

“We the Indians of the Turtle Mountain Reservation...”
Rethinking Tribal Constitutionalism Beyond the Colonialist/Revolutionary Dialectic

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Keith Steven Richotte Jr.

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Jean M. O'Brien, Advisor

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Acknowledgements

My vanity as a writer – which, for both better and worse, is the foremost thing this dissertation has forced me to acknowledge – once led me to believe that I could compose something more interesting and compelling than the bland lists of names and simple platitudes that generally inhabit a typical “acknowledgements” section. My presumption was ignited by what seemed to be an obvious contradiction. How, I used to naively wonder, could a scholar invest such passion, energy, and determination into their subject of study, yet “acknowledge” their family, colleagues, committee, and others with a bare-bones, workmanlike recitation of names and places that most resembled a shopping list? Was the nature of scholarly writing such that it muted, if not killed, the ability to expressively, emotionally, and accurately detail the true depths of one’s heartfelt gratitude? Were there just that many bad writers in the world? Would it be up to me to single-handedly save us all from boring acknowledgements sections?

I have since come to discover that I am an idiot. And I am an all-too-often arrogant idiot, at that. This dissertation has required a monumental and determined effort, and not just by me. More precisely, this dissertation would not exist if I had not received extremely generous helpings of patience, guidance, help, and understanding from many different sources. The so-called “problem” that I thought I had identified with other acknowledgements sections was not one that stemmed from bad writers defiling the acknowledgement landscape with their sub-par dreck. Rather, I now believe that the reason so many acknowledgement sections seem so bland is that it is extremely difficult to properly convey the gratitude one feels for the efforts of others to make one’s dissertation possible. It is not the failure of the writers, but rather a failure of the

words, powerful as they may be. From my new vantage point it is clear that this dissertation does not belong to me alone, that it was not possible without the efforts of a multitude of people, and that I will be unable to completely express my deep love and appreciation in a few simple pages to everybody who played a part in constructing this work which, perhaps inexplicably, bares my name alone. Now knowing that I will assuredly fail, I will nonetheless attempt to acknowledge those who have made this dissertation come to fruition.

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Special attention needs to be paid to my advisor, Jean O'Brien. Without her kindness, patience, and guidance this dissertation would not have been possible. Early

in the process, I was in desperate need of both some direction and an advisor. Professor O'Brien stepped in and provided both. Once I began writing and drafting, I kept trying to move forward without really being ready to do so. At a time when it would have been easy to let me thrash about and drown in the deep pool of my own impatience, Professor O'Brien redoubled her own efforts. We (more her than me) came up with a plan to refocus and complete the project. This new plan required her to again increase her already considerable efforts on my behalf. Several drafts, meetings, conversations, and emails later, this dissertation emerged. I cannot thank her enough and I can honestly write that this dissertation and any and all professional accomplishments I have achieved or will achieve are only possible because of Jean O'Brien.

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of Kathy Deitering, the administrative assistant who was extremely helpful in many ways, including listening to a Midwestern boy complain about the heat.

This acknowledgements section will undoubtedly neglect to mention the many people at Minnesota, Arizona, and elsewhere who have contributed to this dissertation and my education. For this, I am profoundly sorry. Please note that any omission stems from the overwhelming nature of the choices that are necessary to keep an acknowledgements section from becoming a dissertation unto itself. I am grateful to all of you. That being noted, I would be remiss if I did not mention three very significant fellow students: Crazy C, Murder J, and H-Dawwg. Thank you, Crazy C, for being crazy and understanding that I am just kidding. Thank you, Murder J, for keeping the peace and discreetly hiding the bodies. And thank you, H-Dawwg, for always making me dig up my own bones.

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I am currently a tenure-track faculty member at the University of North Dakota School of Law. In so many ways, this is my dream job. To that end, I would sincerely like to thank my colleagues at UND, who are a great group of people with whom to work. This, of course, includes the staff, especially (but certainly not exclusively) Karen Martin and Jan Stone. Karen helped me print and send off numerous drafts to committee members and Jan was tremendously helpful in digging up all kinds of information and aiding in the fight against my shoddy initial efforts at citing in Chicago style. Everybody at UND has been very patient and very supportive. I cannot thank you all enough. I must also single out the efforts of Kathryn Rand. Dean Rand has always had an open door and has been willing to answer my questions, no matter how trivial or goofy they were. She has gone a long way in making me feel both comfortable and competent. I can only hope to give back to UND a small fraction to what it has already given to me.

I also need to thank my family. I know that you all did not always understand what I was doing or why I wanted to do it, and I also know that I was not always as good about explaining why writing this dissertation was so important to me as I should have been. But please do know that I very much appreciated your seemingly infinite patience and love. Also know that I could not have finished this project without that patience and love, especially since there were plenty of times when I am sure that I did not deserve it. I love you all very much. I will not list any names, because you all know who you are, but I did want to make sure to note that this unnamed list includes my in-laws. I am very proud to have become a member of the Tone-Pah-Hote family.

Finally, there is my beautiful wife, Jenny. As noted above, this acknowledgements section will inadequately express my gratitude to everyone involved in making this dissertation possible. This particular section will no doubt be my biggest failing. I sincerely wish that I could adequately express just how much Jenny has meant not just to this project, but to me as a person. She has been a willing research assistant, a generous colleague, and a necessary reminder both that I need to be precise and clear with my ideas and that I am not nearly as smart as I sometimes seem to think that I am. More importantly, she has been patient when I am moody, loving when I have felt impatient and unloved, a true partner during our time together, and so much more. I am so grateful that every time I look into her eyes I can see that she is melting just as much as I am. I thank you and I love you with all of my heart, Jenny.

Again, there are undoubtedly countless others who should be acknowledged and thanked. I am sincerely sorry for not noting you personally. Please know that, as stated above, I now see that the acknowledgements section might be the most difficult thing to write in a dissertation. If you did not find it to be interesting or amusing then I hope that you at least found it to be the one thing I most intended: sincere. Thank you all.

Dedication

To Jenny, for more than I can even begin to describe

To Jackson, for reminding me that the future is still hopeful

To my family, for your love and patience, especially when I didn't deserve it

To the people of Turtle Mountain and indigenous communities everywhere

Abstract

Using the Turtle Mountain Band of Chippewa Indians as a case study, this dissertation argues that the body of scholarship concerning tribal constitutionalism is artificially limited and cannot adequately explain the development of constitutionalism in Indian Country. Scholarship concerning tribal constitutionalism currently exists in what this dissertation calls a colonialist/revolutionary dialectic. The discourse within this dialectic is focused almost exclusively on an examination of the Indian Reorganization Act of 1934 (IRA). On the “colonialist” side of the dialectic, scholars argue that the IRA has forced a foreign form of government on tribes and that constitutionalism is another form of colonialism. On the “revolutionary” side, scholars argue that the IRA was a positive development in Indian Country that was not allowed to fulfill its potential. This narrow focus neglects to consider the choices made by tribal peoples themselves as it concerns their own constitutional histories.

