in rebuilding Native societies and strove for elimination of tribal governments which they

saw as undesirable political entities in American society. The relatively short period of termination policy, which was most intensively implemented during the 1950s, had serious lasting consequences not only on terminated tribes but also on those that escaped termination. Even though the White Earth Reservation and the MCT as a whole were not terminated, they experienced the negative effects of termination policy.

In the first part of this chapter, I describe the development of termination policy, from its ideational beginnings in the early 1940s, through the hasty implementation of imprudent measures and programs during the 1950s to the gradual abandonment of this policy in the late 1950s. In the second part, I analyze hitherto unknown archival sources and trace the decline in tribal governance in which two hidden forms of institutional change, *drift* and *conversion*, newly appeared. These changes, connected with bad adaptability of the MCT Constitution and its formal rules which were not updated, created an environment for informal subversive institutions with a network of clientelist relationships. This development, which continued into the following period, caused serious problems in White Earth governance and enhanced power asymmetries through positive feedback. I draw attention to complementary informal institutions, which in contrast with ineffective subversive ones, maintained community cohesion and paved the way for future government reform.

6.1 Indian Policy: Solving an Indian problem by Means of Termination

Native peoples' expectations that they would at last be allowed to make decisions about their own affairs were frustrated by the BIA's institutionalized administrative practice. Devolving of certain BIA's functions to Native governments, envisioned in the original Collier's Bill, did not materialize and led to widespread discontent with the reorganization policy throughout the Indian country. The IRA's provisions could not be fully implemented because this legislation came soon after its enactment under constant attack from Congress. As early as in 1937 six bills to repeal or limit the IRA were introduced in Congress.¹⁷⁴

¹⁷⁴ S. Lyman Tyler, "Indian Affairs: A Work Paper on Termination, with an Attempt to Show its Antecedents," A Publication of the Institute of American Indian Studies (Utah: Brigham Young University, 1964), p. 22.

These early attacks on the IRA indicated a change in Indian policy toward terminating the special status of Indian tribes and federal trusteeship. In spite of the fact that the federal government officially adopted the termination policy in 1953, a number of measures to expedite further assimilation were prepared during the war and postwar period in the 1940s when domestic budgets were drastically reduced. *Cohen's Handbook of Federal Indian Law* places the beginning of the termination era in 1943.¹⁷⁵ In this year, Senate Report No. 310 entitled "Survey of Conditions among the Indians of the United States" was issued.¹⁷⁶ The Report requested abolishing the BIA and questioned its utility because the Bureau failed to achieve its original goal, which was the integration of Indians into the American society. Instead, under the IRA provisions, the BIA helped to revive "worn-out cultures" that, according to the Report, could not function in the present world. In 1944, Collier facing Congressional hostility and cuts in appropriations for the BIA, recommended to Congress to limit the number of tribes that were to continue receiving federal services. He divided Indian population into three categories: predominantly Indian population, semiacculturated population, and predominantly acculturated population. Tribes listed under the last category were to be "relieved of federal supervision." The Minnesota Chippewa Tribe was labeled as "predominantly acculturated population."¹⁷⁷ In 1947, at the request of the Senate Civil Service Committee, Acting Commissioner Zimmerman submitted a revised list of tribes scheduled for termination.¹⁷⁸ In this list, Zimmerman reduced both the number of tribes slated for immediate release from federal supervision and those tribes which were to be terminated within ten years. The third category included the greatest number of tribes which were to be terminated no sooner than in fifty years.¹⁷⁹ The Minnesota Anishinaabeg as Consolidated Chippewa found themselves in the second group.

In 1946 Congress passed the Indian Claims Commission Act which allowed Indians to file their claims for past injustices of federal Indian policy, mainly relating to

¹⁷⁵ Newton (ed.), *Cohen's Handbook of Federal Indian Law*, p. 10.

¹⁷⁶ Survey of Conditions among the Indians of the United States: Analysis of the Statement of the Commissioner of Indian Affairs in Justification of Appropriations for 1944, and the Liquidation of the Indian Bureau, June 11, 1943, Box 51, Series 4, Central Subject Correspondence Files, 1906–1953, NARA, RG 75.

¹⁷⁷ U.S. Congress, House Committee on Indian Affairs, *Hearings on H.R. 166*. 78th Congress, 2nd Session, Part 2, February 1944, (Washington, DC: GPO, 1944), 61–63.

¹⁷⁸ U.S. Senate, Committee on the Post Office and Civil Service, *Hearings on S.R.41: Officers and Employees of the Federal Government*, 80th Congress, 1st Session, part 3, February 8, 1947, (Washington, DC: GPO, 1947), p. 547.

¹⁷⁹ Ibid.

illegally taken lands and inadequate compensation for land cessions. Most tribes preferred a restoration of their former land base but the federal government offered only monetary compensation. The purpose of the Indian Claims Commission was not achieving justice for Native people by correcting past wrongs. It was the first step to terminating federal guardianship over Native people and the beginning of a new form of social engineering, which saw Native nations as domestic racial minorities not distinct political entities with legal claims against the United States.¹⁸⁰ In 1947 President Harry S. Truman appointed former President Herbert Hoover as chair of the Commission on Organization of the Executive Branch of the Government, known as the Hoover Commission.¹⁸¹ In 1948 this Commission was authorized to review the efficiency of the organization of the executive branch and recommend cost savings by its reorganization. One of the tasks of the Hoover Commission was a review of the administration of Indian Affairs. The result of the review was a 160-page report that criticized the Indian New Deal policy and the Bureau's activity. It argued that federal services provided by the Bureau were strengthening Indian dependency on federal trusteeship, binding Indians to reservations, and discouraging them from entering economic and cultural mainstream. The report described Indians as primitive people who had little interest in preservation of their cultures and instead preferred to reap the benefits of modern civilization. In reality many Native people were disappointed by the reforms of the IRA because all important decisions of tribal councils were subject to the review of the Secretary of the Interior.

The report of the Hoover Commission presented a number of recommendations that were supposed to lead to solving the Indian problem by proposing measures for integration of Indians into the rest of the population. Complete integration was understood in political, economic, and cultural sense. The Commission recommended that responsibility for administering social programs be transferred to states. Authors of the report outlined a new direction in federal Indian policy. They recommended that the executive branch of the government consider tribal governments created under the IRA as "a stage in the transition from Federal tutelage to the full participation of the Indians

¹⁸⁰ Vine Deloria and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1984), p. 190.

¹⁸¹ United States. Commission on Organization of the Executive Branch of the Government (1947-1949). *The Hoover Commission Report On Organization of the Executive Branch of the Government* (New York: McGraw-Hill, 1949).

in State and local government."¹⁸² Committee on Indian Affairs of the Hoover Commission recommended that regardless of opposition by Indians, officials, and legislators, assimilation be "accepted as a controlling policy."¹⁸³ An efficient means of achieving this goal was supposed to be relocation of Indians to urban centers. In 1949 placement offices that helped Indians find jobs out of reservations, were opened in five cities, including Minneapolis.

Indian Commissioner John R. Nichols and the Association on American Indian Affairs questioned the need for rapid assimilation. Instead, they recommended that the government in cooperation with Indians draft rehabilitation plans to improve severe economic conditions on reservations. Provided that Indians would democratically participate in these projects it would be a big step towards self-determination.¹⁸⁴ Former Assistant Commissioner Zimmerman had a similar view of withdrawal of federal supervision over Native people.¹⁸⁵ He was convinced that the right direction in federal Indian policy was not a premature abolition of the BIA but a gradual removal of federal supervision while maintaining treaty commitments and obligations. Zimmerman saw the end of the 1940s as a crossroads from which a path would lead either to great achievement or catastrophe.¹⁸⁶ Events that immediately followed proved the latter to be the case.

In 1950 Indian policy moved towards termination when President Truman named Dillon S. Myer Indian Commissioner. Myer took advantage of Native people's desire for self-determination which reorganization policy promised but failed to deliver. The conception of self-determination that Myer presented as repealing paternalistic discriminatory federal policies was supported not only by politicians and Congressmen but also by many tribal leaders. Through self-determination rhetoric, Myer gained trust of the National Congress of American Indians (NCAI), the most important supratribal organization, which called for change in federal Indian policy. In Myer's understanding self-determination meant complete termination of federal responsibility to Indians, including federal trusteeship over Indian property, which was in contradiction with treaties, agreements, and laws. In the spirit of postwar ideology, Myer connected self-

¹⁸² Ibid, p. 468.

¹⁸³ Commission on Organization of the Executive Branch of the Government, *Social Security and Education; Indian Affairs: A Report to the Congress* (Washington, DC: GPO, 1949), pp. 63–67.

¹⁸⁴ Kenneth R. Philp, *Termination Revisited: American Indians on the Trail to Self-Determination, 1933-1953* (Lincoln: University of Nebraska Press, 2002), pp. 80–82.

¹⁸⁵ Ibid, p. 79.

¹⁸⁶ Ibid, p. 79.

determination with integration of Native people together with all minorities into the mainstream society. While NCAI representatives insisted on the right to first-class citizenship, they did not agree with elimination of federal trusteeship. Their view of self-determination was based on separate tribal sovereignty and recognition of Native cultures.¹⁸⁷ But termination policy regarded separate tribal governments under the IRA as undesirable in American society. From the perspective of this policy, it was desirable to eliminate reservations through relocation of Native population. Myer saw reservations as prison camps not as Indian homelands guaranteed by treaties. To speed up termination program, Myer required cooperation of tribes in gradual removal of federal trusteeship and threatened that he would draft termination bills without their consent.

In 1953 Congress passed House Concurrent Resolution 108 which declared that the Indians would be "subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States."¹⁸⁸ The Resolution stated that all tribes in California, Florida, New York, and Texas and some selected tribes in other states were to be freed from federal supervision and ready for termination of federal services "at the earliest possible time." Terminated tribes had following options: to sell their reservations, divide tribal land into allotments, or to form private companies that would administer tribal property. Between 1954 and 1962 fourteen termination acts were passed by which the United States unilaterally ended federal recognition of more than a hundred tribes and bands in eight states.¹⁸⁹ By 1994 all tribes but one were restored to federal recognition.¹⁹⁰

Even the tribes that escaped termination felt its consequences. States, instead of federal government, were to provide services to tribes in the fields of education, health care, social welfare, and law enforcement.¹⁹¹ Tribes were subject to assimilation legislation and programs designed to prepare them for later termination. One such legislation was Public Law 280 of 1953, which transferred criminal and civil

¹⁸⁷ Kenneth R. Philp, "Dillon S. Myer and the Advent of Termination: 1950-1953," *The Western Historical Quarterly* 19:1 (1988), p. 57.

¹⁸⁸ House Concurrent Resolution 108, 83 Congress, 67 Stat. B132 (1953).

¹⁸⁹ Michael C. Walch, "Terminating the Indian Termination Policy," *Stanford Law Review* 35:6 (1983), p. 1187.

¹⁹⁰ L. Scott Gould, "The Consent Paradigm: Tribal Sovereignty at the Millennium," *Columbia Law Review* 96:4 (1996), p. 831.

¹⁹¹ Kenneth R. Philp, "Termination: A Legacy of the Indian New Deal," *The Western Historical Quarterly* 14:2 (1983), p. 165.

jurisdiction over tribal lands from federal to state governments in Minnesota, California, Nebraska, Oregon, and Wisconsin. Tribes in these states were deprived of a substantial part of their remaining sovereignty. Another assimilation tool that concerned all reservations in the United States was the Placement and Relocation Program created by Commissioner Myer and further developed by his successor Glenn L. Emmons (1953–1961). By moving individuals and families to distant cities, terminators intended to break ties between Indians and their cultures. The idea of relocation was underpinned by the argument that "most of the reservations are greatly overpopulated, and could not support the present population at anything approaching a reasonably adequate American standard of living."¹⁹² But most Indians did not have sufficient qualification to succeed in industrial centers. This problem was intended to be solved by vocational training program for Indians but Congress provided the BIA with the requested funds only in 1956 when Public Law 959, the Indian Adult Vocational Training Act, was passed.¹⁹³ In 1958 a retreat from implementation of termination measures started but termination remained the official federal policy until the end of the 1960s.¹⁹⁴ In 1964 Indian Commissioner Philleo Nash rejected relocation as a program that "by itself solve[d] nothing" only served to "transport people from one pocket of poverty to another."¹⁹⁵ Instead of moving to distant cities, with a return rate varying from 30 to 70 percent, the BIA started to advance vocational training programs aimed directly at the development of reservation economies.

The impact of termination policy not only on terminated tribes was great because many administrative and regulatory changes remained in place even in the era of self-determination policy.

¹⁹² U.S. Congress, House Committee on Interior and Insular Affairs, *Survey Report on the Bureau of Indian Affairs* (Washington, DC: GPO, 1954), p. 23.

¹⁹³ Public Law 959, 70 Stat. 986. August 3, 1956.

¹⁹⁴ In March 1968 President Lyndon B. Johnson delivered a special message to Congress, called "The Forgotten American," in which he proposed freedom of choice for native people – to live on reservations or to move to cities. He used the expression self-determination that his successor President Richard Nixon put in the center of the new federal Indian policy.

¹⁹⁵ Address by Philleo Nash, Commissioner of Indian Affairs, Department of the Interior, at the Abraham Lincoln Centre, Chicago, Illinois, February 12, 1964.
<https://www.bia.gov/node/919/attachment/newest> (accessed January 7, 2016).

6.2 The White Earth Reservation under the Threat of Termination

Vine Deloria Jr. called the termination era of 1945 to 1965 the "barren years"¹⁹⁶ because the continuing existence of Native self-government became undesirable for assimilationist goals of termination policy. From the perspective of the White Earth rebuilding process it might seem that paying attention to this period is irrelevant. But failing to include the termination period within the examined temporal context would prevent identifying institutional changes that had their beginnings in the termination era and have continued into the present.

In the termination period, much more than in previous years, the powerlessness of the MCT tribal organization became clear. The TEC and the individual reservation councils were merely extensions of the BIA's administrative apparatus. This situation can best be illustrated by procedures by which the tribe adopted its resolutions and ordinances. In most cases, these tribal legal documents did not result from collective action of tribal representatives. They were written by the Consolidated Chippewa Agency branch heads who submitted them to the superintendent for approval.¹⁹⁷ Only then the resolutions and ordinances were ready to be turned over to the tribal manager or the secretary who would present them at a meeting to be passed. Most important resolutions required the approval of the Secretary of the Interior or the Commissioner, others were subject to the approval of the Area Director or the Superintendent.¹⁹⁸

From the very beginning of the MCT's existence, the most contentious issue concerned the adoption of enrollment rules. The Department of the Interior repeatedly refused to approve the MCT's own enrollment rules because these were based on lineal descent instead of blood quantum criteria and hence they were in conflict with Congressional politics. During the 1950s BIA officials spent considerable time and energy drafting an enrollment ordinance for the MCT and trying to persuade the TEC to adopt it.¹⁹⁹ But TEC representatives did not yield to these pressures. It was an uneven struggle that shows how important was solving the matter of tribal enrollment for both

¹⁹⁶ Deloria and Lytle, *The Nations Within*, p. 190.

¹⁹⁷ W. W. Palmer, "Resolutions submitted by Agency Representatives to Tribal Executive Committees or Councils," June 5, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁹⁸ W. W. Palmer, "Memorandum to Branch Heads: Minutes of Tribal Council Meetings and Resolutions passed by Councils," May 16, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

¹⁹⁹ *Consolidated Chippewa Newsletter*, August 26, 1953. Box 439, Series 12: Agency Publications, 1923–1954, NARA, RG 75.

sides. What was at stake for the MCT Anishinaabeg was the future of their descendants. For the BIA, tribal adoption of BIA-drafted enrollment ordinance was increasingly important because of the planned termination of the MCT and the need to know who would share in tribal property. The unresolved problem of tribal enrollment was one of serious obstacles for the BIA in preparations for termination. As a result of not adopting the imposed enrollment ordinance, there was no enrollment of newly born children throughout the 1950s.²⁰⁰

The White Earth Anishinaabeg played only minimal role in administering their affairs and had almost none real powers in the BIA-MCT-reservation government hierarchy. For this reason they let themselves easily persuade by the idea of planned withdrawal of federal responsibility for administering their affairs and by the possibility of having tribal trust properties transferred to White Earth ownership.²⁰¹ Unfortunately, they could not understand the meaning of the term self-determination misused by terminators, mainly by Commissioner Dillon S. Myer whose rhetoric of self-determination promised the repeal of discriminatory federal policies.²⁰² The White Earth Anishinaabeg did not know that self-determination in connection with termination policy would mean abolishing their special political status and self-government. They believed that this policy offered them greater powers in administering their affairs and that it would give them a chance to achieve self-sufficiency.²⁰³ In the mid-1950s, White Earth Reservation population faced dire social conditions; the reservation lacked employment opportunities, infrastructure, and basic amenities available in most rural communities of the Midwest.²⁰⁴ The White Earth Anishinaabeg saw the improvement of their economic situation in responsible resource management, mainly handling the timber. For this reason, White Earth Reservation councilmen asked the Department of the Interior to transfer all reservation trust lands to them.²⁰⁵ Under the impression of

²⁰⁰ W. W. Palmer to James A. Wakonabo, October 23, 1959. Box 59, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁰¹ Resolution No.2 of the White Earth Reservation Council, September 21, 1955. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁰² Philp, "Dillon S. Myer and the Advent of Termination," p. 40.