This dissertation examines four episodes in the constitutional history of the Turtle Mountain Band of Chippewa Indians. The first episode concerns the McCumber Agreement, or the Ten-Cent Treaty, as it was derisively nicknamed. Tribal discontent with the McCumber Agreement led the people of Turtle Mountain to seek out constitutionalism. The second episode concerns the first tribal constitution, ratified in 1932. While it was a compromised choice, the people of Turtle Mountain decided to adopt the 1932 constitution in order to attempt to begin a claim against the United States. The third episode concerns the second tribal constitution, ratified in 1959. This constitutional moment is an example of the community seeking to reclaim autonomy over their lives and their government during a particularly onerous social and policy

period. The fourth episode concerns the efforts at constitutional reform in 2002 and 2003. During an era when constitutional reform has been a growing trend in Indian Country, the people of Turtle Mountain used their constitutional votes to express their displeasure with the activities of the tribal government and with an increasingly controversial tribal chairperson.

None of these four episodes fits within the colonialist/revolutionary dialectic. As such, the case study of Turtle Mountain makes clear that the dialectic does not and cannot adequately explain the development of constitutionalism in Indian Country. The Turtle Mountain example provides scholars with an opportunity to reexamine the current discourse concerning tribal constitutionalism and allows scholars to develop a more complex, deeper, richer understanding of tribal constitutionalism and tribal government.

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Introduction

Constitutionalism was not foisted upon the people of Turtle Mountain Band of Chippewa Indians; it was chosen by the people in an effort to effectuate their own vision of sovereignty. This dissertation seeks to critically examine an area of underdevelopment in the scholarship concerning tribal constitutionalism: the tribal decision to ratify a constitution. By gaining a greater depth of understanding about the difficult decisions to ratify, reject, or amend constitutions through the case study of Turtle Mountain, a fuller portrait about tribal constitutionalism can be painted. This fuller portrait reveals a larger degree of agency amongst tribal peoples than has been previously ascribed and a willingness of tribal peoples to engage in the often-labeled “foreign” governmental structure of constitutionalism in order to assert a greater degree of authority over their own lives. The Turtle Mountain experience reflects that, at various times and under various circumstances, the community regarded the tribal constitution as a weapon against the federal government, a tool to seize control of the tribal government, and a way to improve the overall condition of the community. The dismissive notion that tribal constitutions were (to use the most popular word to describe the situation) “foisted” upon tribal peoples cannot adequately explain the decisions made by tribal peoples at Turtle Mountain and elsewhere, nor can it explain long and varied history of constitutionalism in Indian Country.

This is not to suggest that the tribal decisions to ratify, reject, or amend constitutions were made in a vacuum. Turtle Mountain, like all tribal communities, has faced different pressures from varying sources, including the federal and state

governments and the surrounding non-Native population. These outside forces could and often did exert a tremendous amount of influence and stress on tribal communities, many times resulting in tough choices between unappealing alternatives, ineffectual governments, and an ever-present disdain for the tribal constitution. Turtle Mountain's own history reflects a continuing discontent with its governing document. However, the difficult choices about constitutions were made by tribal peoples. The governments they established, with all of their requisite consequences, belong to tribal peoples. Tribal constitutionalism was and continues to be a product of tribal agency.

Located in north central North Dakota with a present-day enrollment around 30,000, Turtle Mountain has operated some form of constitutional government for over seventy-five years. That three-quarter century history has been largely defined by four episodes that occurred in four very different eras of federal Indian policy. Individually and collectively, these episodes reflect a community faced with difficult choices under trying conditions, yet who nonetheless made its choices of its own volition and for its own reasons.

The first episode to critically shape Turtle Mountain constitutional history actually occurred four decades before the community ratified a constitution as the center of its governmental authority. In 1892, under tremendous duress, the community consented to an agreement (a treaty substitute) with the federal government that ceded tribal land for the sum of ten cents an acre. The tribal discontent with the agreement fueled tribal constitutionalism for decades afterward. The second episode occurred in 1932 when Turtle Mountain adopted its first constitution. The purpose behind ratifying the document was to pursue a claim against the federal government for the 1892

agreement. The third episode occurred in 1959 when the community adopted an entirely new constitution. The movement for constitutional reform was the product of many reasons, including a serious dissatisfaction with the claims process, the tribal government, and the 1932 document. The fourth episode occurred early in the twenty-first century. This time, the community rejected constitutional reform as the newly proposed documents became associated with an increasingly controversial tribal chairman. Each of these episodes and their place within this dissertation will be discussed in greater detail later in this introduction.

An examination of these four episodes will show the people of Turtle Mountain at the center of their own constitutional history. The members of the community undoubtedly felt many and varied pressures during the different eras in which their constitutional events were held. And undoubtedly those pressures affected the choices that could be made, the choices that were made, and the text of the constitutions themselves. Regardless, it was the people of Turtle Mountain who made those choices about their constitutions and constitutionalism. By studying each of these four events and measuring the constitutional drafts that they produced against their eras and against each other, a pattern of tribal agency becomes clear.

Literature Review

Previous scholarship concerning tribal constitutionalism has generally settled into a debate about the virtue of the Indian Reorganization Act (IRA) and the man most responsible for the law, John Collier.¹ Enacted by Congress in 1934, the IRA created a

¹ *Indian Reorganization Act*, Public Law 73-383, *U.S. Statutes at Large* 48 (1934): 984 – 88, codified as amended at *U.S. Code* 25 U.S.C. (2006), §§ 461 et seq.

system whereby tribal communities could, among other things, adopt constitutions and corporate charters as the foundational source of tribal governmental authority. The legislation was unique in many ways, particularly in that it permitted tribal communities to vote on whether or not to accept the provisions of the law on the reservation (although how the votes were originally tabulated became a source of controversy). The IRA also officially ended the previous federal policy of allotment. In the approximately half-century between the Allotment Act and the IRA, the federal government not only divested tens of millions of acres of land from tribal communities and persons but also created additional assimilationist legislation with the intention of destroying Native ways of life.² Collier, the longest tenured Commissioner of Indian Affairs in American history, saw the IRA as a new beginning and a major reversal from the destruction wrought from allotment. The focus concerning the IRA is, to a degree, understandable, as it did greatly affect tribal constitutionalism. Additionally, John Collier, through his efforts aimed toward bettering the lives of Native peoples prior to and during his commissionership, is perhaps the most provocative figure to have emerged in Indian policy in the twentieth century.

What is less understandable is the way the debate surrounding the IRA has almost completely dominated the discourse on tribal constitutionalism. The larger school of thought has argued that, despite Collier's best intentions, the IRA was simply another form of colonialism.³ According to this school, the IRA forced a Western model of governmental structure on tribal communities. The disharmony caused by the new

² *Allotment Act, U.S. Statutes at Large* 24 (1887): 388-91

³ Two major works in this school of thought are Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920-1954* (Tucson, AZ: University of Arizona Press, 1977) and Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln, NB: University of Nebraska Press, 1980).

constitutional governments on reservations outweighed any benefits that the newly enacted tribal constitutions brought about. In fact, these scholars argue, a “model” constitution developed by the federal government was foisted upon Indian Country, further confirming the IRA and John Collier’s myopia concerning the diverse needs, circumstances, and history of various tribal communities. As such, the IRA was, in many ways, not much different from the assimilationist policies that came before and after it.

A more minority (yet prominent) school of thought has argued that, whatever flaws it may have, the IRA was a truly revolutionary piece of legislation.⁴ No other American law had provided for the possibility for tribal communities to reject the law’s application to the reservation, nor had American policy ever previously embraced and encouraged the existence and vitality of tribal governments. This dramatic shift in law and policy was coupled with the official end of the disaster of allotment. Additionally, these scholars argue, the flaws in the law were not so much the consequence of Collier’s narrow vision or misunderstanding of Indian Country as much as they were the consequences of the compromises that were made during the political process. Collier’s gigantic omnibus bill was whittled away by various Congressional interests, reformers who still believed in assimilationist policy, and even Native peoples themselves. The end result was a law that was a very limited expression of Collier’s original intention. Finally, the scholars in this school tend to be less willing to accept the current understanding about the impact and influence of a model constitution throughout Indian Country without further scholarship on the issue.

⁴ Perhaps the most prominent text of this school of thought is Vine Deloria Jr. and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon Books, 1984; Austin, TX: University of Texas Press, 1998). Citations are to the University of Texas Press edition.

These two schools of thought have formed what this dissertation will call the colonialist/revolutionary dialectic. While both sides of the conversation make legitimate arguments, the limiting nature of the parameters of the debate can only carry the scholarship so far. Maintaining scholarly focus squarely on the IRA, Collier, and a model constitution narrows the focus of the conversation to the more formal aspects of tribal constitutionalism while paying less attention to tribal peoples and communities and the purposeful choices they made to adopt or reject a constitution both inside and outside of the IRA framework.

A perspective beyond the colonialist/revolutionary dialectic will recognize tribal members as active participants in their own governmental fate. Constitutionalism was not foisted upon Turtle Mountain; rather, the community chose to accept it. This dissertation will contribute to the literature by examining the tribal decisionmaking process concerning constitutionalism and by arguing that tribal agency was and is a critical element of tribal constitutionalism.

The IRA and John Collier

As noted above, the most significant scholarship concerning tribal constitutionalism tends to focus on the IRA, Collier, his efforts at getting the legislation passed, and, to a much lesser extent, the success of the law and policy movement and its impact on Indian Country. This includes Collier's own work, *From Every Zenith: A Memoir and some essays on life and thought*.⁵ Written not only from the perspective of a man in his autumn years reflecting on the defining moments of his life and career, but

⁵ John Collier, *From Every Zenith: A Memoir and some essays on life and thought* (Denver, CO: Sage Books, 1963).

by a man who considered himself a writer and a poet, *From Every Zenith* is often expansive, verbose, and unapologetic in its recollection of the IRA. According to Collier, “In fact, it can be said that the renaissance of the Indians as self-governing, self-respecting men came to fruition in and through their thorough discussion of the Reorganization Act.”⁶ Responding at least partially to the Termination Era that followed the IRA Era, Collier explained the philosophical underpinnings of the Indian Reorganization Act. This intellectual base wedded the past to the future in order to provide a better way for all.

*Assimilation, not into our culture but into modern life, and preservation and intensification of heritage are not hostile choices, excluding one another, but are interdependent through and through. It is the continuing social organism, thousands of years old and still consciously and unconsciously imbued with and consecrated to its ancient past, which must be helped to incorporate the new technologies. It is the ancient tribal, village, communal organization which must conquer the modern world.*⁷
(emphasis in original)

Historian Kenneth R. Philp’s book, *John Collier’s Crusade for Indian Reform, 1920-1954*, is aptly titled as he describes Collier as a crusader with an unshakeable faith in the righteousness of his work, both inside and outside of Indian policy.⁸ Collier, according to Philp, was an, “energetic, persistent, ingenious, and inventive person’ [who] often began more projects than he could finish.”⁹ He also made several missteps, including attempting to recreate his romantic vision of Pueblo life throughout the totality of Indian Country. These missteps produced a contradictory effort to reinfuse tribal governments with the necessary authority to provide a model for righteous living

⁶ Ibid. at 175.

⁷ Ibid. at 203.

⁸ Philp, *John Collier’s Crusade*.

⁹ Ibid. at 20.

for the Western world while under the watchful, and consequently continued colonial, eye of his administration. Despite Collier's failings, Philp ultimately saw Collier's efforts at reviving tribal sovereignty as a meaningful impetus of later activities toward the same end. "It would have pleased Collier, who devoted his long life to the Indians' cause, to know that some of the ideas he favored were still having an impact on history."¹⁰

Although not completely without a sense of empathy for Collier, Historian Graham D. Taylor's book, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45*, comes to a more critical conclusion than Philp.¹¹ Taylor argues that the IRA was doomed to producing, at best, uneven results because of Collier's serious misunderstanding of the complexity, diversity, and desires of Native America. While the IRA, the centerpiece of the policy movement known as the Indian New Deal, did foster some success, it was, from a tribal perspective, little more than another colonial imposition from a foreign government. "The reforms of the Indian New Deal failed to endure because, in the last analysis, they were imposed upon the Indians, who did not see these elaborate proposals as answers to their own wants and needs."¹²

Scholar and activist Vine Deloria Jr. and political scientist Clifford M. Lytle are much less critical of Collier and his most famous piece of legislation in their work, *The Nations Within: The Past and Future of American Indian Sovereignty*.¹³ Responding to the growing chorus of critics of Collier and the IRA, Deloria Jr. and Lytle note that,

¹⁰ Ibid. at 244.

¹¹ Taylor, *New Deal*.

¹² Ibid. at xiii.