²⁰³ Resolution No.2 of the White Earth Reservation Council, September 21, 1955. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁰⁴ Brenda J. Child, "Politically Purposeful Work: Ojibwe Women's Labor and Leadership in Postwar Minneapolis" in *Indigenous Women and Work: From Labor to Activism*, ed. Carol Williams, (Urbana: University of Illinois Press, 2012), p. 243.

²⁰⁵ Resolution No.2 of the White Earth Reservation Council, September 21, 1955. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

newly gained powers and responsibilities, the White Earth Reservation Council announced its separation from the MCT.²⁰⁶ Hopes placed by the White Earth Anishinaabeg in termination policy as well as the reservation's effort to withdraw from the MCT soon proved to be too simplistic and mistaken.

During the 1950s shortcomings of the MCT governing structure became more obvious. Centralizing power in the TEC was causing intratribal conflicts. The MCT Constitution did not define functions and powers of tribal executive members, reservation council members, and tribal manager.²⁰⁷ In the course of the 1950s, quarrels within the TEC intensified to such an extent that top TEC representatives – president, secretary, manager, and clerk – did not cooperate with each other and, as the Agency superintendent put it, they were "stepping on each other's toes."²⁰⁸ Irresponsible and self-seeking individuals newly appeared among tribal officials and contributed to the creation of an environment in which the proliferation of ineffective competing informal institutions subverted rules and procedures of the weak MCT government. This new trend was connected with the creation of the position of tribal manager who was authorized to disburse tribal funds which prior to 1948 were in the hands of the superintendent.²⁰⁹ The function of tribal manager became a tempting means for dissipation of tribal money. A network of political actors, who enriched themselves at tribal expense through unjustified payments of per diems and travel reimbursements, created a clientelist environment around the manager.²¹⁰ These clientelist relationships were responsible for the election of Lyzeme Savage to the position of tribal president in May 1956 despite the fact that this former tribal manger was in December 1953 sentenced to two years in prison for misappropriation of tribal funds.²¹¹

²⁰⁶ Ibid.

²⁰⁷ J. W. Kauffman to Don C. Foster, April 4, 1951. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁰⁸ W. W. Palmer to R. D. Holtz, March 4, 1957. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁰⁹ J. W. Kauffman to E. Morgan Pryse, July 18, 1955. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹⁰ Summary of Investigation of Alleged Wasting of Funds of the Minnesota Chippewa Tribe of Indians. July 3, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹¹ B. O. Angell to R. D. Holtz, May 29, 1956. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

This scandalous case reopened the question of amending the MCT Constitution, but realizing this intention turned out to be extremely complicated.²¹² The MCT Constitution was deliberately designed in such a way that it was difficult to change. Under Article XVIII, Section 1 of the MCT Constitution, amending the Constitution required the consent of at least two-thirds of the Tribal Executive Committeemen which was a necessary condition for calling an election by the Secretary of the Interior.²¹³ Conflicts within the TEC made any agreement impossible which did not escape the attention of the Superintendent and the Acting Area Director who observed that "[...] it is no easy matter to amend the Constitution and By-Laws, [which] [...] has advantages at times, even though in the present situation it seems to have only disadvantages."²¹⁴ Responsible TEC representatives strove to amend the MCT Constitution which they saw as unwieldy because it clearly failed to provide a remedy in new situations of political pathologies.²¹⁵ Only in 2006 did the MCT Constitution incorporate the much needed provision forbidding a convicted criminal to hold office: "No member of the Tribe shall be eligible to hold office [...] if he or she has ever been convicted of a felony of any kind; or of a lesser crime [...]."²¹⁶

Dissatisfaction with the MCT Constitution among Anishinaabe bands took shape in their unwillingness to be part of the consolidated organization of the MCT.²¹⁷ While Anishinaabe bands shared certain interests, their loyalty to the band was stronger than the allegiance to the MCT as a whole.²¹⁸ A band that would pull away from the MCT would risk becoming landless because purchased and returned ceded lands were held in the name of the MCT.²¹⁹ Specifically, the White Earth Anishinaabeg did not own tribal

²¹² W. W. Palmer to R. D. Holtz, October 10, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹³ Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. July 24, 1936. <https://www.loc.gov/law/help/american-indian-consts/PDF/36026761.pdf> (accessed January 7, 2016).

²¹⁴ Thomas Carter to W. W. Palmer, August 13, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹⁵ W. W. Palmer to R. D. Holtz, October 10, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹⁶ See Article IV, Section 4. Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. Minnesota Chippewa Tribe and United States Office of Indian Affairs, (1964; amended 1972 and 2006).

²¹⁷ W. W. Palmer to R. D. Holtz, January 29, 1958. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹⁸ Management Review, Minnesota Agency. Undated document, circa 1957. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²¹⁹ W. W. Palmer to R. D. Holtz, January 29, 1958. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

lands as a band but as members of the MCT. They had the same equity in the tribal lands scattered throughout the other five reservations.²²⁰

Emancipation efforts of Anishinaabe bands fitted the intentions of termination policy which, in contrast with the previous reorganization policy, had no interest in consolidating the bands and their land base but made efforts to disperse the reservation population and remove the trust status of allotted lands. "Withdrawal programming," initiated by Commissioner Myer and further developed by his successor Emmons, contained a recommendation that the Consolidated Chippewa Agency dissolve the TEC and plan the termination of individual reservations.²²¹ As early as in 1952 Consolidated Chippewa Agency staff prepared the withdrawal plan for each of the six reservations.²²² In 1954, an alphabetical list of tribes appeared in House Report No. 2680 which assessed each band of the MCT individually according to its readiness. The White Earth Reservation was marked "yes (conditionally)."²²³ Withdrawal plans were to be "consulted" with each band separately. Both Myer and Emmons substituted "Indian consultation" for Indian consent. By "Indian consultation" they meant talking with Indians and then acting in disregard of their wishes.²²⁴ Nonetheless, the MCT Anishinaabeg were not entirely helpless in the face of manipulation and untrue arguments of BIA officials and House Representatives who tried to persuade them about the benefits of termination. At a House of Representatives Committee meeting on June 18, 1956 the MCT delegation expressed a strong opposition to the Bill H. R. 10909 containing a termination clause for the MCT. Their disagreement thwarted the plans of BIA officials to present a prepared statement saying that the MCT Anishinaabeg had wanted such legislation passed by Congress for a long time.²²⁵

²²⁰ J. W. Kauffman to Don C. Foster, August 19, 1953. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²²¹ United States Congress, House of Representatives, *House Report No. 2680: Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs*. 83rd Congress, 2d session. (Washington, D.C., 1954), p. 27.

²²² *Consolidated Chippewa Newsletter*, September 12, 1952. Box 439, Series 12: Agency Publications, 1923–1954, NARA, RG 75.

²²³ United States Congress, House of Representatives, *House Report No. 2680: Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs*. 83rd Congress, 2d session. (Washington, D.C., 1954), pp. 3–4.

²²⁴ The Extension of State Jurisdiction over Indian Reservations. Undated document, circa 1953. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²²⁵ Joe E. Vizenor and William Morrell, Report of the Delegation to Washington D.C., June 18, 1956. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

In spite of the MCT government's resistance to termination policy, intense preparations for the withdrawal of BIA services were made since the early 1950s. As part of "withdrawal programming" BIA field employees collected data on the land status, natural resources, number of Anishinaabeg on tribal rolls, blood quantum, and employment on each MCT reservation. Under Commissioner Myer's direction the BIA was no longer to care for improvement of social and economic conditions of Native people but its main task became dismemberment of reservations.²²⁶ This goal was to be achieved by removing federal trust responsibility over tribal property and by ending services provided by the BIA (healthcare, education, welfare, law and order) and their transfer to state and county agencies that provided services to the general population.²²⁷ In the Consolidated Chippewa Agency the transfer of BIA services was complete in the early 1950s. It was a move away from satisfying reservation Anishinaabe needs and a step toward their assimilation. The social security program placed the Anishinaabeg on an identical basis as non-Indians.²²⁸ While the majority of social security programs provided by the Minnesota Department of Public Welfare (general relief, aid to dependent children, old age assistance, aid to the blind) was federally subsidized, direct relief was a local responsibility. In the late 1950s, counties were unable to pay their share of expense for direct relief and many needy Anishinaabeg found themselves destitute. Becker County, which forms the southern part of the White Earth Reservation, announced that it would no longer be responsible for direct relief for the Anishinaabeg as of April 1, 1960.²²⁹

Destitute Anishinaabeg who had no source of direct relief relied on hunting, fishing, and gathering as the only rescue from starvation. While the Treaty of 1867 by which the White Earth Reservation was established gave the White Earth Anishinaabeg exclusive hunting, fishing, and gathering rights, the implementation of allotment policy changed this situation. Because the lands were alienated in fee to non-Natives, the exclusive rights applied officially only to trust lands. In practice, however, state game wardens exercised full powers and arrested the Anishinaabeg on all types of reservation

²²⁶ Richard Drinnon, *Keeper of Concentration Camps: Dillon S. Myer and American Racism* (Berkeley: University of California Press, 1989), p. 235.

²²⁷ 1952 Annual Report: Consolidated Chippewa Agency. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²²⁸ J. W. Kauffman to E. Morgan Pryse, October 19, 1955. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²²⁹ Minnesota Five Year Plan. April 4, 1960. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

lands, including individual Indian allotments, tribal trust lands, and lands purchased for the Anishinaabeg under the IRA provisions.²³⁰ Problems with hunting, fishing, and gathering rights stemmed from unclear definition of the role of state and federal government regarding legal jurisdiction over the Anishinaabeg and their property. Minnesota has been one of five states that after the passage of Public Law 280 in 1953 was granted jurisdiction over Native people in reservation areas.²³¹ Public Law 280 was supposed to solve the doubtful jurisdiction which the State of Minnesota had unofficially exercised over the Anishinaabeg since the mid-1930s when the majority of reservation lands, particularly on the White Earth Reservation, were in non-Native ownership.²³² But the passage of Public Law 280 left the matters of hunting, trapping, and fishing rights in the same state as they were prior to this legislation which resulted in the perpetuation of maltreatment and illegal actions by game wardens.²³³ The Anishinaabeg continued to be arrested, made to pay fines or were jailed, and their nets, guns and other material were confiscated by law enforcement officers for supposed violations of Minnesota state laws while all this time they were merely exercising their legal treaty rights as a partial means of their livelihood.

Federal and state attack at Anishinaabe treaty rights was part of termination policy's strategy focused on cultural transformation of Native people, tearing their ties with homelands, and the loss of Native identity. The White Earth Anishinaabeg have always placed great emphasis on traditional collective practices and values connected with them. Relationships of interdependence which encouraged the Anishinaabeg to care for the needy were an important source of community coherence. Cooperative relationships of mutual help functioned as complementary informal institutions that were making up for failures in the operation of formal ones, such as the inadequacy or lack of welfare services. Old Anishinaabeg who had trouble surviving on the meager old

²³⁰ James A. Wakanabo to Commissioner of Indian Affairs, May 1, 1951. Box 62, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³¹ Public Law 280 was not enacted nationally. Originally, it applied to five states: California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation). The Menominee Reservation was subject to this law in 1954. Public Law No. 83–280, 67 Stat. 588 (1953).

²³² In 1935 Minnesota state courts and police assumed jurisdiction in about 95 percent of crimes committed by the MCT Anishinaabeg. M. L. Burns to John Collier, April 8, 1935. Box 70, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³³ Minnesota Five Year Plan. April 4, 1960. Box 56, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

age assistance were often criminalized for fishing for their own consumption.²³⁴ The White Earth Anishinaabeg considered caring for old people as a virtue and their compassionate behavior helped to maintain the structure of community life. Informal institutions, mainly socially shared rules and practicing the severely limited seasonal round, became efficient means of delaying the planned termination of the White Earth Reservation.

The adherence to traditional cultural patterns and habits made the White Earth Anishinaabeg resistant to a new form of community organization which the Consolidated Chippewa Agency encouraged. The goal of these community organizations with non-Native participation was to teach the White Earth Anishinaabeg to accept more responsibilities that would be expected of them as members of mainstream society.²³⁵ In reality, it was another assimilation tool for elimination of their own reservation council, as particularly older Anishinaabeg correctly suspected.²³⁶ The BIA indeed saw Anishinaabe tribal governments as "remnants of anachronistic tribal autonomies" that were the barriers to Anishinaabe integration into the mainstream society.²³⁷

Under the nation-wide Placement and Relocation Program, which was initiated at the Consolidated Chippewa Agency level during 1952, BIA placement officers were trying to persuade the White Earth governing body about the necessity to accept the placement program.²³⁸ It was undesirable that the governing body was in opposition. Therefore, a possible disagreement of the reservation council was not to be put on record.²³⁹ Using manipulation and misinformation, placement officers managed to convince individuals and entire families of the need to relocate by presenting the various factors, such as unemployment, surplus population, and lack of available resources on the reservation.²⁴⁰ Statistical data that BIA field employees were instructed

²³⁴ James A. Wakanabo to Superintendent, May 22, 1952. Box 62, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³⁵ 1952 Annual Report: Consolidated Chippewa Agency. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³⁶ Ibid.

²³⁷ Indian Assimilation in the State of Minnesota, A Report by Kent FitzGerald, May 9, 1952. Box 53, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³⁸ 1952 Annual Report: Consolidated Chippewa Agency. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²³⁹ Indian Affairs Manual, Community Services, Placement. 1951. Box 52, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁴⁰ Ibid.

to collect served to underpin the terminationists' belief that reservations were overpopulated and could not sustain the growing Indian population. But the data on the MCT and White Earth population that the Consolidated Chippewa Agency Superintendent had at his disposal were not actual survey figures, only the Tribal Office estimates.²⁴¹ The goal of the Placement and Relocation Program was permanent relocation of Native people to urban centers where they were to obtain year-round employment. Many White Earth Anishinaabeg who decided to relocate had no interest in becoming permanent city dwellers. Because most of them had no experience in industrial types of employment and were qualified only for starting jobs in industrial plants, they preferred seasonal work (forestry work, harvest work, rice gathering, guiding, resort work, railroad section work, road construction work) on the reservation or in the vicinity.²⁴² Those who could not make a living on the reservation and expressed a serious interest in relocation had an interview with a relocation officer who filled in two forms with applicants.²⁴³ The Relocation Information Record form contained personal data on marital status and family members, education, work history, property, and plans into the future. The Application for Financial Assistance form contained the applicants' declaration that they intended to "establish [their] permanent home" in the new place. The need for financial assistance was assessed individually by the BIA. Applicants were encouraged to save the money for relocation and cover most of the costs themselves.²⁴⁴ The most needy applicants were given money for one-way transportation, subsistence en route and at destination, and up to fifty dollars for the shipment of personal goods. The BIA could also provide money for lodging and food for up to four weeks.

Data on the number of relocatees and returnees from the White Earth Reservation are incomplete because the overall statistics for the entire period during which the relocation program was carried out were never made. As an illustration might serve figures pertaining to the period from 1952 to 1954 when 173 people relocated to

²⁴¹ J. W. Kauffman to K. W. Dixon, November 25, 1953. Box 55, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁴² 1952 Annual Report: Consolidated Chippewa Agency. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁴³ General information, Boxes 407–420. Series 127: Employee Assistance Case Files, 1951–1966, NARA, RG 75.

²⁴⁴ *Consolidated Chippewa Newsletter*, July 8, 1953. Box 439, Series 12: Agency Publications, 1923–1954, NARA, RG 75.