¹³ Deloria Jr. and Lytle, *Nations Within*.

considering the direction Native communities were headed prior to the legislation, the IRA was a significant improvement. “It is important to recognize that, given the decades of erosion traditional cultures have suffered and the sparsity of viable alternatives available in the twentieth century, the present organization of tribal governments is not necessarily an unreasonable compromise between what might have been and what was possible to accept.”¹⁴

Deloria Jr. and Lytle are quick to note that the IRA was not perfect and that the law necessarily contains vestiges of colonial imposition.¹⁵ However, Collier, according to Deloria Jr. and Lytle, was a truly revolutionary figure. “Collier was not the first non-Indian to appreciate the Indian tradition. He certainly became the first to understand, appreciate, articulate, and fight zealously for it.”¹⁶ The failings of the IRA were not due to his lack of consideration for the diversity and feelings within Indian Country as much as they were due to the inevitable political process that eviscerated the original bill. “June 18, 1934, must have been a bittersweet day in the life of John Collier. It was the culmination of months of hard work in which he devoted his full energy to the passage of a bill, which was nearly unrecognizable when it finally became law.”¹⁷

Political scientist Elmer R. Rusco’s book, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act*, is less explicitly concerned with assigning value to Collier and the IRA.¹⁸ Rather, this thorough work concentrates its efforts in providing a more complete picture of the enactment of the law. Rusco

¹⁴ Ibid. at 19.

¹⁵ “Let us be clear, however: self-government is not and cannot be the same as self-determination so long as it exists at the whim of the controlling federal government.” Ibid.

¹⁶ Ibid. at 41.

¹⁷ Ibid. at 140.

¹⁸ Elmer R. Rusco, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno, NV: University of Nevada Press, 2000).

concludes, among other things, that Collier was fueled by the belief that tribal governments were no longer active or viable within Indian Country, that Collier came into his commissionership without a clear vision for the IRA and was working on the draft of the original bill literally until he handed it into Congress, and that the final version of the bill that became law was mostly the product of Collier and Montana Senator Burton K. Wheeler. The two men were of opposite perspectives concerning the most beneficial path for advancement for tribal peoples. Yet, they were able to find ground for compromise. “Both saw the need to continue the trust responsibility of the national government toward the Indians.”¹⁹ Nonetheless, as compromised (from both Collier’s and Wheeler’s perspective) as the final law was, the fact that it afforded tribal communities the opportunity to vote on a major piece of legislation promulgated by the federal government was, according to Rusco, a major step in recognizing the validity of tribal decisionmaking. “The IRA embodied the key idea behind the tribal alternative ideology, which was that forced assimilation should be replaced by measures giving Indians the right to make uncoerced choices in these matters.”²⁰

Part of Rusco’s reluctance to engage in conversations concerning the impact of Collier’s work and the IRA stems from the fact that much of the scholarship tends to stop at the borders of Washington D.C. Rusco correctly notes that, “There is still no thorough study of how the Bureau of Indian Affairs organized itself to carry out the act and few studies of the actual writing of constitutions and related actions in specific Native American communities.”²¹

¹⁹ Ibid. at 293.

²⁰ Ibid. at 295.

²¹ Ibid. at xii-xiii

Since Rusco published this statement in 2000, the depth of the scholarship has improved slightly, although by no means is it now complete or even able to provide an adequate synopsis of the total impact of the IRA on Indian Country. Perhaps of most importance to students of tribal constitutionalism and the IRA was the recent publication of Felix S. Cohen's *On The Drafting of Tribal Constitutions*.²² Cohen, a member of the solicitor's office of the Department of the Interior during the IRA period of federal policy, a major strategist and drafter of the IRA, and primary author and editor of the original *Handbook of Federal Indian Law*, was perhaps the most influential lawyer to affect law and policy concerning Indian Country during the twentieth century.²³ *On The Drafting of Tribal Constitutions* reproduces Cohen's "Basic Memorandum On Drafting Of Tribal Constitutions" and sheds some additional light on one of the major controversies concerning the IRA: the existence and influence of a Bureau of Indian Affairs-produced "model" constitution on Indian Country.

Political scientist David E. Wilkins notes in his introduction to Cohen's work that many commentators have argued that the federal government developed a model constitution that was then foisted upon tribal communities, "forcing a constitutional uniformity that denies the diverse nature of tribal nations."²⁴ Rusco's scholarship, Wilkins states, tends to refute that notion. In finding a middle ground, the benefit and limitation of this particular piece of Cohen's work are revealed. According to Wilkins, there is "incontrovertible evidence" that some tribal communities did receive a model

²² Felix S. Cohen, *On The Drafting Of Tribal Constitutions*, ed. by David E. Wilkins (Norman, OK: University of Oklahoma Press, 2006).

²³ Felix S. Cohen, *Handbook of Federal Indian Law* (1941; repr., Washington D.C.: United States Government Printing Office, 1945).

²⁴ David E. Wilkins, introduction to *On the Drafting of Tribal Constitutions* by Felix S. Cohen (Norman, OK: University of Oklahoma Press, 2006), xxii.

constitution or an outline for a constitution; however, “much more comprehensive and systematic research of all the BIA’s records and the records of individual IRA tribes is required before we can definitively answer the question of precisely how many tribes received the ‘model’ constitution, the ‘outline,’ or the corporate charter.”²⁵ Wilkins also argues that it is still an open question as to what tribal governance looked like immediately prior to the IRA and what effect the model constitution and outline actually had in Indian Country.²⁶

Cohen’s *On The Drafting of Tribal Constitutions*, is a primary document. While it is essential as a record of Cohen’s vision for tribal constitutionalism, it sheds no light about its implementation or the impact of the IRA within Indian Country. At best, it expresses Cohen’s at least initial reluctance to furnish a model constitution to various tribal communities. Cohen noted the incredible diversity within Native America and also stated that a “model” constitution would be inappropriate because, “a model furnished by the Indian Office might be ‘adopted’ by an Indian tribe, but it would be only an adopted child and not the natural offspring of Indian hearts and minds.”²⁷

While each of these works is an essential contribution toward understanding an important law and policy period and the meaningful actors on the federal level, they nonetheless maintain their focus on the federal level and, consequently, within the parameters of the colonialist/revolutionary dialectic. The agency exerted by tribal peoples in contemplating and deciding upon constitutionalism is lost within the specific focus of the questions raised by this particular line of scholarship.

²⁵ Ibid. at xxiii.

²⁶ Ibid.

²⁷ Cohen, *On The Drafting*, 3.

The IRA in Indian Country

Among the few texts that do tackle the impact of a constitution promulgated under the IRA on specific tribal communities is anthropologist Thomas Biolsi's *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations*.²⁸ Biolsi argues that the Lakota had become resigned to the fact that the Office of Indian Affairs (OIA, later to be named the Bureau of Indian Affairs) had become an integral part of Lakota life. This resignation did not imply that the Lakota thought of the OIA as legitimate, but that through various methods of coercion and through the treaty relationship with the United States, the OIA became indispensable. "The Lakota endured the bureaucratic penetration of their everyday lives by the OIA because the OIA made their everyday lives possible."²⁹ Thus, when the IRA was enacted on the Pine Ridge and Rosebud reservations the tribal constitutional government did not become a buffer from federal governmental oversight as Collier originally imagined, but rather an unnecessary and extra impediment to the resources and relationship engendered by the OIA. Nor did the OIA provide an adequate opportunity for the tribal constitutional governments to thrive. Biolsi states, "Because the OIA actively disempowered tribal governments and prevented them from controlling the critical resources in the artificial reservation economies or from truly representing the people or guaranteeing civil liberties with appropriate courts, tribal governments appeared as oppressive and parasitic to their would-be constituents in ways that the OIA did not."³⁰

²⁸ Thomas Biolsi, *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* (1992; repr., Tucson, AZ: University of Arizona Press, 1998).

²⁹ *Ibid.* at 29.

³⁰ *Ibid.* at 183.

Another recently published work also looks at the Pine Ridge community. Historian Akim D. Reinhardt's *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee* examines the connections between the constitutional government established under the IRA in the 1930s and the political discord, activism, and violence that surrounded the second Wounded Knee incident and the general tumult of the 1970s.³¹ Reinhardt comes to the conclusion that the IRA-established government was a major and direct impetus for the upheaval on the reservation forty years later. "The ten-week siege [at Wounded Knee in 1973] was in fact dominated to some degree by the American Indian Movement, but the initial occupation itself was a culmination of local political protests against the IRA government."³² Reinhardt also falls fairly squarely on one side of the colonialist/revolutionary dialectic. "Reorganization meant (among other things) that tribal governments would be restructured to conform to a U.S. cookie-cutter model and that the federal government would now recognize these new bodies politic as the only legitimate Indian governments on their reservations."³³ Reinhardt's stark condemnation of tribal constitutional governments has not escaped scholarly attention and criticism.³⁴

Both Biolsi and Reinhardt make clear the failings of the tribal constitutions adopted under the IRA. Biolsi is particularly adept at revealing the level of control that

³¹ Akim D. Reinhardt, *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee* (Lubbock, TX: Texas Tech University Press, 2007).

³² *Ibid.* at 16.

³³ *Ibid.* at 10.

³⁴ In his mostly positive review of Reinhardt's book, David Wilkins does note that Reinhardt's sweeping generalization that IRA governments are "foreign" or not "Indigenous" is a "flawed premise" that "weakens the intellectual force" of the book. According to Wilkins, "The nearly two hundred Native nations that adopted the IRA will probably chuckle when they hear that their governments are not their own...Such ideologically tainted statements mar an otherwise solid analysis of one people's quest to regain and exercise self-determination." David Wilkins, review of *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee*, by Akim D. Reinhardt, *The Journal of American History* 94, no. 3 (2007): 980.

the OIA maintained both before and after the adoption of constitutional governments on Pine Ridge and Rosebud. Yet, the main focus for both scholars is upon the tribal constitutions themselves and their consequences. Neither Biolsi nor Reinhardt critically examine why the tribal members at the center of their studies chose to ratify their constitutions. At best, they provide perfunctory explanations about tribal behavior. Biolsi states, “Lakota people did not understand the IRA when they went to the polls in 1934 to vote on it. It was probably their (erroneous) belief that generous material benefits would accrue to them which accounted for the positive votes on the IRA on Pine Ridge and Rosebud.”³⁵ Biolsi provides other such glimpses into the possible rationales for ratification but never addresses the issue directly. Reinhardt briefly acknowledges the potential benefit of the IRA, thereby implicitly addressing its appeal for tribal peoples, before quickly refocusing on his criticism of the legislation. “The IRA certainly had its supporters, on Pine Ridge Reservation and elsewhere. This support is understandable, as some important and positive accomplishments have stemmed from the Indian New Deal. Nonetheless, the IRA’s flaws, deep and indelible, are undeniably amplified on Pine Ridge.”³⁶ Neither scholar adequately address the agency expressed by tribal peoples in voting affirmatively on the IRA constitutions and consequently on constitutionalism in general.

Tribal constitutionalism outside of the IRA

Unfortunately, the tremendous influence of the IRA has often obscured the constitutional history within Native America prior to and after its enactment. As noted

³⁵ Biolsi, *Organizing the Lakota*, 83-84.

³⁶ Reinhardt, *Ruling Pine Ridge*, 11.

by Wilkins, “most commentators writing about Indian Affairs, if they discuss indigenous governments at all, tend to skip from a description of traditional governing structures to the Indian Reorganization Act governments of the 1930s... They assume that the intervening years were so cataclysmic for tribes that little was left in the way of traditional tribal government structures or Indian self-determination.”³⁷ In fact, this belief that tribal governing structures and self-determination were either non-existent or were soon to be non-existent may have been a significant, contributing factor to the development of the IRA in the first place. Rusco argues that John Collier believed that many, if not most, tribal communities lacked viable governments prior to the IRA and continued to write about that belief throughout his commissionership.³⁸

While Wilkins does not deny that the forces of colonialism had a profound impact upon tribal peoples and ways of life, he argues that the lack of scholarship about tribal governance does a disservice to the resiliency of tribal peoples and governance.³⁹ He notes that, “[tribal nations’] governing systems changed in part as a result of forced colonial influence, but also as a deliberate result of efforts of the tribes’ members to modify the method of government organization to reflect the community’s evolution.”⁴⁰ Sometimes those modifications were expressed in written constitutions. Building on a framework established by Deloria Jr. and Lytle, Wilkins labels such governments as

³⁷ David E. Wilkins, *American Indian Politics and the American Political System* 2nd ed., (Lanham, MD: Rowman and Littlefield Publishers, Inc., 2007), 132.

³⁸ Rusco, *Fateful Time*, 152-53. Also, see Elmer R. Rusco, “The Indian Reorganization Act and Indian Self-Government,” in *American Indian Constitutional Reform and the Rebuilding of Native Nations*, ed. Eric D. Lemont, 49-82 (Austin, TX: University of Texas Press, 2006).

³⁹ Wilkins, *American Indian Politics*, 132-33.

⁴⁰ *Ibid.*, 133.