Chicago, Minneapolis, Los Angeles, and other cities.²⁴⁵ By 1954 twenty-nine people returned to the reservation.²⁴⁶ In 1957 Agency officials openly admitted that the MCT's response to the program was not good and that the bands formally indicated that they did not want it.²⁴⁷ Agency employees evaluated the MCT Anishinaabe relocation as unsuccessful because "traditional cultural patterns and habits of hunting, fishing, and participation in the annual harvesting of wild rice" prevented permanent relocation.²⁴⁸

The withdrawal of federal services for the White Earth Reservation was conditioned by the transfer of all trust lands, originally belonging to full blood allottees, to fee simple title and by removing all remaining restrictions on allotments.²⁴⁹ While only a few trust allotments remained on the White Earth Reservation, the BIA was unable to solve the problems of inherited lands because it was impossible to identify tens to hundreds of heirs of individual allotments, contact them, and determine their blood status. Complicated land status made it impossible to sell undivided fractional shares which was delaying the termination of federal trusteeship on the White Earth Reservation.²⁵⁰ These confused land holdings were one of the main factors that saved the White Earth Anishinaabeg from termination.

For the White Earth Anishinaabeg and the MCT as a whole termination policy has left its legacy in the form of the Revised Constitution of 1964.²⁵¹ The Constitution maintained the IRA format created by the BIA in 1936 and contained many of its structural shortcomings. Like the previous constitution, it did not provide for the separation of powers or the creation of a separate judiciary system. Power remained centralized in the TEC while Reservation Councils, renamed to Reservation Business Committees (RBC), were subordinated to its central decision making. Reservation charters were superseded by Article VI which specified limited powers of RBCs. The Revised Constitution extended the TEC members' term of office from one year to four

²⁴⁵ *Consolidated Chippewa Newsletter*, September 1954. Box 439, Series 12: Agency Publications, 1923-1954, NARA, RG 75.

²⁴⁶ *Ibid.*

²⁴⁷ Management Review, Minnesota Agency. Undated document, circa 1957. Box 60, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁴⁸ *Ibid.*

²⁴⁹ Narrative Report, Consolidated Chippewa Agency, Branch of Realty, 1954. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁵⁰ 1952 Annual Report: Consolidated Chippewa Agency. Box 54, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁵¹ Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. Minnesota Chippewa Tribe and United States Office of Indian Affairs, (1964; amended 1972 and 2006).

years and instituted staggered elections. Unlike the 1936 constitution which avoided explicit racial criteria for tribal membership, the MCT under the threat of termination succumbed to federal pressure and included the requirement of one-quarter Minnesota Chippewa Indian blood in the Revised Constitution.

In the termination period, the White Earth Anishinaabeg started to realize more than ever before that their political survival depended on the preservation of their culture in the U.S. political system. But only in the following decades were they able to more clearly articulate and try to realize their vision of good Native governance. The lost struggle against policies and regulations that were in conflict with Anishinaabe cultural values was a struggle for self-determination which finally resulted in White Earth Anishinaabe reform efforts.

6.3 Analytical Conclusions

The shift of federal Indian policy to termination changed the functioning of the MCT government. The formal structure of the MCT government was kept unchanged, yet two hidden forms of institutional change appeared and had identifiable effects. The circumstances caused by the change of federal Indian policy altered social effects of formal rules entrenched in the MCT Constitution but all efforts to update these rules failed. In the terminology of new institutionalism, such a situation is called *drift*.²⁵² Some MCT representatives benefited from the impossibility to update the MCT rules and reinterpreted them to serve their needs. They took advantage of rule ambiguity for personal gain. This other hidden form of institutional change, called *conversion*,²⁵³ worked together with *drift* and maintained the formal status quo. *Drift* and *conversion* that occurred in the MCT governance in the termination period were the consequence of New Deal policy's failure to eradicate the monopolistic control of the BIA. The MCT Constitution was a product of the BIA's controlling power, did not suit the diverse needs of the six constituent reservations, and was designed in such a way that later amending was almost impossible.

Drift and *conversion* created gaps between formal MCT institutions and aspirations of opportunistic tribal representatives. The poverty on MCT reservations

²⁵² Hacker, Pierson, and Thelen, "Drift and Conversion," pp. 180–208.

²⁵³ Ibid.

coupled with the weak formal tribal governing structure created a breeding ground for competing informal institutions that had subversive effects. Giving some tribal officials greater powers to handle tribal funds was in agreement with the strategy of termination policy to prepare the MCT for the withdrawal of federal responsibility for administering Anishinaabe affairs. The newly created function of tribal manager, whose powers were not clearly defined, gave rise to a network of clientelist relationships which were undermining the functioning of the MCT government. The MCT Constitution lacked checks and balances which would prevent violations of rules and by-laws by Anishinaabe officials who abused their vested powers for personal enrichment. These constitutional weakness did not allow the faithful application of the MCT Constitution regardless of the power holders' interests. The MCT Constitution became ineffective because its provisions were increasingly out of step with rapid legislative activity of the termination period. This situation caused serious problems in White Earth governance in the following period, particularly in the 1980s and 1990s, when political authority of certain White Earth and MCT actors supported by the BIA was a source of positive feedback which increased power asymmetries.

Ineffective competing informal institutions were not the only informal institutions that worked in the MCT governing system. In Anishinaabe communities, time honored conventions, customs, practices, and socially shared rules were the structures functioning as complementary informal institutions supporting reservation governance. These informal institutions were persisting unaffected by the changes of federal Indian policy. Unlike formal tribal and reservation governing structures, they were effective and played an indispensable role in community building. On the White Earth Reservation the role of complementary informal institutions was particularly important at the time of the termination policy's irresponsible social engineering when Minnesota's social welfare services collapsed. White Earth Anishinaabe adherence to traditional culture and subsistence practices was delaying their planned termination because only a few individuals and families permanently left the reservation during the relocation program's implementation.

In the termination period, more than previously, questions of legitimacy of the MCT government and accountability of tribal officials arose and led to constituent bands' efforts to separate from the joint government. The planned termination of individual MCT reservations created the impression that it would meet their calls for autonomy and greater responsibility for their affairs. The White Earth Anishinaabeg

were not sufficiently and truthfully informed about the termination policy which BIA personnel depicted as an opportunity to achieve self-determination. The BIA's power structure tried to achieve its goal through fabricated claims which was evident in the case of the Congressional discussions about the Bill H. R. 10909 (1956) containing a termination clause for the MCT. BIA officials presented the passage of this legislation as the wish of all MCT Anishinaabeg but their false arguments ran into unexpected resolute resistance of MCT representatives from White Earth and Leech Lake.

Even in the period unfavorable to self-determined activities, there were situations when the White Earth Anishinaabeg, joined by other MCT bands, refused to play the role of helpless victims of the inevitable power domination. They did not give up their right to determine their own fate when faced with manipulative pressures striving to change their special political status and dissolve their reservations. With the same resilience, the White Earth Anishinaabeg and the whole MCT, resisted the BIA imposed membership criteria and defended their right to determine their identity on the basis of their cultural values. By asserting their right to self-determination, the White Earth Anishinaabeg prepared themselves for later struggles in the difficult process of government reform aimed at establishing a new constitutional order.

7. THE WHITE EARTH NATION IN THE SELF-DETERMINATION PERIOD

The wave of Native nation building in Indian Country is clearly connected with self-determination policy and with the implementation of two major pieces of legislation, the Indian Self-Determination and Education Assistance Act (1975) and the Tribal Self-Governance Act (1994). The drive for efficiency of tribal governments, accountability, and greater ability to function within the federal-state-tribal system has led many Native nations to revise their outdated constitutions and develop effective governing institutions. This is a political task, the main components of which are practical sovereignty, legitimacy of governing institutions, and leaders committed to the ideas of nationhood and cultural continuity in the twenty-first century conditions. In this rebuilding process Native nations often encounter many obstacles which may cause the

failure of their reform efforts. This does not mean that the rebuilding process ends. It is an ongoing struggle for self-determination which opens new possibilities for reform.

In the first part of this chapter, I deal with the development of self-determination policy, which began as part of a broad social initiative aimed at elimination of poverty among the American poor. I stress the significance of innovative political statements by Presidents Lyndon B. Johnson and Richard Nixon who in 1968 and 1970 articulated fundamental principles of self-determination policy. Even though all subsequent U.S. presidents, including Donald Trump, have officially declared government-to-government relationships with Native nations, there is a stagnation in the self-determination policy which currently lacks major legislative initiatives. In the second part, I trace how the White Earth government reacted to political changes which brought greater powers to the MCT government and show that their success in litigation with the State of Minnesota allowed the White Earth Anishinaabeg to exercise *de facto* sovereignty by creating a conservation court. In the third part, I reveal the causes of the crisis in the MCT government. While the processes of *drift* and *conversion* kept the MCT government formally unchanged, they redirected the effects of this outdated institution to be in agreement with the interests of corrupt leaders. I detail two constitutional reform attempts and analyze the causes of their failure.

7.1 Indian Policy: the Turn to Self-Determination

The first indications that the federal government started to abandon the termination policy appeared in 1958.²⁵⁴ Significantly, this gradual turn was predominantly a return to the philosophy and many of the objectives of the Indian New Deal era. *Cohen's Handbook of Federal Indian Law* places the end of the termination period and the beginning of the self-determination era in 1961.²⁵⁵ But some scholars regard as the end

²⁵⁴ On September 18, 1958, Secretary of the Interior, Fred A. Seaton, stated in his speech that "it is absolutely unthinkable [...] that consideration would be given to forcing upon an Indian tribe a so-called termination plan which did not have the understanding and acceptance of a clear majority of the members of the affected tribe." He added that it was "criminal to send any Indian tribe out into the stream of American life" without proper preparation for taking over new responsibilities. Remarks by Secretary of the Interior Fred A. Seaton, Flagstaff, Arizona, September 18, 1958. *Congressional Record*, 105: 3105 (1959).

²⁵⁵ Newton, (ed.), *Cohen's Handbook of Federal Indian Law*, p. 10.

of the termination policy the mid-1960s²⁵⁶ or even the year 1967.²⁵⁷ This ambiguity is not unusual in federal Indian policy. As a rule, it is easier to identify the beginning point of a period than an end point.²⁵⁸

The repudiated termination policy was replaced with a new policy aimed mainly at social and economic assistance as a "new trail to eventual assimilation."²⁵⁹ In contrast with the IRA policy, which from its beginnings was concerned solely with Native American matters, the self-determination era in Indian policy began as part of a broader socially oriented nation-wide initiative that initially had nothing to do with Indian policy itself. Thanks to Philleo Nash, President Kennedy's Commissioner of Indian Affairs, Native people were included in "New Frontier" social and economic programs. Broad social initiatives, the War on Poverty and the Great Society, which President Lyndon B. Johnson declared at the beginning of his term in office, were primarily aimed at the urban and rural poor. This general public policy was not intended as an Indian policy but Native self-determination became its by-product.²⁶⁰ The newly formed federal office, the Office of Economic Opportunity (OEO), included grassroots community organizations when solving the poverty problem. After the passage of the Economic Opportunity Act (1964), American Indian tribes were given the opportunity to participate in antipoverty programs.²⁶¹ Behind this success was the strategy of tribal leaders to present tribes as grassroots community organizations and not to emphasize their political status.²⁶² From the perspective of later development of tribal governments, it was significant that the OEO programs helped tribes to politically organize.

The basic principles of the new direction in Indian policy were articulated in speeches delivered by President Johnson and later by President Nixon. During his administration, President Lyndon B. Johnson recognized that the needs and wishes of Native Americans differed from those of the American population included in antipoverty programs as undefined mass of the poor. In March 1968, before the end of his term, Johnson delivered a "Special Message to Congress on the Problems of the

²⁵⁶ Wilkins and Stark, *American Indian Politics*, p. 298.

²⁵⁷ John R. Hermann, "American Indians in Court: The Burger and Rehnquist Years (1969–1992 Terms)," Unpublished PhD. Dissertation, Emory University in Atlanta, GA. 1995.

²⁵⁸ Washburn, "Tribal Self-determination at the Crossroads," p. 778.

²⁵⁹ Task Force on Indian Affairs, Report to the Secretary of the Interior 77 (July 10, 1961).

²⁶⁰ Washburn, "Tribal Self-determination at the Crossroads," p. 793.

²⁶¹ Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508.

²⁶² Washburn, "Tribal Self-determination at the Crossroads," p. 791.

American Indian: The Forgotten American."²⁶³ In this statement, President Johnson proposed "a new goal for our Indian programs: A goal that ends the old debate about 'termination' of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership self-help."²⁶⁴ Because he recognized that many Native people wanted to stay in their homelands, he proposed a policy of "freedom of choice," which allowed Native people to choose between living on reservations or moving to cities. In his special message to Congress on July 8, 1970, President Richard Nixon officially announced a new national policy toward Native people.²⁶⁵ He asked Congress to officially renounce the termination policy embodied in House Concurrent Resolution 108 and to pass a new Concurrent Resolution which "would explicitly affirm the integrity and right to continued existence of all Indian tribes."²⁶⁶ Richard Nixon was the first president in the twentieth century who recognized the importance of treaties as the basis for the federal-tribal relationship and their politically binding aspect. President Nixon's message contained important policy recommendations allowing tribes to operate federal programs on reservations. Under his administration, the federal Indian budget more than doubled.²⁶⁷ Many of Nixon's legislative recommendations were enacted.

The first important legislation was the Indian Self-Determination and Education Assistance Act of 1975 which allowed tribes to make contracts with the federal government.²⁶⁸ By this piece of legislation Congress purported to "provide maximum Indian participation in the Government and education of Indian people" and encouraged tribes to take over programs in education, economic development, and social services that were formerly administered by the BIA and other agencies.²⁶⁹ It was a step forward for tribes but in practice the BIA maintained control over which contracts would be prioritized and funded.²⁷⁰ Tribal leaders were dissatisfied with the implementation of the

²⁶³ Lyndon B. Johnson, "Special Message to Congress," March 6, 1968. *Public Papers of the Presidents of the United States*: Lyndon B. Johnson, 1968–1969.

²⁶⁴ Ibid.

²⁶⁵ Richard Nixon, "Special Message on Indian Affairs," July 8, 1970. *Public Papers of the Presidents of the United States*: Richard Nixon, 1970.

²⁶⁶ Ibid.

²⁶⁷ United States Department of the Interior, Bureau of Indian Affairs, *Indian Record*, 1968–1974.

²⁶⁸ Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2203 (1975).

²⁶⁹ Ibid.

²⁷⁰ Carole Goldberg, "Federal Self-Determination and Self-Governance Policies 1970–Today" in *Introduction to Tribal Legal Studies*, eds. Justin B. Richland and Sarah Deer, (Lanham, Maryland: Rowman and Littlefield, 2016), pp. 97–99.

contract program, mainly with the restricted tribal powers to adapt programs according to their needs. Their efforts to remedy these shortcomings led to an amendment to this Act passed by Congress in October 1988 as the Tribal Self-Governance Demonstration Project.²⁷¹ Under this Project, seven, later twenty, selected tribes received blocks of federal funds to plan and administer services, redesign programs, and reallocate funds. After reviewing the results of this Project, Congress found that transferring control over funding federal programs to tribal governments was an effective way to implement the government-to-government relations between the United States and Indian tribes and to strengthen the self-determination policy. Tribes that were selected to the Project had to design their own spending plan, demonstrate financial stability and financial management capability. Based on the success of the Tribal Self-Governance Demonstration Project, Congress passed the Tribal Self-Governance Act in October 1994 that permanently established and implemented tribal self-governance.²⁷² Under this legislation, up to twenty new tribes per year may participate in self-governance compacting.

Even though all subsequent U.S. presidents after Nixon have supported the self-determination policy and government-to-government relationships with Native nations, none of them made as comprehensive statements about Indian policy as Lyndon B. Johnson in 1968 and Richard Nixon in 1970. Presidential policies after Nixon made little conceptual improvement; the 1980s were even likened to a form of termination by some observers.²⁷³ During the Ronald Reagan administration, cuts in federal spending resulted in drastic reductions or elimination of Indian education and social services programs. Reagan understood Indian self-determination as a matter of economic development. Instead of providing federal funding for Native American programs, Reagan's administration encouraged Native people to engage in entrepreneurial activities to achieve independence from federal assistance. The Indian Gaming Regulatory Act of 1988 (IGRA) became a means of promoting tribal economic development and a source of self-sufficiency for impoverished tribes.²⁷⁴ The neoliberal program of cutting federal spending for public sector enforced by Republican presidents

²⁷¹ Tribal Self-Governance Demonstration Project, October 5, 1988. U.S. Statutes at Large, 102: 2296–98.