“transitional constitutional governments.”⁴¹ While there are few attributes that bind the transitional constitutional governments together, as they were written by different tribal communities in different eras, conditions, geographic regions, and under different pressures, Wilkins does find a common thread. “The tribal nations were clearly in a transitional mode and many of them...developed written constitutions as one response to changing circumstances.”⁴²

Rusco has stated that there were at least fifty-three tribal constitutions prior to the IRA.⁴³ Wilkins has stated that by December of 1934 around sixty tribal constitutions or “documents in the nature of constitutions” were on file in the Department of the Interior.⁴⁴ While this postdates the enactment of the IRA, Wilkins also noted that December of 1934 was, “well before the major thrust of constitutional development [under the IRA] had taken place.”⁴⁵

Both Wilkins and Rusco have noted that there has yet to be a comprehensive study of tribal governmental and constitutional history before the IRA.⁴⁶ Rusco has also recognized the difficulty in such a project. “No doubt it is theoretically possible to examine the relevant portions of all these thousands of often voluminous files to develop an overall picture of the nature of Indian governance for this period, but no one has invested the very large amounts of time that would be necessary to arrive at such a

⁴¹ For the original framework, see Vine Deloria Jr. and Clifford M. Lytle, “The Evolution of Tribal Governments,” in *American Indians, American Justice* (1983; repr., Austin, TX: University of Texas Press, 2000). For Wilkins’s contribution, see Wilkins, *American Indian Politics*, 133.

⁴² Wilkins, *American Indian Politics*, 133.

⁴³ Rusco, *Fateful Time*, 39.

⁴⁴ Wilkins, “Introduction,” xxi.

⁴⁵ *Ibid.*

⁴⁶ Wilkins, *American Indian Politics*, 135; Rusco, *Fateful Time*, 35. It should be noted, however, that Wilkins has compiled a collection of pre-IRA tribal constitutions for publication. The book is expected to be available sometime in 2009.

picture.”⁴⁷ Yet, even this process would not provide the full picture, according to Rusco. Government documents, which were not always accurate or complete in and of themselves, would have to be critically measured against other sources.⁴⁸

The closest attempt at a comprehensive detailing of tribal systems of governance during this era occurred in 1929 when the BIA sent a questionnaire concerning tribal business councils to 120 reservation superintendents. The BIA received seventy-eight responses which painted a complex, if incomplete, portrait of tribal governance.⁴⁹ What the questionnaires did reveal is that tribal communities employed many different structures of governance, including traditional methods, business committees, and constitutional governments.⁵⁰ Despite the eulogies and lamentations of Collier and others, tribal governments were not dead.

Nonetheless, the 1929 questionnaire is far from a complete synopsis of these transitional constitutional governments. Cohen himself noted the rich history of pre-IRA constitutions.

Between the time of the adoption of the Constitution of the Five Nations and the adoption by more than a hundred Indian tribes of written constitutions pursuant to the [IRA], there is a fascinating history of political development that has never been pieced together. Students of Indian law know of the achievements of the Five Civilized Tribes in constitution making by reason of occasional references in the decided cases to the Cherokee, Creek, and Choctaw constitutions. What is generally not known is that many other Indian tribes have

⁴⁷ Rusco, *Fateful Time*, 35.

⁴⁸ *Ibid.*

⁴⁹ Rusco noted four reasons as to why the BIA circular cannot be understood as providing a complete picture of tribal governance at this time: 1. Not all of the superintendents responded to the questionnaire, 2. Sometimes the answers provided by the superintendents are vague, which makes it difficult to decipher the situation on a reservation with any particularity, 3. The questionnaire only asked about one type of governmental structure; business councils, and 4. The information provided by the superintendents was in many cases too brief to provide a full understanding of the situation on a particular reservation. *Ibid.*

⁵⁰ *Ibid.* at 35-40.

operated under written constitutions. *The writing of Indian constitutions under the [IRA] is therefore no new thing in the legal history of this continent.*⁵¹ (emphasis added)

There have been a few noteworthy efforts to explore this “fascinating history.” Perhaps the most famous example is legal historian Rennard Strickland’s *Fire and the Spirits: Cherokee Law from Clan to Court*.⁵² Strickland’s important work traces Cherokee jurisprudence and government from the early contact period through the end of the nineteenth century, which included a tribal constitution and a sophisticated court system. The development of a more Western model did not mean that the Cherokee abandoned their traditional values or orientation. According to Strickland, “Cherokee records suggest that traditional elements played a vital role in the development of the Cherokee legal system.”⁵³

Another noteworthy exploration of pre-IRA tribal constitutional history is sociologist Duane Champagne’s *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek*.⁵⁴ Champagne poses the question: Under what conditions are democratic governments formed and how do they become institutionalized? Through an examination of the formation of the early constitutional governments of the Cherokee, Choctaw, Chickasaw, and Creek, he concludes that the tribal shift to constitutional governments was most influenced by the development of a unified political nationality and a political order that found growing differentiation amongst social influences such as the tribal

⁵¹ Cohen, *Handbook*, 128-29.

⁵² Rennard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman, OK: University of Oklahoma Press, 1975).

⁵³ *Ibid.* at xii.

⁵⁴ Duane Champagne, *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, CA: Stanford University Press, 1992).

government and religious and clan leaders.⁵⁵ Echoing Wilkins and Strickland, Champagne also notes that, “the formation of the southeastern constitutional governments reflect both consensual and coercive modes of change.”⁵⁶

Most of the other texts about pre-IRA constitutions detail the experiences of the so-called Five Civilized Tribes.⁵⁷ However, these tribal communities do not account for the totality of the transitional constitutional governments. As noted above, there were between four and five dozen tribal constitutions on file with the BIA before and shortly after the enactment of the IRA. Thus, there are still many more missing pieces to the “fascinating history.” Additionally, while both provide a richer understanding of the history of the subject, neither Strickland’s book nor this particular Champagne text addresses the current state of tribal constitutionalism in Indian Country.

Contemporary tribal governments

The literature about contemporary tribal constitutions is oriented less around their histories and formations and more around how to improve them and what characteristics the most successful tribal governments share. This body of work is not particularly concerned with the difficult choices that tribal communities made in the past concerning their governing document. Rather, the focus is on the consequences of those decisions and how to amend or correct those choices.

⁵⁵ Ibid. at 252-54.

⁵⁶ Ibid. at 254.

⁵⁷ Wilkins noted a collection of these texts including Grant Foreman, *The Five Civilized Tribes* (Norman, OK: University of Oklahoma Press, 1934) and Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Norman, OK: University of Oklahoma Press, 1940). Wilkins, *American Indian Politics*, 331n47. One exception is a 1916 publication by the New York State Museum that provided a look at the constitutional history of the Iroquois Confederacy. Arthur C. Parker, *The Constitution of the Five Nations or the Iroquois Book of the Great Law*, (Albany, NY: University of the State of New York, 1916).

Among the leaders in this area of scholarship are the collaborators at the Native Nations Institute (NNI) housed at the University of Arizona. NNI is a joint effort between the Morris K. Udall Center for Public Policy at the University of Arizona and the Harvard Project on American Indian Economic Development. The various scholars at the two schools routinely publish Joint Occasional Papers on Native Affairs (JOPNAs). A useful example of this work is “Seizing the Future: Why Some Native Nations Do and Others Don’t.”⁵⁸ In this JOPNA, the four authors detail the conditions that tend to be necessary for successful tribal development: legitimate tribal authority over tribal affairs, effective governmental institutions, a reasonable match between those governmental institutions and traditional understandings of the exercise of authority, and long-range planning. According to the authors, “These four factors, taken together, form the heart of an approach to development that we call ‘nation building’: laying the political foundations for sustainable economic and community development.”⁵⁹

While he does not do so in his book mentioned above, Champagne has also addressed the future of tribal constitutional governments in other texts, particularly in his chapter, “Renewing Tribal Governments: Uniting Political Theory and Sacred Communities,” in his recent book *Social Change and Cultural Continuity Among Native Nations*.⁶⁰ While recognizing its limitations as an example, Champagne suggests that tribal communities look to the American constitution, with its system of checks and balances and the diffuse power relations between the federal government and state

⁵⁸ Stephen Cornell and others, “Seizing the Future: Why Some Native Nations Do and Others Don’t,” http://jopna.net/pubs/jopna_2005-01_Seizing.pdf (accessed May 21, 2008).

⁵⁹ *Ibid.* at 5.

⁶⁰ Duane Champagne, *Social Change and Cultural Continuity Among Native Nations* (Plymouth, United Kingdom: AltaMira Press, 2007).

governments, as a model. Champagne finds common ground with the JOPNA authors in arguing it is beneficial to create a resemblance between traditional and modern governing structures. “The families, clans, villages, bands, or village coalitions, or whatever arrangement characterizes the sociopolitical power relations of the tribe, will work to mobilize political and cultural resources from the people and serve as a balance on the central tribal government in ways that are analogous to the state governments under the U.S. constitution.”⁶¹

One recent text that attempts to present a more global perspective of the state of contemporary tribal constitutionalism is *American Indian Constitutional Reform and the Rebuilding of Native Nations*.⁶² This collection of essays addresses various issues involving both the history of tribal constitutions and the difficulties facing contemporary tribal governments, including the process of constitutional reform, membership requirements, and citizen participation among others. As noted by the book’s editor, Eric D. Lemont, tribal communities have begun to radically reassert authority over their own well-being. “Especially since the commencement of the U.S. government’s policy of Indian self-determination in 1975, Indian nations have seized opportunities to exercise their powers of self-governance.”⁶³

Constitutional reform is a topic of growing importance in Native America. However, it is difficult to grasp as to just how meaningful the topic is within Native communities. In fact, it is difficult to find any accurate measure of tribal constitutional

⁶¹ Ibid. at 81. For a similar argument in another source, see Duane Champagne, “Remaking Tribal Constitutions: Meeting the Challenges of Tradition, Colonialism, and Globalization,” In *American Indian Constitutional Reform and the Rebuilding of Native Nations*, ed. by Eric D. Lemont, 11-34 (Austin, TX: University of Texas Press, 2006).

⁶² Eric D. Lemont, ed., *American Indian Constitutional Reform and the Rebuilding of Native Nations* (Austin, TX: University of Texas Press, 2006).

⁶³ Eric D. Lemont, introduction to *American Indian Constitutional Reform and the Rebuilding of Native Nations*, ed. Eric. D. Lemont (Austin, TX: University of Texas Press, 2006), 1.

reform. There is no consensus among those who have written about contemporary movements. Lemont relates that, “With dozens of American Indian nations having completed, currently undertaking, or planning major reexaminations of their constitutions, Indian Country is witness to a veritable wave of constitution-making and revision.”⁶⁴ Yet, Champagne states that, “Dissatisfaction with tribal government is widespread throughout Indian country, and while some tribes are actively reconsidering their constitutions and other organic documents, movement is slow.”⁶⁵

Scholarship on Turtle Mountain

For the most part, the relatively sparse scholarly literature on Turtle Mountain has not engaged in a meaningful discussion about the various tribal constitutions. Rather, it has generally focused on the genesis of the community, the establishment of the reservation, and the federal government’s unsavory behavior in the negotiations of an agreement.

A few noteworthy writings stand out from this general rule and engage specifically with Turtle Mountain governmental structure and leadership. Two works have tackled more contemporary issues. This includes first a spiral-bound, book-length project put together by the Project Peacemaker initiative. Project Peacemaker, housed at the Turtle Mountain Community College and funded in part by a grant from the Department of Justice, was established in 2001 to, “strengthen legal justice curricula at the tribal college level as well as increase the numbers of tribal members

⁶⁴ Ibid. at 3.

⁶⁵ Champagne, *Social Change*, 76.

knowledgeable about Indian law.”⁶⁶ The text, *Turtle Mountain Band of Chippewa Constitution and Revision Process 2001-2002*, provides both primary and secondary sources concerning the constitutional revision process that took place early in the twenty-first century.⁶⁷ The project is absolutely vital in understanding the work and thought-processes that went into the struggle for a new constitution in the new century. Second, tribal member Kent A. LaRoque’s master’s thesis, “The 1934 Indian Reorganization Act and Indigenous Governance: A Comparison of Governance of Santa Clara Pueblo and the Turtle Mountain Band of Chippewa Nations – 1991-2000” is a useful source for understanding the various constitutional amendments that were enacted in the 1990s and turmoil at Turtle Mountain prior to the votes on a new document in 2002 and 2003.⁶⁸

Two other works have studied Turtle Mountain governmental structure and leadership from a more historical perspective. Perhaps foremost of this group is a master’s thesis which challenges the current scholarly understanding of the negotiations between the community and the federal government. Tribal member Roland Marmon’s “A Reservation is No Refuge: A Story of the Turtle Mountain Chippewa 1800-1900,” which will be discussed in greater detail in chapter 1, argues that some members of the community, seeking immediate relief from their dire situation, were more active participants in the breakdown of tribal leadership during the negotiations with the

⁶⁶ “Project Peacemaker: Overview,” <http://www.turtle-mountain.cc.nd.us/community/propeace/index.asp> (accessed May 21, 2008).