²⁷² Tribal Self-Governance Act, October 25, 1994. U.S. Statutes at Large, 108: 4270–77.

²⁷³ C. Patrick Morris, "Termination by Accountants: The Reagan Indian Policy" in *Native Americans and Public Policy*, eds. Fremont J. Lyden and Lyman H. Legters, (Pittsburgh, PA: University of Pittsburgh Press, 1992).

²⁷⁴ Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (1988).

Ronald Reagan and George H. W. Bush was adopted by the Democratic administration of President Bill Clinton even though the president himself was favorable to Indian causes. Clinton was the first U.S. president to request a meeting with all Native leaders of federally recognized tribes. In 1998, President Clinton issued Executive Orders 13084 and 13175 (Consultation and Coordination with Indian Tribal Governments) which significantly strengthened tribal-federal relationships on a government-to-government basis.²⁷⁵ In contrast with George W. Bush, who only formally recognized the government-to-government relationship but in fact was indifferent to the needs of Native people, President Barack Obama was familiar with economic and social needs of the Indian Country. He was aware of federal policymakers' responsibility to consult federal Indian policy with tribal leaders and issued a memorandum directing all federal agencies to develop plans for consultation with tribal governments.²⁷⁶ Federal consultation with Native governments was not enacted into law, therefore it is not legally enforceable on future administrations. During Obama's two terms, a number of laws supporting tribal governance were passed. A step forward in tribal self-determination may be the Indian Trust Asset Management Reform Act (2016) that empowers Native nations to manage their trust lands based on their own objectives and priorities. Nonetheless, Obama did not declare a new Indian policy which would go beyond the achievements of the self-determination policy toward the recognition of tribal governments in the federal-state-local system.

The emergence of the Native nation-building movement in the early 1990s is connected with legislative initiatives which enhanced the powers of tribal governments. Native nation building is not directly related to higher levels of federal funding. Federal budget spending on Native American affairs culminated in the mid-1970s when the first major legislation to implement the self-determination policy – the Indian Self-Determination and Education Assistance Act– was enacted.²⁷⁷ Since then, the federal expenditures on Native American affairs declined or stagnated. When the U.S. Commission on Civil Rights examined six federal agencies with the largest

²⁷⁵ Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," 63 FR 27655. Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249.

²⁷⁶ Tribal Consultation, Memorandum for the Heads of Executive Departments and Agencies. November 5, 2009.

²⁷⁷ Stephen Cornell and Joseph P. Kalt, "American Indian Self-Determination: The Political Economy of a Policy that Works," Harvard Kennedy School Faculty Research Working Paper Series. 2010. Date Accessed 2 August 2017. Available at <http://hks.harvard.edu>.

expenditures on Native American programs, it found that between fiscal years 1998 and 2003 these programs were funded inadequately. Because this situation is unnoticed and unreported, the Commission labeled it "a quiet crisis."²⁷⁸ Regardless of the level of federal funding a growing number of Native nations initiate a complicated process of government reform because they realize that without good governance economic development cannot be achieved and cultural perpetuation can be at risk.

7.2 The White Earth Nation's Struggle for Self-Determination

The new Indian policy encouraged the White Earth Anishinaabeg in their activities aimed at long-term goals. The White Earth RBC strove to create good leadership with clear idea of what needed to be done for good governance and for the improvement of reservation life. In the 1970s, the White Earth Reservation was trying to come to grips with problems lingering from the reorganization and termination periods. The RBC had little financial means for proper operation, representation, and leading the people. The White Earth RBC received annually 6,800 dollars from the MCT as its operating budget. In 1972, the MCT decided that this amount was insufficient and resolved to enlarge the RBC's budget that would allow to set up a central office with adequate equipment and provide a modest wage to White Earth representatives.²⁷⁹

The change of Indian policy allowed the White Earth RBC to obtain some new powers related to the MCT's participation in operating federal and state programs funded by the BIA and other federal and state agencies. In 1975 these programs included education, vocational training, law and order, economic development, employment, health care, and social services. The White Earth RBC perpetually faced problems stemming from its position in the system of multi-level (reservation-tribal-federal) governance. White Earth representatives perceived bureaucratic obstacles caused by the BIA's bureaucracy as incompatible with the self-determination program which, in their eyes, was supposed to give main powers to reservation governments and turn the BIA into a genuine service agency.

²⁷⁸ U.S. Commission on Civil Rights, "A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country." July 2003.

²⁷⁹ "Reservation Business Committee: Backbone of White Earth Reservation," *The Anishinabe Journal*, Vol.1, No.1. September 1, 1972.

The broadening of the MCT government's powers again pointed at the weaknesses of the MCT Revised Constitution of 1964 which essentially maintained the spirit of the 1936 Constitution and became inadequate in the new conditions of self-determination policy implementation. This model IRA document did not anticipate the strengthening of the tribal government and did not provide the TEC with tools to deal with new legislative and administrative processes. In April 1975, the work on revising the MCT constitution was initiated through the White Earth Reservation Tribal Development Program.²⁸⁰ But these efforts, same as later ones, did not lead to a successful end.

The greatest shortcoming of the MCT governing structure was the absence of tribal judiciary. Soon after the formation of the MCT, TEC representatives influenced by BIA Agency officials rejected the possibility of establishing a tribal court system and left the responsibility for law and order on reservations to counties.²⁸¹ Public Law 280, which since 1953, has subjected most Minnesota reservations to state jurisdiction, did not solve the problem of jurisdictional vacuum on MCT reservations. Rather, it was a source of abuse of authority when the state law enforcement encroached on Anishinaabe property rights on lands held in trust by the United States or violated treaty hunting, trapping, and fishing rights on reservations. The first U.S. Supreme Court's case dealing with Public Law 280 was connected directly with the MCT Anishinaabeg. The case of *Bryan v. Itasca County* (1976) concerned a MCT member, Russell Bryan, living with his family in a mobile home on tribal trust land of the Leech Lake Reservation.²⁸² Itasca County imposed a property tax on Bryan's trailer. The Supreme Court decided in favor of the Anishinaabe petitioner and held that while Congress granted Minnesota jurisdiction over tribes under Public Law 280, it did not confer "general state civil regulatory control over Indian reservations."²⁸³ This landmark case became a precedent and later served as the legal basis for Native gaming industry. Following the Bryan case in *California v. Cabazon Band of Mission Indians* (1987) the Supreme Court established a shorthand test whether a state law is criminal/prohibitory and subject to state

²⁸⁰ *Ni-Mi-Kwa-Zoo-Min*. Cass Lake, Minnesota. April 1975.

²⁸¹ Before Public Law 280 was enacted, the federal government had jurisdiction on MCT reservations. In practice, however, the Agency had authority to issue permits to county law enforcement officers to enter the reservations and arrest Anishinaabeg acting contrary to the laws of the state. Box 70, Series 5, Decimal Correspondence File, 1926–1969, NARA, RG 75.

²⁸² *Bryan v. Itasca County*, 426 U.S. 373 (1976).

²⁸³ *Ibid*.

jurisdiction or civil/regulatory and outside the state's control.²⁸⁴ Because state anti-gaming laws are regulatory rather than prohibitory, they do not apply to reservations under Public Law 280.²⁸⁵ For the White Earth Anishinaabeg, Indian gaming became an efficient means of self-help. It brought the needed finances to the reservation which did not have enough resources to be self-sufficient.

The case *State v. Clark* (1979) concerned the interference of the State of Minnesota into White Earth Anishinaabe hunting, trapping, and fishing rights.²⁸⁶ The decision of the Minnesota Supreme Court that state game and fish laws could not be enforced against enrolled White Earth Anishinaabeg within the boundaries of the White Earth Reservation was an important acknowledgement of internal sovereignty of the White Earth Nation. Encouraged by this success, the White Earth Anishinaabeg established the Conservation Court and adopted their own Conservation Code which they started enforcing since October 1, 1979.²⁸⁷ The purpose of the Conservation Court was to protect reservation natural resources and ensure that each member had equal access to them. The Code specified fishing, hunting, wild rice, and forestry provisions and in some instances its rules governing seasons and limits were more stringent than the state's laws.²⁸⁸

The creation of the White Earth Conservation Court was the first step of the White Earth RBC toward strengthening reservation governance. But this court could not handle important matters coming under civil jurisdiction, such as child custody, child protection, domestic violence, family relations, and juvenile justice. The problem of adoptions was particularly serious as a study conducted in 1976 revealed; over a thousand MCT children were placed in foster homes throughout Minnesota and less than one fourth of them were in Indian foster homes. Two thousand MCT children were in adoptive homes and less than two percent of them were in Anishinaabe families.²⁸⁹

²⁸⁴ The Supreme Court's test is as follows: "if the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation." *California v. Cabazon Band of Mission Indians*, 480 U.S. 209 (1987).

²⁸⁵ Carole Goldberg and Duane Champagne, "Case Study in Funding Inequity: Law Enforcement and Tribal Courts" in *A Second Century of Dishonor: Federal Inequities and California Tribes*. Date Accessed 2 August 2017. Available at <https://www.aisc.ucla.edu/ca/Tribes.htm>.

²⁸⁶ *State v. Clark*, 282 N.W.2d 902 (1979).

²⁸⁷ *Ni-Mah-Mi-Kwa-Zoo-Min*. Cass Lake, Minnesota. September 1979.

²⁸⁸ *Ni-Mah-Mi-Kwa-Zoo-Min*. Cass Lake, Minnesota. March 1980.

²⁸⁹ *Ni-Mi-Kwa-Zoo-Min*. Cass Lake, Minnesota. August - September 1976.

The White Earth Anishinaabeg strove to take over child custody jurisdiction under the Indian Child Welfare Act of 1978 but their request was rejected by the BIA Field Solicitor.²⁹⁰ Again, the problem lied in the MCT Constitution which did not authorize the TEC or the White Earth RBC to promulgate child custody ordinances and to set up a court with child custody jurisdiction. The Field Solicitor recommended amending the MCT Constitution.²⁹¹ But TEC representatives disagreed and repeatedly petitioned the Solicitor's Office to reconsider its decision. In 1994, Associate Solicitor reviewed previous decisions and decided that constitutional amendment was not necessary for establishing a tribal court system.²⁹²

The creation of the White Earth Tribal Court in 1997 was an act of tribal sovereignty in practice. The White Earth Tribal Court does not follow state court procedures and state laws.²⁹³ It has its own White Earth Band of Chippewa Judicial Code which follows Anishinaabe customs and traditional law. Customary law is equal in importance to other laws in law hierarchy.²⁹⁴ Even though the White Earth Tribal Court is based on a Western model of justice, it uses traditional methods and procedures. Judicial practices in the White Earth Tribal Court include peacemaking circles and an elders' panel. Peacemaking circles use traditional circle ritual in which all interested community members in partnership with tribal court seek consensus on appropriate sentencing. The panel of elders has an advisory function in cases when the elders' assistance is requested by one of the parties to the dispute. For the White Earth Anishinaabeg it is vitally important that the White Earth Tribal Court took over child custody jurisdiction and in so doing it ensured the continuation of the White Earth Nation through its children.

²⁹⁰ Mariana R. Schulstad, Field Solicitor, to Associate Solicitor, June 10, 1980. Hearing to Consider Petition for Adoption of a Rule of Procedure for the Recognition of Tribal Court Orders and Judgments. State of Minnesota in Supreme Court. 2002.

²⁹¹ Ibid.

²⁹² Michael J. Anderson, Associate Solicitor, to Ada E. Deer, Assistant Secretary. August 16, 1994.

²⁹³ Anita Fineday, "A Roundtable: Sorting Out the Relationship of the Tribal Courts and the State Court System," A Summary of Proceedings of the Conference Held on May 17, 2000. University of Minnesota.

²⁹⁴ White Earth Band of Chippewa Judicial Code, chapter VII § 6 (b).
<http://www.whiteearth.com/data/upfiles/files/JudicialCode.pdf> (accessed December 5, 2017).

7.3 Toward Government Reform

The reforms of the 1970s strengthened the MCT government and allowed tribal representatives greater involvement in decision making and policy. But the federal government through the BIA did not give up its control over political activities of the TEC and MCT reservation governments. The BIA took advantage of power ambitions of some tribal and reservation leaders and their willingness to protect the institutional status quo. The leaders' desire to remain in power shaped their actions which differed from publicly known and accepted rules and practices. They pursued private interests at the expense of community benefit which not only denied Anishinaabe moral values but gradually dismantled political operation of self-government.²⁹⁵ The concentration of power in one branch of the government perpetually disrupted the balance of power. The absence of checks and balances gave opportunity for the abuse of power and misappropriation of tribal funds by tribal and reservation representatives. Instead of protecting reservation communities' interests, irresponsible, self-interested, and corrupt tribal and reservation leaders used their powers in such a way that threatened these interests. Clientelist relationships, which appeared in the MCT government in the termination period, became common among reservation and tribal officials in the 1980s and the early 1990s.

During the 1980s, the White Earth RBC and the TEC made political decisions adverse to the White Earth community. The White Earth chairman, Darrell "Chip" Wadena, overstepped his authority when he actively supported the passage of the controversial White Earth Land Settlement Act of 1986 despite the opposition of other RBC members.²⁹⁶ This Act extinguished White Earth Anishinaabe title to more than one hundred thousand acres of land illegally transferred during the early 1900s.²⁹⁷ The Act specified that the State of Minnesota would transfer the ownership of ten thousand acres of land within the boundaries of the White Earth Reservation to the United States to be held in trust. This acreage was approximately ten percent of all White Earth lands confiscated by the state. The White Earth RBC received 6.6 million dollars for

²⁹⁵ Vernon Bellecourt describes immoral practices of TEC members whose service to the MCT consisted in allocating money to themselves in the form of per diems and mileage allowances as a recompense for work they did not do. Vernon Bellecourt, "An Open Letter to the Ojibwe Anishinabe" in *The Ojibwe News*, June 8, 1988.

²⁹⁶ "White Earth Members Call for Chairman's Removal" in *The Circle*, June 1986.

²⁹⁷ White Earth Land Settlement Act, 100 Stat. (1986).

economic development purposes but rightful heirs were not financially recompensed. Wadena's opponents who formed an organization, called Anishinaabe Akeeng (the People's Land), protested against the loss of land and feared that Wadena would mismanage the funds because there was no public accounting. Even though the MCT Constitution allowed tribal members to inspect the books and records, in practice, this right was denied to the White Earth Anishinaabeg.²⁹⁸ Wadena used part of the funds obtained from the White Earth Land Settlement Act for the construction of the Shooting Star Casino.

Illegitimate and corrupt practices persisted during Darrell "Chip" Wadena's long term of office as the White Earth RBC chairman (1976 – 1996) and the MCT president (1978 – 1994). Because Wadena, who kept himself in power through election fraud, ignored constitutional procedures allowing his removal from office, all attempts to remove him failed.²⁹⁹ The main cause of this situation was that tribal and reservation governing institutions were not based on democratic principles that would allow to replace a bad government sooner than it does too much unnecessary damage. Corruption in tribal government and repeated election fraud that was depriving White Earth citizens of their voting rights could not be justly settled by a tribal court. No court system independent of the RBC or TEC existed because the MCT Constitution did not provide for the separation of powers. The election board of appeals was completely controlled by the TEC. Tribal judge did not have independent authority and had to rule in compliance with the wishes of tribal leadership. In 1980 the TEC claimed exclusive power to interpret the MCT Constitution. From the perspective of the White Earth Band, the Interpretation No. 2 - 80 was important because it declared the power to create by ordinance a judicial system.³⁰⁰ This Interpretation stretched the powers granted under Articles V and VI of the MCT Constitution and referred to the case of *Santa Clara Pueblo v. Martinez* which described tribal courts that were part of a single branch of the government as "appropriate forums for adjudicating disputes."³⁰¹ Of course, tribal and reservation leaders did not intend to create a court system that would

²⁹⁸ Bylaws of the Minnesota Chippewa Tribe, Article 1, Section 4 b.

²⁹⁹ Throughout the 1980s and 1990s, almost every election on the White Earth Reservation was rigged by incumbents to ensure reelection and remaining in power. The White Earth Reservation has unbelievable election history. Ballot stuffing, ballot stealing, and dead people voting were common election irregularities. Cole Short, "White Earth Officials Vow Clean Tribal Election" in *The Ojibwe News*, April 21, 2000.

³⁰⁰ Tribal Constitution, Interpretation No. 2 - 80. October 22, 23, 1980.

³⁰¹ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65-66 (1978).

be independent of the White Earth RBC and TEC to remedy the injustice caused by the maladministration.

The BIA considered the creation of the MCT's court system as illegal. In spite of that, it supported the TEC in its effort to strengthen its powers and to silence critical voices through tribal and reservation courts.³⁰² In fiscal year 1986/87 the BIA funded the creation of the White Earth criminal court which served White Earth leaders to suppress the opposition from members of the Anishinaabe Akeeng.³⁰³ In 1987 the TEC proposed a constitutional amendment supported by the BIA that was aimed at suppressing reservation citizens' activities and denying their rights of free speech and association.³⁰⁴ The opposition which united in resistance to criminalizing three of its members finally achieved that the amendment was not adopted.

Silencing the opposition pointed to the dilemma of tribal sovereignty and civil rights. The Indian Civil Rights Act (1968) in Appendix I provides, among other things, for freedom of religion, speech, press, assembly, and petition; freedom from unreasonable search and seizure; and the rights to speedy trial, equal protection, and due process.³⁰⁵ The Indian Civil Rights Act is supposed to protect the rights of tribal citizens from the acts of an Indian tribe exercising powers of self-government but it does not deal with legal action against a tribal government that breaks these provisions. White Earth citizens were helpless against violations of their rights guaranteed them by the Revised Constitution and Bylaws of the MCT. United States courts do not interfere in intratribal conflicts in which a tribal government is set against its citizens and deprives them of their rights. Since 1978, courts follow the ruling of the U.S. Supreme Court in *Santa Clara Pueblo v. Martinez* that suits against tribes under the Indian Civil Rights Act are barred by tribes' sovereign immunity.³⁰⁶

Since the early 1990s, calls for constitutional and election reforms and the removal of Wadena from the positions of the MCT president and White Earth chairman were gaining strength. People went into open opposition and put pressure on the tribal government using the form of protest camps at the White Earth headquarters. In July 1991 a three-day peaceful sit-in of more than a hundred White Earth people initiated a

³⁰² Mike Bassett, "New Criminal Court Jails Manypenny for Contempt of Court" in *The Circle*, October 1988.

³⁰³ Ibid.

³⁰⁴ Sherrole Benton, "Leading Opponents Allege Tyranny to Minnesota Chippewa Tribe" in *The Circle*, June 1987.

³⁰⁵ The Indian Civil Rights Act, 25 U.S.C. § 1301-1304 (1968).

³⁰⁶ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978).

five-year reform movement known as Camp Justice.³⁰⁷ Dr. Erma Vizenor, later White Earth chairwoman, who organized the protest as a spokesperson of White Earth elders, was arrested together with twenty-eight others. Camp Justice became a catalyst of political life which grew from the real needs and wishes of the White Earth Anishinaabeg expressed in the words of Eugene McArthur "We must regain our democracy. We want justice and an open form of our government."³⁰⁸ From July to December 1991 the White Earth Anishinaabeg maintained an experimental community devoted to Anishinaabe practices of free expression and sharing of views. Their discussions led them to the conviction that political remedy was not possible without underlying social and spiritual restoration. Camp Justice movement shows that Anishinaabe worldviews and philosophy that have been hidden under the surface of internalized values of the alien culture, emerged when the people rediscovered the values of their own culture and identity.

On June 24, 1996 chairman Wadena and two RBC³⁰⁹ members were convicted and sentenced to prison terms for various felonies, including conspiracy, theft, bribery, election fraud, and willful misapplication of tribal funds.³¹⁰ The new White Earth leadership that replaced the old reservation government was faced with two kinds of difficulties. On the one hand, strong opposition from supporters of the former White Earth councilmen struggled to gain leadership positions through illegal means and tried to restore the previous clientelist system.³¹¹ On the other hand, due to prolonged civil rights violations, the frustrated constituency no longer believed that their civic engagement made any difference and doubted the value of political participation. Erma Vizenor, first as a secretary/treasurer and later as a chairwoman, strove to overcome people's aversion to politics and tried to persuade them that no public action could do without politics if stability and order were to be achieved. She epitomized politics filled with morality, authenticity, and the ethos of solidarity. Vizenor's idea of reforming the reservation government included the entire reservation community into the decision-

³⁰⁷ See e.g. Jim Ortiz, "White Earth Tribal Members Call for Reform" in *The Ojibwe News*, July 31, 1991.

³⁰⁸ Ibid.

³⁰⁹ In 1985, White Earth officials renamed the Reservation Business Committee to the White Earth Reservation Tribal Council. But in official documents the title is used inconsistently.

³¹⁰ United States v. Wadena, Crim. No. 3-95-102 (D. Minn. Jan. 24, 1996).

³¹¹ Gary Blair, "New Elections, Investigations Likely in White Earth Turmoil" in *The Ojibwe News*, June 12, 1998. Gary Blair, "FBI Reportedly Investigating White Earth Absentee Ballot Seizure" in *The Ojibwe News*, June 19, 1998.

making process and led to the creation of an independent committee of volunteers that prepared a draft White Earth constitution in February 1998.³¹² It was a working version open to people's comments and suggestions with a view to bridge differences in opinion and reach the necessary consensus to make the constitution legitimate in the eyes of the whole community. In spite of many community meetings that allowed people to comment on the draft constitution both in writing and orally, participation was low. The proposed constitution remained merely in the draft form even though it offered a more suitable alternative to the outdated MCT Constitution which tribal officials modified by a number of constitutional interpretations. Based on democratic principles, it separated powers between the branches of the government and intended to institute specific types of checks and balances drawing on traditional Anishinaabe governing forms. Through the Grand Council comprised of all adult enrolled White Earth members, people could have regained the power to control the government that had been denied to them for decades and partake in sharing the power and responsibility. A question arises: why the people who called for government reform for such a long time, failed to meet the expectations that the new reform leadership connected with the participatory process? According to Vizenor, the reason for the insufficient people's participation was that the process of public input was seen as something new and unknown.³¹³ I think that this state was caused by a combination of factors, with path dependency playing substantial role. The White Earth Anishinaabeg were affected by what they went through in the preceding decades. The long-term experience with malfeasance and the deep internalization of colonial governing structures sabotaged the reform effort and led to distrust and unfounded accusations against the new White Earth representatives.³¹⁴

The government reform at the MCT level repeatedly encountered the difficulty, if not impossibility to reach consensus in all constituent reservations. For this reason, the proposed White Earth constitution was intended to serve as a guide for other MCT reservations to rewrite the MCT Constitution.³¹⁵ Erma Vizenor, elected as White Earth chairwoman in 2004, 2008, and 2012, continued in her efforts to reform the reservation government. The failure of the first attempt at constitutional reform led her to take a

³¹² The White Earth Reservation Constitution Draft (February 21, 1998) in *Anishinaabeg Today*, July 1999, pp. 9–12.

³¹³ "Constitutional Reform Proposed" in *ibid.*, pp. 1, 17.

³¹⁴ Jamie Marks, "Protesters Call for True Reform on Reservation" in *The Ojibwe News*, March 20, 1998.

³¹⁵ Dale Greene, "Simplicity is Key to Effective Constitution" in *ibid.*

different approach to the constitution-making process. Erma Vizenor was aware of the fact that government reform was a process that concerned all the citizens of the White Earth Nation. Therefore, the pre-constitutional societal consensus about the changes that the new constitution would bring was necessary. The first step was the creation of a working group consisting of people committed to the reform effort. Vizenor's goal was to make possible for a group of diverse people to meet and achieve consensus as one community. Through specially convened constitutional conventions she tried to create what Jon Elster calls "deliberative setting."³¹⁶ The four constitutional conventions that took place between 2007 and 2009 were open to all White Earth citizens and allowed them to participate in deliberations.³¹⁷ Forty delegates from ten reservation and two off-reservation communities represented the plurality of views on the reservation. The diversity of opinion made their debates difficult, nonetheless it reflected what people expected of a democratic reform process. None of the delegates was willing to take the responsibility for the first draft of the constitution. For this reason, during the second convention, Erma Vizenor persuaded the famous Anishinaabe writer Gerald Vizenor, one of the at-large delegates, to be the principal writer³¹⁸ of the Constitution of the White Earth Nation (CWEN).³¹⁹ Yet, the CWEN was a result of collective choices. All White Earth citizens were invited to contribute to the constitution – "every clause was discussed, fought over, and some eliminated in a communal conversation."³²⁰ Deliberations of constitutional convention delegates provided the raw material for the draft. Delegates agreed on foundational governing principles based on a set of beliefs, rules, and values. The foundational principles had a close relationship to Anishinaabe identity which most delegates understood in the sense of cultural practices and moral meanings, not strictly determined by racial criteria. Delegates strongly supported the creation of a democratic governing system with separate powers of government and the institutionalization of additional checks and balances based on aspects of traditional Anishinaabe governance. The ratification of the constitution at the fourth convention on

³¹⁶ Jon Elster, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998), p.105.

³¹⁷ Gerald Vizenor and James Mackay, "Constitutional Narratives: A Conversation with Gerald Vizenor," in Doerfler, Sinclair, and Stark (eds), *Centering Anishinaabeg Studies*, pp. 133–48.

³¹⁸ The main weight of responsibility for drafting the constitution was on Gerald Vizenor's shoulders. The principal writer of the constitution was assisted by an appointed advisory committee: Jill Doerfler (assistant professor, University of Minnesota, Duluth), JoAnne Stately (vice president of development for the Indian Land Tenure Foundation), and Anita Fineday (chief tribal court judge, White Earth Nation).

³¹⁹ Constitution of the White Earth Nation, White Earth Reservation Tribal Council (ratified 2009; adopted 2013). http://www.whiteearth.com/data/upfiles/files/Proposed_White_Earth_constitution_2.pdf.

³²⁰ Vizenor and Mackay, "Constitutional Narratives," p. 136.

April 4, 2009 by two-thirds majority of the delegates present demonstrated the intent of the White Earth Nation to separate from the MCT federation. The period between the CWEN's ratification and its adoption in the referendum of November 19, 2013 was very important because it gave an opportunity for public discourse. Through the reservation newspaper, *Anishinaabeg Today*, all White Earth citizens had access to the proposed constitution and a host of articles explaining its individual parts. The informational resources included *Constitutional Reform Workbook*, training videos, and a list of frequently asked questions. More than fifty informational sessions organized by the Constitutional Reform Project Manager Terry Janis and his team took place in reservation and off-reservation communities.³²¹ The result of these deliberative and educational processes was the adoption of the new constitution by nearly 80 percent of White Earth voters.³²²

In spite of the referendum results, the constitution was not implemented. The reason was a combination of internal and external causes. The internal cause was a division of opinion among the White Earth citizens. The support for the constitutional reform that was strong in the referendum became ambiguous. It is possible that a fear of abandoning the deeply internalized institutional order played its role. This fear keeps the White Earth Anishinaabeg on the path they have pursued as part of the colonial power structure of the MCT up to the present. The implementation of the new constitution was stopped after the election of three new tribal council members in June 2014.³²³ The democratic dialogue was discontinued when in November 2014 new antireform members voted to censor the press to prevent publishing any information or updates on the CWEN in *Anishinaabeg Today* newspapers.³²⁴ The external obstacle to proceeding with the implementation of the CWEN was the fact that the MCT Constitution, established under the IRA provisions and legally binding for the White Earth Nation, does not allow any changes without the approval of the Secretary of the Interior. Revoking or amending the MCT Constitution requires the approval of two-thirds of the

³²¹ Terry Janis, "White Earth Nation Constitution: Educational Tools Help Voters Make Their Own Choices" in *Anishinaabeg Today*, October 11, 2013, p. 2.

³²² "White Earth Voters Approve New Constitution," in *Anishinaabeg Today*, December 4, 2013, p. 1.

³²³ The June 2014 White Earth General Election was marked by low voter turnout. The three challengers defeated the incumbents by a slight majority. "Voters Give Nod to Clark, Goodwin & Mason" in *Anishinaabeg Today*, July 2, 2014.

³²⁴ "News from Chairwoman Erma J. Vizenor" in *Anishinaabeg Today*, December 3, 2014.

TEC or a petition signed by twenty percent of the resident MCT voters.³²⁵ Chairwoman Vizenor negotiated with the MCT regarding the implementation of the CWEN but after her negotiations proved unsuccessful she contacted the Assistant Secretary of the Interior with the request to call a Secretarial election. The antireform White Earth tribal council described Vizenor's communication with the Assistant Secretary as a violation of the MCT Constitution and motioned for a vote on Vizenor's censure in the TEC. Vizenor was censured by the TEC on December 22, 2015 and resigned from her post as White Earth chairwoman on January 20, 2016.³²⁶

The CWEN had a potential to set a new institutional trajectory for White Earth governance, different from the one that has limited its autonomy under the umbrella MCT Constitution. This new constitution categorically rejected the distorted view of the White Earth Band as merely one of the six profit-making business corporations of the MCT. Instead, the CWEN declared community relationships and a sovereign right to establish law and order on the basis of shared values. The preamble expressed the foundational role of the constitution by formulating the main goals and shared values which imbued the phrase "we the Anishinaabeg" with meaning.³²⁷ The values the CWEN entrenched for future generations did not make the constitution static and rigid, but provided a broad framework for interpretation in changing conditions and circumstances.

The CWEN created overall architecture for a functioning government based on principles of liberal-democratic political culture and democratic aspects of traditional Anishinaabe governance. Gerald Vizenor and his advisory committee managed to devise a democratic constitution in the true sense of the word because it contained features of both the national and the liberal constitutional models.³²⁸ This constitution reflected Anishinaabe pre-constitutional identity and fitted within the nation-state

³²⁵ See Articles XII (Amendment) and XIV (Referendum) in the MCT Constitution. Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. Minnesota Chippewa Tribe and United States Office of Indian Affairs, (1964; amended 1972 and 2006).

³²⁶ "Embattled White Earth Chair Erma Vizenor Resigns" in *MPR News*, January 20, 2016. <http://www.mprnews.org/story/2016/01/20/white-earth-chair-erma-vizenor-resigns> (accessed December 5, 2017).

³²⁷ Constitution of the White Earth Nation, White Earth Reservation Tribal Council (ratified 2009; adopted 2013).

³²⁸ See Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (New York: Cambridge University Press, 2011). This book does not deal with Native American constitutions. Yet, it contains valuable information on constitution-making process. Lerner argues that the most democratic constitutions contain both the nation-state and the liberal elements. These features can also be found in the Constitution of the White Earth Nation.

constitutional paradigm in this sense. The CWEN also bore features of the liberal-democratic political culture in that it included democratic electoral rules and the ideas of human rights inspired by the Magna Carta, the U.S. Bill of Rights, and the Indian Civil Rights Act of 1968. Chapter 3 (Articles 1–16) contained a detailed enumeration of basic rights of White Earth citizens, and thus it was in conformity with the fundamental principle of constitutionalism that constrains the government's powers over citizens. Liberal principles were in accord with the strong Anishinaabe sense of individual liberty and with the endeavor to retain traditional values, which have always firmly buttressed community cohesion and guaranteed the continuing existence of the Anishinaabeg. The emphasis on universal human rights and democratic citizenship would have strengthen the White Earth Nation's democratic character.

The new constitution replaced the term "membership" of the MCT Constitution with the term "citizenship." Chapter 2, Article 1 of the CWEN defined citizenship criteria on the basis of family descent, not on the basis of the federally imposed blood quantum requirement. Article 2 of this chapter was a compromise that arose from the debates of the second constitutional convention. This article was to provide protection to those White Earth citizens who feared that the rejection of the federal blood quantum membership criteria would deprive them of federal services provided to federally recognized tribes. Establishing their own regulations for determining White Earth citizenship by lineal descent was an act of sovereignty and responsibility to future generations.

The question of Anishinaabe identity is an existential problem for which the term *survivance* by Gerald Vizenor offers an answer. As a creative writer, Gerald Vizenor sees Anishinaabe life from the perspective of its originality and uniqueness. In this sense of *survivance*, Anishinaabe existence is not mere physical survival, but a free choice to actively form the present and take responsibility for the future, which is built "through present actions."³²⁹ As "spiritual existentialism" and a "source of identity," *survivance* suggests a close connection with the philosophy of *mino-bimaadiziwin*, the main idea of which is to live a good life in the full sense of the word.³³⁰

³²⁹ Viola F. Cordova and Kathleen D. Moore, *How It Is: The Native American Philosophy of V. F. Cordova* (Tucson: University of Arizona Press, 2007), p. 119.

³³⁰ Larry McCaffery and Tom Marshall, "Head Water: An Interview with Gerald Vizenor," *Chicago Review* 39: 3/4 (1993), p. 54.

The CWEN connected traditional Anishinaabe principles of governance with defining individual powers – legislative, executive, and judicial – which are mutually balanced by the system of checks and balances. This distribution of powers was to limit governmental power so that government officials' actions outside constitutional boundaries were considered as unauthorized. The separation of powers between the three branches of government would have eliminated the conflict between the centralized conception of political authority institutionalized by the MCT Constitution and White Earth citizens' wish to revive Anishinaabe consensual governing methods. To minimize official misconduct serving personal or clientelist interests at the expense of public well-being, the CWEN introduced oversight mechanisms by incorporating traditional forms of government into the institutional system. These were the community councils, the council of elders, and the youth council, which were supposed to become part of the executive branch of government and they were to function as advisory bodies to the legislative council and the president. These advisory bodies were to add additional layers of checks and balances into the governing structure. The CWEN specified activities of each of the councils and gave them formal recognition and greater authority, which was in conformity with the citizens' wishes to engage as many people as possible in the decision-making process.³³¹ The community councils were given the task to promote the philosophy of *mino-bimaadiziwin*. The renaissance of this moral ideal was a response to the need for clear moral basis that helps society to function properly. The reintroduction of traditional advisory bodies and reciprocal cooperation between these councils and elected officials would have facilitated reaching consensus in decision making regarding public matters and strengthened the ability of the tribal government to provide for communal well-being, protection of the community's interests, and promotion of common goals and values.

Public involvement in an open constitutional process was a factor that could have strengthened the sense of ownership and legitimacy of the new institutions if the CWEN was implemented. The implementation of the CWEN could have renewed people's trust in the government because corruption, abuse of power, and other political pathologies would be minimized by the division of powers and oversight mechanisms. By liberalizing citizenship criteria on the basis of lineal descent, the CWEN was designed

³³¹ Vizenor and Doerfler, *The White Earth Nation*, pp. 88–89.

to ensure that future generations remain an undisputed part of the continuing existence of the White Earth Anishinaabeg as a nation.

Even though the White Earth constitutional reform was stopped by the present White Earth Tribal Council, the ideas to reform the government are alive among citizens at the community council level where constitutional reform discussion continues. These discussions need to include both sides of the dispute. The reopening of the constitutional dialogue should not be a dialogue of the deaf. It is important that the White Earth Anishinaabeg revive their art of consensual negotiation which requires the will to understand the opposing side's views and motivations and an effort to seek a common platform for solving the stalemate.

7.4 Analytical Conclusions

Since the mid-1970s greater political powers given to tribal governments by self-determination legislation have allowed MCT representatives an increased engagement in decision-making processes regarding the tribe as a whole and individual reservations. During the 1980s and 1990s political decisions motivated by power ambitions of tribal and reservation representatives were against White Earth Anishinaabe vital interests. The MCT and White Earth governments were pervaded by informal political ties. A network of clientelist relationships around the person of the MCT president and concurrently the White Earth chairman created power asymmetries that, in the long run, were amplifying through the positive feedback. The opposition calling for democratic reform of governing institutions got into conflict with tribal representatives who turned governing institutions into profitable offices without restrictive regulations and helped maintain the institutional status quo. Corrupt political actors exercised their powers in excess of those set forth in the MCT Constitution and willfully changed the rules of the game in both MCT and reservation governance. The processes of *drift* and *conversion* that first appeared in the MCT governance in the termination period were also behind the changing institutional effects in the conditions of the self-determination policy. MCT representatives formally declared that constitutional revision was needed but they intentionally kept the MCT Constitution unchanged and used the ambiguity of its provisions to change their meaning through their own interpretation. *Conversion*

occurred in the MCT government when TEC officials declared their exclusive authority to interpret the MCT Constitution to fit their intention to create tribal and reservation court system dependent on the TEC, i.e. not subject to any checks and balances.

Willful exercise of power and trampling of White Earth citizens' civil rights was only a tip of a proverbial iceberg that emerged from the internalized heritage of colonial dominance which plagued everyday life of the White Earth Anishinaabeg for decades and weakened their sovereignty. Members of the opposition who took community matters on their shoulders strove to exercise sovereignty in practice when they initiated an institutional change from within the White Earth Nation.

The reform steps in 1998 and 2007–2013 were attempts at endogenous *displacement* which were supposed to reactivate the idea of a separate reservation government, an alternative suppressed at the time of the adoption of the MCT Constitution. The return to this suppressed historical alternative turned out to be extremely difficult, if not unfeasible. Reformers, who were striving for a change from within the context of existing conditions, used the opportunities of the present self-determination policy but they encountered constraints lingering from the previous Indian policy eras. There is a question of whether the White Earth constitutional reform would have succeed if the *critical juncture* in 1936 had set the course of institutional development toward creating separate reservation governments. In this scenario, the White Earth Anishinaabeg would not have to face the dilemma of withdrawing the White Earth government from the MCT. It would be a lot easier to initiate a Secretarial election about amending or revoking the constitution. Even though the chances for success would be greater, the outcome is hard to predict because of internal disputes between those who pressed for new ways of governance and those who were mentally tied with the existing governing institutions and internalized their practices.

Even though the CWEN was not implemented it can be considered as an important watershed in the development of White Earth governance because it outlined a path the White Earth Nation can follow if it wants to decolonize its governance and maintain its national existence. This constitution was created with the intention to make governing institutions enduring regardless of whoever holds office at a given time. People come and go but the governing institutions stay as a spiritual embodiment of human efforts at agreement and coexistence. The White Earth Anishinaabeg should realize that every nation follows a path that is never perfect but always more or less bad.

What matters most is not to follow the worse path for too long so that material and psychological costs are minimized.

8. CONCLUSION

In this dissertation I focused on the rebuilding process of the White Earth Nation located in northwestern Minnesota. Since 1936, the White Earth Nation has been part of the Minnesota Chippewa Tribe, an artificially formed federation of six Minnesota Anishinaabe bands functioning under a joint IRA constitution. This joining of the six scattered reservations with different environments, needs, and interests into the centralized structure is not an effective form of self-government. The procedural obstacles entrenched in the MCT Constitution restrict decision-making freedom of constituting reservations, make amending or revoking the constitution difficult, and prevent individual Anishinaabe bands from abandoning the federative arrangement and creating independent reservation governments.

The purpose of this study was to investigate the development of White Earth constitutionalism during the twentieth century in order to get insights into the present state of the White Earth institutional stalemate. In the Introduction I specified two main tasks to be addressed in the dissertation. First, to understand the meanings connected with Anishinaabe governing practices and to explain how these practices together with external factors of changing federal Indian policy influenced the formation, preservation, and transformation of IRA governing institutions. And second, to explain how the institutional structure, which the White Earth Anishinaabeg inherited from the past, excluded certain political alternatives and effectively foreclosed possible paths of historical development.

Literature review shows that except for the recent Jill Doerfler's book, *Those Who Belong: Identity, Family, Blood, and Citizenship among the White Earth Anishinaabeg*, there is no work focused on the White Earth constitutional reform in a broader historical context. Jill Doerfler focuses in detail on serious issues of Anishinaabe identity and citizenship but there are no political science studies dealing specifically with the development of White Earth governance taking into account changes in federal Indian policy and the long-term underlying institutional dynamics. Earlier works on the White Earth Anishinaabeg deal with a bounded period in the distant past, like Rebecca Kugel's

political history (1825 – 1898) and Melissa L. Meyer's historical study of White Earth land loss (1889 – 1920).

In this dissertation I tried to fill the empirical and theoretical gaps identified in the study of White Earth governing institutions. My strategy to remedy this lack in scholarship involved placing my research into the wide temporal context (from the early 1900s to the 2010s) and utilizing the case-specific theoretical framework which I designed for the purpose of studying the White Earth nation-building process. In the wide temporal framework I identified both the effects of changing exogenous factors responsible for radical changes as well as small incremental changes caused by slow endogenous development. Understanding the development of White Earth governance as a long term slow moving process allowed to study not only the last phase of the White Earth government reform but also shed light on the beginnings of reform efforts in the deeper past and ideas from which these efforts grew. The case-specific theoretical framework which combines Native American studies perspectives, genealogical method, Vincent Pouliot's practice tracing method, and selected analytic tools of new institutionalism allowed to identify, understand, and explain many aspects in the development of White Earth governance which would be difficult to uncover without these theoretical tools. All aforementioned theoretical approaches and methods required archival research which provided new empirical material for historical reconstruction. On the basis of rigorous reconstruction of the White Earth government's history from archival documents, I sought answers to the research questions formulated in the Introduction of this dissertation. Through what dynamics the White Earth government came into being? How has it been maintained and transformed? How and why the present stalemate in White Earth governance happened?

Understanding the dynamics through which the White Earth governing structure came into being would not be possible without the knowledge of the White Earth pre-Indian reorganization history which included the fourteen-year existence of the first inter-reservation constitutional government, the General Council of the Chippewa (1913 – 1927). For later development of White Earth governance it was unfavorable that the United States, on the basis of the Nelson Act (1889), recognized all Anishinaabe bands scattered on reservations in northern Minnesota as one tribe sharing common property. From the perspective of the White Earth Anishinaabeg and their later reform efforts, I consider two aspects as particularly important. First, the General Council constituted a decentralized form of government which maintained substantial autonomy of

constituting reservations. Second, the General Council was a transitional form of government which combined elements of traditional Anishinaabe governance and American-style representational system. This arrangement allowed to incorporate certain features of traditional Anishinaabe governance which would not be completely forgotten and remained an important source of Anishinaabe cultural continuity. Textual analysis of archival documents disclosed to what extent traditional practices of governance survived the erosive effects of assimilation policy. In spite of factional disputes between the so called progressives ("mixed-bloods") and conservatives ("full-bloods") both factions realized that they needed to cooperate and tried to protect Anishinaabe rights and the remaining land base which they perceived as their homeland. In their decision making and actions full-blood leaders applied principles of Anishinaabe philosophy of *mino-bimaadiziwin*, such as responsibility to the community, ethical human relationships, and proper individual conduct. Governing practices included consensual decision making, protracted deliberation, and meetings open to a plurality of standpoints. I conceptualize the creation of the General Council as the first *critical juncture* on the trajectory toward the formation of the federalized arrangement of the MCT in 1936.

The change of Indian policy in the 1930s put the White Earth Nation into a complicated situation because in 1936 the MCT Constitution created a political entity which did not exist previously. The dynamics through which this artificial institutional arrangement came into being were connected with new Indian policy implemented under the Indian Reorganization Act of 1934. I regard the establishment of the federative governing structure of the MCT as the second *critical juncture* which was a starting point on the trajectory leading to the centralization of tribal power, elimination of sub-tribal autonomy, and creation of conditions for path dependency which made the MCT institutional pattern resistant to change. The empirical gap in the history of White Earth governance concerned mainly the very beginning of the Indian reorganization era when the Minnesota Anishinaabeg were supposed to decide about the way of political organizing of their reservations. Events around the drafting of the MCT Constitution gave evidence that the Minnesota Anishinaabeg had little voice in the process of constitution making and adopting the final version which was entirely under the supervision of BIA personnel. When studying archival documents I found out that there was an open possibility for another alternative – creating separate reservation constitutional governments which would be more in agreement with sociohistorical

realities of Anishinaabe communities. But BIA field employees persuaded reservation leaders about the advantages of a joint governing body. During the one-year period of the second *critical juncture* certain factors had greater impact on the process of decision making than those in the periods preceding and following the *critical juncture*. This critical period was filled with confusion caused by little knowledge of the goals of the reorganization policy among BIA field employees who had a vague idea of the scope of powers newly granted to tribal self-government. Unpredictability of the effects of implementing the IRA provisions, uncertainty, misleading and insufficient information, and underestimating the impact of seemingly unimportant choices were the main factors which influenced the decision-making process. The White Earth Anishinaabe decision making was influenced by decisions made in the first *critical juncture* which was connected with the idea of creating a governing body similar to the General Council. They did not anticipate the loss of reservation autonomy under the umbrella MCT Constitution.

The decision of BIA field personnel about the future of Minnesota Anishinaabe reservations was caused by their insufficient knowledge about legal implications of creating a single government for six scattered reservations. In contrast, some BIA top employees were fully aware of the risk of losing local autonomy and local land rights. They recommended organizing Anishinaabe reservations as separate governments possessing all powers vested in tribal governments under section 16 of the IRA. In spite of these warnings, BIA Agency officials pushed through the idea of the joint government. The new political entity subordinated the needs of individual reservations to the interests of the Tribal Executive Committee and to the BIA supervision which was exercised with unchanged administrative inertia. At the level of field personnel, the BIA was not substantially affected by personnel changes that took place in top positions in the 1930s and remained locked-in within the previous assimilation policy mindset.

I characterized this change in Anishinaabe governance as an exogenously caused *displacement* that replaced the previous system of autonomous political units by a culturally alien model. Once it was established, the new governing body started to change the power structure inside the Anishinaabe society. Some Anishinaabe actors who were allocated political power supported institutional reproduction and had no interest to make any changes even though they knew that the new political arrangement was not an efficient means of exercising self-government. The internalization of the imposed structure played a significant role in maintaining the institutional status quo.

As early as 1939, when the MCT issued charters to individual reservations, most White Earth Anishinaabeg realized that the organization of political life on their reservation was incompatible with their previous experience. They did not view the new system as natural, fair, and legitimate. As a consequence of *displacement*, the former band organization on the White Earth Reservation was dissolved and time-honored elements of the old social structure were not incorporated into the new institutional arrangement. But informal Anishinaabe institutions, mainly traditional subsistence practices, remained an important factor of community building and prevented a complete break up of Anishinaabe sociopolitical life.

The MCT Constitution instituted a one-branch government and a parliamentary style selection of tribal officials. It failed to provide for the creation of an institutional system with a separation of powers among the various branches of government and concentrated all governmental authority and functions in the Tribal Executive Committee. The autonomy of individual reservations was substantially limited. The White Earth Reservation Council was dissatisfied with its new position as a business sub-unit within the chartered corporation of the MCT. But the MCT government was deliberately created in such a way that made it difficult to change. Procedural obstacles contained in the MCT Constitution subjected amending or revoking the constitution to the approval of the Secretary of the Interior.

The dynamics through which the White Earth government was maintained as part of the umbrella MCT government have two sources. First, path-dependent processes which prevented the return to a previously rejected alternative, i.e. organizing of individual reservations as separate governing bodies. Second, the internalization of the outwardly imposed structure, rules, and regulations. Through the lens of genealogy, I do not attribute to the White Earth Anishinaabeg the position of passive recipients of imposed changes. This argument can be substantiated by their resistance to the MCT Constitution and the White Earth sub-charter in the late 1930s. While their protests did not yet lead to government reform, they paved the way to later more open opposition and showed that submissiveness can never bring about any improvement.

Another empirical gap in scholarship that I tried to fill was in the period of the termination policy. Scholars dealing with Native nation building often omit this period because it was uncondusive to tribal governance. I paid attention to this period because the institutional changes that occurred in the MCT government continued into the self-determination period and caused serious problems in White Earth governance. Archival

data provided clear evidence of the decline in the MCT governance during the 1950s and 1960s that was connected with the federal government's intention to terminate federal guardianship over tribes. The formal structure of the MCT government remained unchanged but two hidden forms of institutional change, *drift* and *conversion*, newly appeared. The change of federal Indian policy altered effects of formal rules in the MCT Constitution but amending the constitution proved impossible because of intratribal conflicts. This hidden institutional change, called *drift*, became a permanent phenomenon in the MCT government. Some MCT representatives used the impossibility to update the MCT rules and changed their effects through their own interpretation. This hidden change, called *conversion*, together with *drift* maintained the institutional status quo. In the environment of poverty and the weak tribal government, *drift* and *conversion* created conditions for the thriving of competing informal institutions that had subversive effects. Tribal officials who were granted the power to handle tribal funds formed a network of clientelist relationships which were undermining the functioning of the MCT government. In contrast with the MCT government which was negatively affected by the change of Indian policy, Anishinaabe practices, customs, and socially shared rules remained unaffected. They were functioning as complementary informal institutions supporting reservation governance.

In the termination period, Minnesota Anishinaabe bands, more than previously, questioned the legitimacy of the MCT government and strove to separate themselves from this arrangement. Their emancipation efforts suited the goals of the termination policy, which in contrast with the previous period, had no desire to consolidate the bands. Rather, it strove to disperse the reservation population and remove the trust status of allotted lands. Termination policymakers presented the termination policy as an opportunity to achieve self-determination but the White Earth Anishinaabeg struggled for their self-determination in their acts of resistance. They successfully resisted the passage of termination legislation containing a termination clause for the MCT. Also, they unsuccessfully but persistently resisted BIA-imposed membership criteria and protected their right to determine their cultural identity.

In the termination period, self-reinforcing processes maintained the formal structure of the MCT government unchanged, yet it was transformed and its rules redirected to different goals through hidden forms of institutional change, *drift* and *conversion*.

In the conditions of self-determination policy the White Earth Anishinaabeg aimed their activities at long-term goals. The self-determination legislation that allowed the broadening of the MCT government's powers again pointed at the weaknesses of the MCT Constitution. Its revised version of 1964 maintained the IRA format of the 1936 Constitution and contained many of its structural shortcomings. It did not provide for the separation of powers or the creation of a separate judiciary system. Power remained centralized in the TEC. Under the threat of termination, the MCT Anishinaabeg included the one-quarter Minnesota Chippewa Indian blood requirement for membership in the Revised Constitution.

Because of the absence of tribal judiciary there was jurisdictional vacuum on MCT reservations. Since 1953, most Minnesota reservations were subject to state jurisdiction under the Public Law 280. The state law enforcement abused its authority and encroached on Anishinaabe property rights on lands held in trust by the United States or violated treaty hunting, trapping, and fishing rights on reservations. In the case of *State v. Clark* (1979), the Minnesota Supreme Court decided that state game and fish laws could not be enforced against the White Earth Anishinaabeg on the White Earth Reservation. This victory strengthened the White Earth government and encouraged the White Earth Anishinaabeg to create their own Conservation Court. But this court could not handle important civil matters, such as child custody. Another important step in the White Earth rebuilding process was the adoption of the judicial code and the creation of the White Earth Tribal Court in 1997. By creating both courts the White Earth Anishinaabeg exercised *de facto* sovereignty.

Even though the self-determination legislation gave greater decision-making powers to tribal and reservation leaders, the federal government through the BIA kept its control over political activities of the MCT and reservation governments. The BIA took advantage of power ambitions of some tribal and reservation leaders and their willingness to protect the institutional status quo which enabled them to keep themselves in power for a long time. Without checks and balances, the MCT government allowed to create conditions for the abuse of power, misappropriation of tribal funds, and corruption. An extensive network of clientelist relationships around the person of the MCT president and concurrently the White Earth chairman pervaded the MCT and White Earth governments. These people changed governing institutions into profitable offices without restrictive regulations. They did not exercise their powers in agreement with the rules set forth in the MCT Constitution and willfully changed the

rules of the game in both the MCT and reservation governance. The processes of *drift* and *conversion* continued in the MCT governance and they were changing institutional effects. MCT leaders kept the form of the MCT Constitution unchanged and used the ambiguity of its provisions to change the effects of these provisions through their own interpretation. *Conversion* occurred in the MCT government when the TEC claimed exclusive power to interpret the MCT Constitution.

Resistance of White Earth community against unchecked activities of tribal and reservation leaders activated social groups that were not formally represented in the government. Some of these dissidents were elected as new White Earth representatives and they used their positions to propose specific reform steps toward nation building. Constitutional reform efforts in 1998 and 2007 – 2013 were attempts at endogenous *displacement* which were supposed to return to an alternative of the separate White Earth government independent of the MCT. The proposed White Earth constitution of 1998 remained merely in the draft form in spite of the fact that the constitutional reform process allowed wide participation of White Earth citizens. The proposed innovations, mainly the separation of powers between the branches of government and specific types of checks and balances drawing on traditional Anishinaabe governing forms, initially met with positive reactions by White Earth citizens. Nonetheless, the draft constitution was not ratified. I attribute the failure of the 1998 reform effort to a combination of factors, among which path dependency played substantial role. Also the deep internalization of colonial governing structures and citizens' doubts about the merit of civic engagement sabotaged the reform effort.

The second White Earth constitutional reform process comprised four constitutional conventions that took place between 2007 and 2009. The result of constitutional conventions' deliberations was the Constitution of the White Earth Nation which joined features of the liberal-democratic political culture with traditional elements of Anishinaabe governance. The new constitution established an institutional system that distributed powers between legislative, executive, and judicial branches of government. As an act of sovereignty and responsibility to future generations, the CWEN defined citizenship criteria on the basis of family descent not on the basis of blood quantum requirement. Constitutional convention delegates ratified the CWEN in 2009 and nearly 80 percent of White Earth citizens adopted the new constitution in the referendum of November 19, 2013. In spite of that, the CWEN was not implemented and the White Earth government reform ended up in a stalemate.

Answering the question of how and why the present stalemate in White Earth governance happened entails the combination of internal and external causes. The internal cause was the fear of abandoning the deeply internalized institutional order which resulted in deepening the division of opinion among White Earth citizens. Decades-long existence of the White Earth Reservation as a subordinated sub-unit of the MCT caused mental dependence of the White Earth Anishinaabeg on their past. The implementation of the new constitution was stopped in June 2014 when new antireform leadership replaced White Earth representatives committed to nation building. The democratic dialogue was discontinued by censoring the press, *Anishinaabeg Today* newspapers, with the goal to stop disseminating information on the CWEN. The external obstacle to the implementation of the CWEN was the fact that the MCT Constitution, which is legally binding for the White Earth Nation, does not allow any changes without the approval of the Secretary of the Interior. Revoking or amending the MCT Constitution requires the two-thirds approval of the TEC or a petition signed by twenty percent of the resident MCT voters. Because Tribal Executive Committeemen represented reservations with diverse interests and goals, achieving consensus proved impossible. Reformers, who used the opportunities of the present self-determination policy, did not take into account that the MCT Constitution was not flexible enough to keep step with legislative changes. The MCT Constitution contains procedural obstacles that make amending or revoking the constitution difficult and restrict decision-making freedom of constituting reservations in this way. For this reason, none of the reservations managed to create an independent government.

The failure of the White Earth constitutional reform is not a failure of the White Earth rebuilding process which involves both successful and less successful phases. The establishment of the White Earth Tribal Court was an extremely important act that moved White Earth *de jure* sovereignty toward sovereignty in practice. If the CWEN is implemented in its original or revised form in the future, then the White Earth judiciary will become its buttress.

The story of the White Earth Nation alone cannot provide a comprehensive picture about the present wave of Native nation building in the United States. Nonetheless, the White Earth Nation shares many features characteristic of the nation-building movement regardless of the specific problems it faces as part of the MCT. It is apparent that across the United States Native nations rethink their relationship to the imposed governing institutions and strive to create their own legitimate institutions that

are in agreement with Native principles and beliefs about organization of political power. Traditional Native political values, mainly the emphasis on leadership credibility, autonomy, and consensus-based decision making were suppressed by centralized corporate style of governance which served U.S. colonial interests. The incorporation of Native political values into constitutions runs not only into obstacles brought about by Native nations' subordination to the direct control of the U.S. government. Serious obstacles inside Native nations themselves are often caused by the internalization of imposed institutional structures and alien cultural and political values.

Native nations' rebuilding is a slow, complicated, and often indirect process. Yet it is a path that leads to active formation of Native presence and future in spite of defeats. It is a strategy leading to decolonization and self-determination. The story of the White Earth constitutional reform fits within this strategy because it is a bold act of sovereignty that deserves continuation. Each nation which hopes to maintain its existence cannot follow anything abstract but has to build on concrete actions albeit connected with defeats. The Constitution of the White Earth Nation is a product of people who strive to maintain a link between the past, present, and future. Continuation of this story requires self-reflection leading to individual and national self-confidence.

References

Archival Sources

National Archives and Records Administration (NARA), Kansas City, MO

Restricted Files (Record Group 75, Records of the Bureau of Indian Affairs Consolidated Chippewa Agency)

- RG 75, Series 4: Central Subject Correspondence Files, 1906-1953, National Archives Identifier: 5687796
- RG 75, Series 5: Decimal Correspondence File, 1926-1969, National Archives Identifier: 5687782
- RG 75, Series 127: Employee Assistance Case Files, 1951-1966, National Archives Identifier: 5716860
- RG 75, Series 140: Tribal Manager's Subject Files, 1918-1953, National Archives Identifier: 5720170
- RG 75, Series 227: Photographs, 1922-1960, Audio-Visual, National Archives Identifier: 285175

Unrestricted Files (Record Group 75, Records of the Bureau of Indian Affairs Consolidated Chippewa Agency)

- RG 75, Series 12: Agency Publications, 1923-1954, National Archives Identifier: 5710088
- RG 75, Series 36: Records Relating to General Councils of the Chippewa Indians of Minnesota, 1918-1923, National Archives Identifier: 5686568
- RG 75, Series 38: Testimony Taken at a Conference on the Wheeler-Howard Bill, 1934-1934, National Archives Identifier: 5686563

Newspapers

Indians at Work (1933 – 1945)

The Minnesota Chippewa Bulletin (November 1938 – April 1947)

The Consolidated Chippewa Newsletter (May 1947 – September 1954)

The Anishinaabe Journal (early 1970s)

Ni-Mi-Kwa-Zoo-Min (1974 – 1994), the newspaper was later renamed to *Ni-Mah-Mi-Kwa-Zoo-Min*

The Circle (1976 – present)

Anishinaabe Dee-Bah-Gee-Mo-Win (1979 – 1991)

Ojibwe News (1988 – 2009)
The Anishinaabeg Today (1996 – present)

Tribal Constitutions/ Charters

Constitution of the General Council of All the Chippewas in Minnesota (1913).

Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. July 24, 1936

Charter of Organization of the White Earth Band of Chippewa Indians. February 22, 1939.

Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota. (1964; amended 1972 and 2006).

Constitution of the White Earth Nation, White Earth Reservation Tribal Council (ratified 2009; adopted 2013).

Legislation

The Indian Reorganization Act, 48 Stat. 984–988 (1934); codified as amended at 25 U.S.C. § 461 et seq.

House Concurrent Resolution 108, 83 Congress, 67 Stat. B132 (1953).

Public Law 280 Public Law No. 83–280, 67 Stat. 588 (1953).

Public Law 959, 70 Stat. 986. August 3, 1956.

Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508.

The Indian Civil Rights Act, 25 U.S.C. § 1301-1304 (1968).

Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2203 (1975).

White Earth Land Settlement Act, 100 Stat. (1986).

Tribal Self-Governance Demonstration Project, October 5, 1988. U.S. Statutes at Large, 102: 2296–98.

Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (1988).

Tribal Self-Governance Act, October 25, 1994. U.S. Statutes at Large, 108: 4270–77.

Court Cases

- Johnson v. M'Intosh*, 21 U.S. 543 (1823).
Cherokee Nation v. Georgia, 30 U.S. 1 (1831).
Worcester v. Georgia, 31 U.S. 515 (1832).
Bryan v. Itasca County, 426 U.S. 373 (1976).
Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
State v. Clark, 282 N.W.2d 902 (1979).
California v. Cabazon Band of Mission Indians, 480 U.S. 209 (1987).
United States v. Wadena, Crim. No. 3-95-102 (D. Minn. Jan. 24, 1996).

Books and Articles

- Andersen, Chris and Jean M. O'Brien (eds.). *Sources and Methods in Indigenous Studies* (Abingdon: Routledge, 2016).
- Bordewich, Fergus M. *Killing the White Man's Indian: Reinventing Native Americans at the End of the Twentieth Century* (New York: Doubleday, 1996).
- Bruyneel, Kevin. "Social Science and the Study of Indigenous People's Politics: Contributions, Omissions, and Tensions" in *Oxford Handbook of Indigenous People's Politics*, eds. José Antonio Lucero, Dale Turner, and Donna Lee VanCott. Oxford University Press. Oxford Handbooks Online. 2014-04-01. Date Accessed 2 August 2017.
<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195386653.001.0001/oxfordhb-9780195386653-e-008>.
- Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007).
- Champagne, Duane "Challenges to Native Nation Building in the 21st Century," *Arizona State Law Journal* 34 (2002).
- Champagne, Duane. "In Search of Theory and Method in American Indian studies," *The American Indian Quarterly* 31:3 (2007).
- Champagne, Duane. *Notes From the Center of Turtle Island* (Lanham: Rowman Altamira, 2010).
- Champagne, Duane. *Social Change and Cultural Continuity Among Native Nations* (Lanham: Altamira Press, 2007).
- Child, Brenda J. "Politically Purposeful Work: Ojibwe Women's Labor and Leadership in Postwar Minneapolis" in *Indigenous Women and Work: From Labor to Activism*, ed. Carol Williams, (Urbana: University of Illinois Press, 2012).
- Clinton, Robert N. "There is No Federal Supremacy Clause for Indian Tribes," *Arizona State Law Journal* 34 (2002).

- Cohen, Felix S., David E. Wilkins, and Lindsay G. Robertson. *On the Drafting of Tribal Constitutions* (Norman: University of Oklahoma Press, 2007).
- Collier, Ruth Berins and David Collier. *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (Princeton: Princeton University Press, 1991).
- Copway, George. *The Traditional History and Characteristic Sketches of the Ojibway Nation* (Boston: Benjamin B. Mussey & Co., 1851).
- Cordova, Viola F. and Kathleen D. Moore, *How It Is: The Native American Philosophy of V. F. Cordova* (Tucson: University of Arizona Press, 2007).
- Cornell, Stephen, Catherine Curtis, and Miriam Jorgensen. "The Concept of Governance and its Implications for First Nations," Joint Occasional Papers on Native Affairs, No. 2004-02, Native Nations Institute for Leadership, Management and Policy. 2004. Date Accessed 2 August 2017. Available at <http://caid.ca/JopGovCon2004.pdf>.
- Cornell, Stephen and Joseph P. Kalt. "American Indian Self-Determination: The Political Economy of a Policy that Works," Harvard Kennedy School Faculty Research Working Paper Series. 2010. Date Accessed 2 August 2017. Available at <http://hks.harvard.edu>.
- Deloria, Vine and Clifford M. Lytle. *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1984).
- Dennison, Jean. *Colonial Entanglement: Constituting a Twenty-First-Century Osage Nation* (Chapel Hill: University of North Carolina Press, 2012).
- Doerfler, Jill. *Those Who Belong: Identity, Family, Blood, and Citizenship Among the White Earth Anishinaabeg* (East Lansing: Michigan State University Press, 2015).
- Doerfler, Jill Niigaanwewidam James Sinclair, and Heidi Kiiwetinepinesiiik Stark (eds.). *Centering Anishinaabeg Studies: Understanding the World Through Stories* (East Lansing: Michigan State University Press, 2013).
- Drinnon, Richard. *Keeper of Concentration Camps: Dillon S. Myer and American Racism* (Berkeley: University of California Press, 1989).
- Elster, Jon. *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998).
- Eisenberg, Avigail. "Reconstructing Political Pluralism" in *The Political Theory Reader*, ed. Paul Schumaker (Oxford: Blackwell Publishing, 2010).
- Ferguson, Kennan. "Why Does Political Science Hate American Indians?," *Perspectives on Politics* 14: 4 (2016).
- Flinders, David J. and Geoffrey E. Mills (eds.). *Theory and Concepts in Qualitative Research: Perspectives from the Field* (New York: Teachers College Press, 1993).
- Foucault, Michel and Colin Gordon, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon Books, 1980).
- Gewirth, Alan. "Practical Philosophy, Civil Liberties, and Poverty," *The Monist* 67:4 (1984).
- Ghoshray, Saby. "Revisiting the Challenging Landscape of Self-Determination Within the Context of Nation's Right to Sovereignty," *ILSA Journal of International and Comparative Law* 11 (2005).

- Goldberg, Carole. "Federal Self-Determination and Self-Governance Policies 1970-Today" in *Introduction to Tribal Legal Studies*, eds. Justin B. Richland and Sarah Deer, (Lanham, Maryland: Rowman and Littlefield, 2016).
- Goldberg, Carole and Duane Champagne. "Case Study in Funding Inequity: Law Enforcement and Tribal Courts" in *A Second Century of Dishonor: Federal Inequities and California Tribes*. Date Accessed 2 August 2017. Available at <https://www.aisc.ucla.edu/ca/Tribes.htm>.
- Gould, L. Scott. "The Consent Paradigm: Tribal Sovereignty at the Millennium," *Columbia Law Review* 96:4 (1996).
- Hacker, Jacob S., Paul Pierson, and Kathleen Thelen, "Drift and Conversion: Hidden Faces of Institutional Change" in *Advances in Comparative-Historical Analysis*, eds. James Mahoney and Kathleen Thelen, (Cambridge: Cambridge University Press, 2015).
- Haas, Theodore. *Ten Years of Tribal Government under IRA* (Washington, DC: United States Indian Service, 1947).
- Hermann, John R. "American Indians in Court: The Burger and Rehnquist Years (1969-1992 Terms)," Unpublished PhD. Dissertation. Emory University in Atlanta, GA. 1995.
- Hickerson, Harold. *The Chippewa and Their Neighbors: A Study in Ethnohistory* (New York: Holt, Rinehart and Winston, 1970).
- Innes, Robert Alexander. "Introduction: Native Studies and Native Cultural Preservation, Revitalization, and Persistence," *American Indian Culture and Research Journal* 34: 2 (2010).
- Janda, Kenneth, Jeffrey M. Berry, Jerry Goldman, Deborah Schildkraut, and Paul Manna. *The Challenge of Democracy: American Government in Global Politics*, 14th ed. (Boston: Cengage Learning, 2017).
- Jones, Dennis "The Etymology of Anishinaabe," *Oshkaabewis Native Journal* 2:1 (1995), pp. 43–48.
- Jones, Peter. *History of the Ojebway Indians; With Especial Reference to Their Conversion to Christianity* (London: A.W. Bennett, 1861).
- Jorgensen, Miriam (ed.). *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson: University of Arizona Press, 2007).
- Kallen, Horace M. "Democracy Versus the Melting-Pot," in *Nation*, Parts 1 & 2: February 18, 1915 and February 25, 1915.
- Kappler, Charles J. *Indian Affairs: Laws and Treaties*, Volume 2 (Washington: Government Printing Office, 1904).
- Kugel, Rebecca. *To Be the Main Leaders of Our People: A History of Minnesota Ojibwe Politics, 1825-1898* (East Lansing: Michigan State University Press, 1998).
- Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).
- Lemont, Eric D. (ed.). *American Indian Constitutional Reform and the Rebuilding of Native Nations* (Austin: University of Texas Press, 2006).

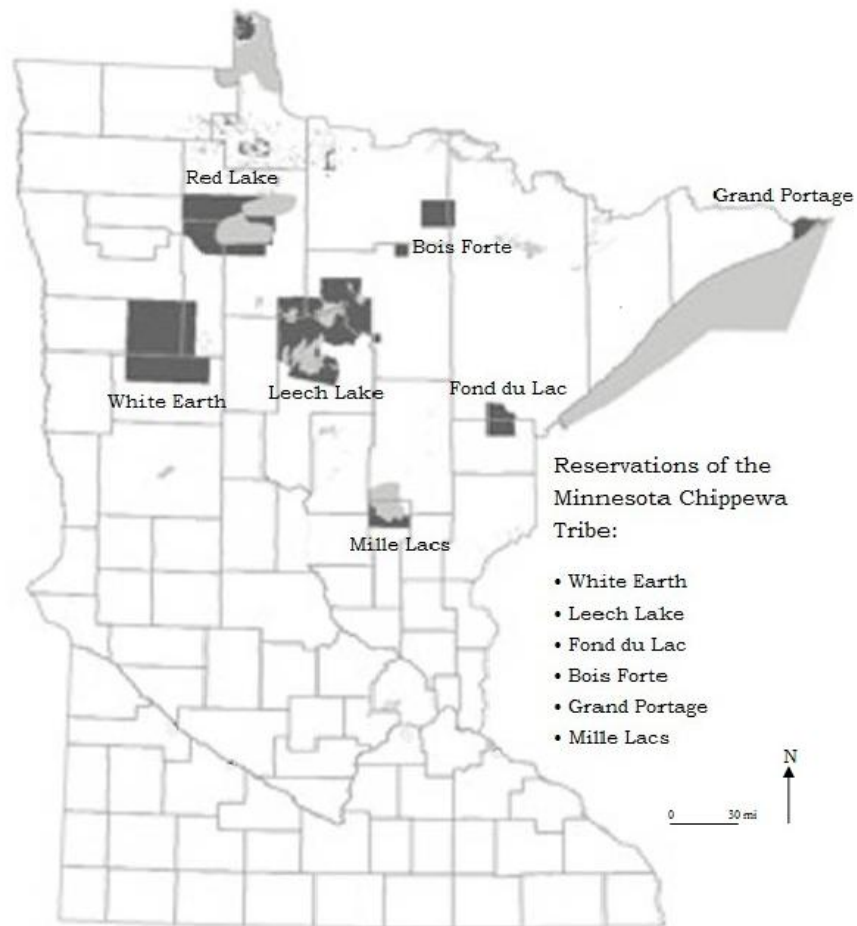
- Lerner, Hanna. *Making Constitutions in Deeply Divided Societies* (New York: Cambridge University Press, 2011).
- Lowi, Theodore. "The Public Philosophy: Interest-Group Liberalism," *American Political Science Review* 61: 1 (1967).
- Lowndes, Vivien. "The Institutional Approach" in *Theory and Methods in Political Science*, eds. David Marsh, and Gerry Stoker, 3rd ed. (Basingstoke: Palgrave Macmillan. 2010).
- Lowndes, Vivien and Mark Roberts. *Why Institutions Matter: The New Institutionalism in Political Science* (Basingstoke: Palgrave Macmillan, 2013).
- Mahoney, James. "Path dependence in historical sociology," *Theory and Society* 29:4 (2000).
- Mahoney, James and Kathleen Thelen (eds.). *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010).
- Maxwell, Joseph A. *Qualitative Research Design: An Interactive Approach* (London: Sage, 2012).
- Meyer, Melissa L. *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889–1920* (Lincoln: University of Nebraska Press, 1999).
- McCaffery, Larry and Tom Marshall, "Head Water: An Interview with Gerald Vizenor," *Chicago Review* 39: 3/4 (1993).
- McNally, Michael D. *Honoring Elders: Aging, Authority, and Ojibwe Religion* (New York: Columbia University Press, 2009).
- McNally, Michael D. *Ojibwe Singers: Hymns, Grief, and a Native Culture in Motion* (St. Paul: Minnesota Historical Society Press, 2009).
- Monette, Richard A. "New Federalism for Indian Tribes: The Relationship between the United States and Tribes in Light of our Federalism and Republican Democracy," *University of Toledo Law Review* 25 (1994).
- Morris, C. Patrick. "Termination by Accountants: The Reagan Indian Policy" in *Native Americans and Public Policy*, eds. Fremont J. Lyden and Lyman H. Legters, (Pittsburgh, PA: University of Pittsburgh Press, 1992).
- Newton, Nell Jessup (ed.). *Cohen's Handbook of Federal Indian Law* (Newark, NJ: LexisNexis, 2005).
- Norrgard, Chantal. "From Berries to Orchards: Tracing the History of Berrying and Economic Transformation among Lake Superior Ojibwe," *The American Indian Quarterly* 33: 1 (2009).
- O'Brien, Sharon. *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989).
- Philp, Kenneth R. "Dillon S. Myer and the Advent of Termination: 1950-1953," *The Western Historical Quarterly* 19:1 (1988).
- Philp, Kenneth R. "Termination: A Legacy of the Indian New Deal," *The Western Historical Quarterly* 14:2 (1983), p. 165.
- Philp, Kenneth R. *Termination Revisited: American Indians on the Trail to Self-Determination, 1933-1953* (Lincoln: University of Nebraska Press, 2002).

- Pierson, Paul. *Politics in Time: History, Institutions, and Social Analysis* (Princeton and Oxford: Princeton University Press, 2004).
- Pomerance, Michla. "The United States and Self-Determination: Perspectives on the Wilsonian Conception," *The American Journal of International Law* 70:1 (1976).
- Pouliot, Vincent. "Practice Tracing" in Andrew Bennett and Jeffrey T. Checkel (eds.), *Process Tracing* (Cambridge University Press, 2014).
- Riley, Angela R. "Good (Native) Governance," *Columbia Law Review* 107 (2007).
- Rusco, Elmer R. *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno and Las Vegas: University of Nevada Press, 2000).
- Rusco, Elmer R. "The Indian Reorganization Act and Indian Self-Government," in Eric D. Lemont (ed.), *American Indian Constitutional Reform and the Rebuilding of Native Nations* (Austin: University of Texas Press, 2006).
- Sil, Rudra and Peter J. Katzenstein. "Analytic Eclecticism in the Study of World Politics: Reconfiguring Problems and Mechanisms Across Research Traditions," *Perspectives on Politics* 8 (2010).
- Six, Perri and Christine Bellamy. *Principles of Methodology: Research Design in Social Science* (London: Sage, 2011).
- Stark, Heidi Kiiwetinepinesiik. "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," *American Indian Culture and Research Journal* 34:2 (2010).
- Strakosch, Elizabeth. *Neoliberal Indigenous Policy: Settler Colonialism and the 'Post-Welfare' State* (Basingstoke: Palgrave Macmillan, 2015).
- Tocqueville, Alexis de. *Democracy in America*, trans. Arthur Goldhammer (New York: The Library of America, [1835] 2004).
- Treuer, Anton. *The Assassination of Hole in the Day* (St. Paul: Borealis Books, 2011).
- Tsuk, Dalia. "The New Deal Origins of American Legal Pluralism," *Florida State University Law Review* 29 (2001).
- Tsuk, Dalia. "Pluralisms: The Indian New Deal as a Model," *Margins* 1: 2 (2001).
- Tsuk Mitchell, Dalia. *Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism* (Ithaca: Cornell University Press, 2007).
- Tyler, S. Lyman. "Indian Affairs: A Work Paper on Termination, with an Attempt to Show its Antecedents," A Publication of the Institute of American Indian Studies (Utah: Brigham Young University, 1964).
- Vizenor, Gerald and Jill Doerfler. *The White Earth Nation: Ratification of a Native Democratic Constitution* (Lincoln: University of Nebraska Press, 2012).
- Wadsworth, Nancy D. "Unsettling Lessons: Teaching Indigenous Politics and Settler Colonialism in Political Science," *PS: Political Science & Politics* 47: 3 (2014).
- Walch, Michael C. "Terminating the Indian Termination Policy," *Stanford Law Review* 35:6 (1983).
- Warren, William Whipple. *History of the Ojibway Nation* (St. Paul: Minnesota Historical Society, 1885).
- Washburn, Kevin K. "Tribal Self-determination at the Crossroads," *Connecticut Law Review* 38 (2006).

- Wilkins, David E. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997).
- Wilkins, David E. *Documents of Native American Political Development: 1500s to 1933* (New York: Oxford University Press, 2009).
- Wilkins, David E. "The Manipulation of Indigenous Status: The Federal Government as Shape-Shifter," *Stanford Law and Policy Review* 12:2 (2001).
- Wilkins, David E. *The Navajo Political Experience* (Lanham: Rowman & Littlefield, 2003).
- Wilkins, David E. and Heidi K. Stark, *American Indian Politics and the American Political System*, 4th ed. (Lanham: Rowman & Littlefield, 2017).
- Wilkins David E. and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001).

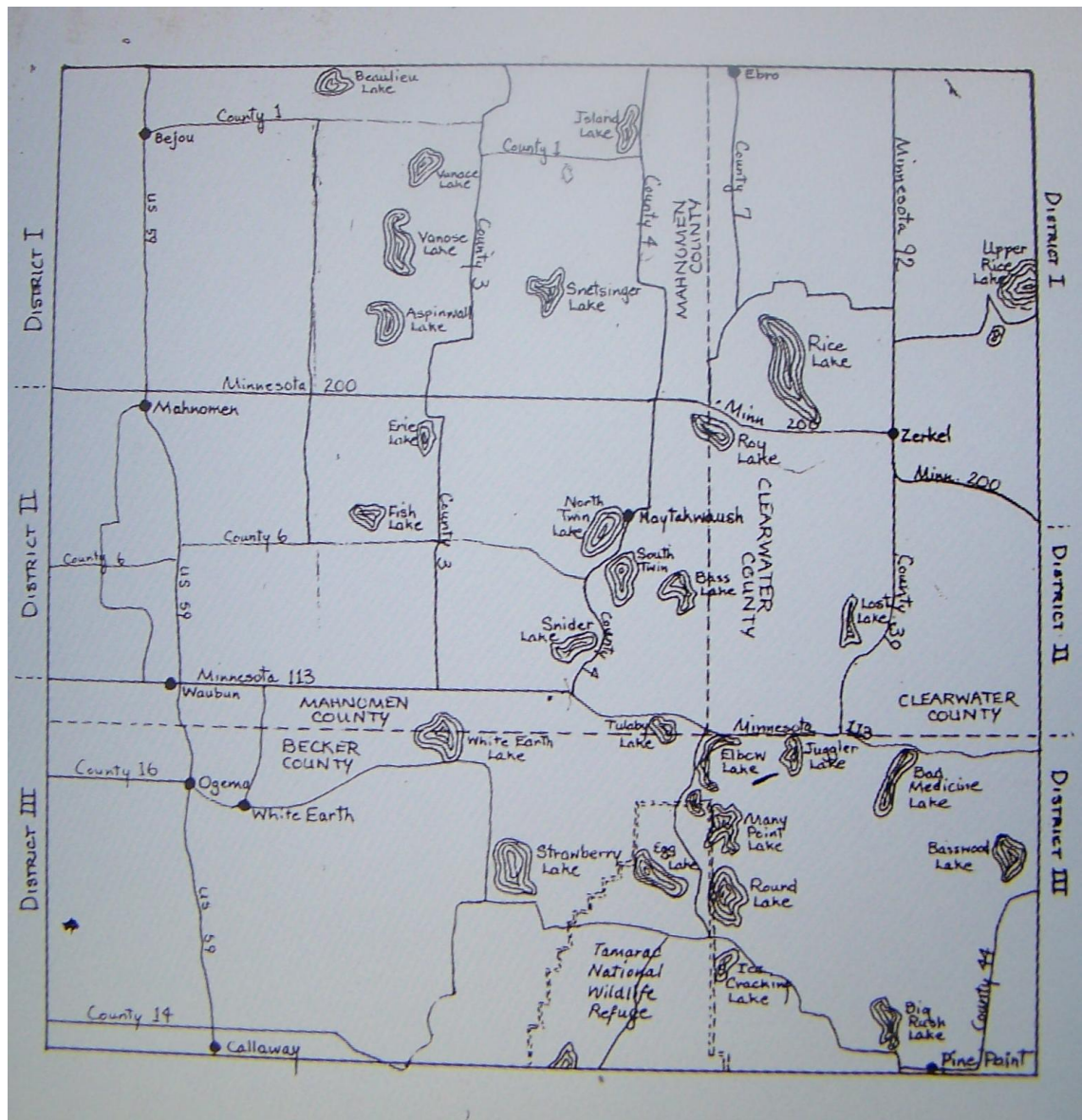
List of Appendices

Appendix no. 1. Map of Minnesota Anishinaabe reservations



Source: Map by the author

Appendix no. 2. Reservation Business Committee District Map of the White Earth Reservation



Source: The Anishinabe Journal, Vol. 1, No. 1, September 1972

Appendix no. 3. Wild rice harvesting: gathering rice into boats



Source: Series 222, Photographs, 1922–1960, Records of the Bureau of Indian Affairs, Minnesota Agency, NARA, RG 75, Kansas City.

Appendix no. 4. Wild rice harvesting: parching rice



Source: Series 222, Photographs, 1922–1960, Records of the Bureau of Indian Affairs, Minnesota Agency, NARA, RG 75, Kansas City.

Appendix no. 5. Wild rice harvesting: threshing rice



Source: Series 222, Photographs, 1922–1960, Records of the Bureau of Indian Affairs, Minnesota Agency, NARA, RG 75, Kansas City.

Appendix no. 6. Wild rice harvesting: winnowing rice.



Source: Series 222, Photographs, 1922–1960, Records of the Bureau of Indian Affairs, Minnesota Agency, NARA, RG 75, Kansas City.