⁶⁷ Jerilyn DeCoteau ed., *Turtle Mountain Band of Chippewa Constitution and Revision Process 2001-2002* (Belcourt, ND: Turtle Mountain Community College, 2003).

⁶⁸ Kent A. LaRoque, “The 1934 Indian Reorganization Act and Indigenous Governance: A Comparison of Governance of Santa Clara Pueblo and the Turtle Mountain Band of Chippewa Nations – 1991-2000” (master’s thesis, Virginia Polytechnic Institute and State University, 2004).

federal government than has been previously reported.⁶⁹ Additionally, Charlie White Weasel, a tribal member and tribal historian, wrote “Old Wild Rice: The Great Chief, Genesis of the Pembina/Turtle Mountain Chippewa.”⁷⁰ It is a pamphlet that provides a brief overview of early tribal leadership.

The vast majority of the scholarship on Turtle Mountain concerns the community’s early history and the establishment of the reservation. A handful of book-length projects populate this literature. Among this group, two unpublished dissertations most neatly fall into the category of historical monographs. Gregory Scott Camp’s “The Turtle Mountain Plains-Chippewa and Métis, 1797-1935,” provides an analysis of the origin of the comparatively new tribal community through the pivotal period prior to the ratification of the first constitution.⁷¹ While the scope of his work ostensibly includes the ratification of the first Turtle Mountain constitution and the tribal vote on the IRA, Camp’s discussion of constitutionalism is incomplete. Camp engages in the colonialist/revolutionary dialectic stating, among other things, that, “the call of the Indian Reorganization Act to return to tribalism was impractical, if not impossible, for the Turtle Mountain people,” while completely failing to mention the 1932 constitution at all.⁷² The other unpublished dissertation, George Morrison Shaw’s “‘In Order That Justice May Be Done’: The Legal Struggle of the Turtle Mountain Chippewa, 1795-1905,” also traces the early history of the community.⁷³ The scope of Shaw’s work stops

⁶⁹ Roland Marmon, “A Reservation Is No Refuge: A Story of the Turtle Mountain Chippewa 1800-1900” (master’s thesis, University of North Dakota, 2001).

⁷⁰ Charlie White Weasel, “Old Wild Rice: The Great Chief, Genesis of the Pembina/Turtle Mountain Chippewa” 2nd ed. (1988; repr., self-published, 1990).

⁷¹ Gregory Scott Camp, “The Turtle Mountain Plains-Chippewas and Métis, 1797-1935” (Ph.D. diss., University of New Mexico, 1987).

⁷² *Ibid.* at 193.

⁷³ John M. Shaw, “‘In Order That Justice May Be Done’: The Legal Struggle of the Turtle Mountain Chippewa, 1795-1905” (Ph.D. diss., University of Arizona, 2004).

well short of the enactment of the first constitution and he does not address this aspect of Turtle Mountain history. While neither dissertation directly addresses Turtle Mountain's constitutional history both are useful for understanding the early formation of the community. Both works rely on government documents, newspaper accounts, ethnographic accounts, and evidence produced during the claims process in addition to secondary sources to detail the various stresses that led to the agreement between the federal government and the community.

Other books, some more directly than others, also chronicle Turtle Mountain's early years. John Tanner's *The Falcon: A Narrative of the Captivity and Adventures of John Tanner* is the autobiographical account of a young Euro-American child from his capture through his adulthood as a member of the Native communities who came to form the Turtle Mountain Band.⁷⁴ The text provides a glimpse of early Turtle Mountain leaders and lifestyle. William W. Warren's *History of the Ojibway People* is instructive in detailing the history of the larger tribal collective from the pre-contact years until the mid-nineteenth century.⁷⁵ Useful information about the early Turtle Mountain leaders is found in Warren's account. *St. Ann's Centennial: 100 Years of Faith, Turtle Mountain Indian Reservation, Belcourt, North Dakota, 1885-1985* is a collaborative effort among members of the most prominent church within the local community.⁷⁶ The bulk of the text contains personal family histories; yet it also contains the history of the community from a more community-oriented perspective. White Weasel, whose pamphlet is

⁷⁴ John Tanner, *The Falcon: A Narrative of the Captivity and Adventures of John Tanner* (G. & C. & H. Carvill, 1830; New York: Penguin Group, 2003). Citations are to the Penguin Edition.

⁷⁵ William W. Warren, *History of the Ojibway People* (St. Paul, MN: Minnesota Historical Society, 1885; repr., St. Paul, MN: Minnesota Historical Society Press, 1984). Citations are to the 1984 edition.

⁷⁶ *St. Ann's Centennial Book: 100 Years of Faith, Turtle Mountain Indian Reservation, Belcourt, North Dakota, 1885-1985* (Rolla, ND: Star Printing, 1985).

mentioned above, self-published *Pembina and Turtle Mountain Ojibway (Chippewa) History* in 1994.⁷⁷ This text is mostly a collection of primary sources (e.g. pertinent treaties, photos of tribal members) interspersed with occasional commentaries and short essays by the author. Although not the complete focus of her study, several nuggets of useful information about Turtle Mountain can be found in anthropologist Mary Jane Schneider's text *North Dakota Indians: An Introduction*.⁷⁸ This college textbook provides a general overview of all of the Native communities within the state.

A handful of notable shorter works also center their study on early tribal history. Some of the authors who have produced monographs have also produced articles and shorter pieces. Camp has written two articles concerning the more immediate consequences of Turtle Mountain's negotiation with the federal government.⁷⁹ The scope of neither article reaches the constitutional period in Turtle Mountain history. Other authors, discussed below, have written smaller articles concerning early tribal history that emanate from their respective larger works.⁸⁰ While none of these articles dwell on Turtle Mountain constitutionalism they are instructive in chronicling the community's pre-constitutional history.

There are several other articles and shorter writings that do not directly address Turtle Mountain constitutionalism, but nonetheless make a useful contribution to this

⁷⁷ Charlie White Weasel, *Pembina and Turtle Mountain Ojibway (Chippewa) History* (Canada: self-published, 1994).

⁷⁸ Mary Jane Schneider, *North Dakota Indians: An Introduction*, 2nd ed. (Dubuque, IA: Kendall/Hunt Publishing Company, 1994).

⁷⁹ Gregory S. Camp, "Working Out Their Own Salvation: The Allotment of Land in Severalty and the Turtle Mountain Chippewa Band, 1870-1920," *American Indian Culture and Research Journal* 14, no. 1, (1990): 19-38; Gregory S. Camp, "The Dispossessed: The Ojibwa and Métis of Northwest North Dakota," *North Dakota History: Journal of the Northern Plains*. 67, no. 1 (2000): 62-79.

⁸⁰ James H. Howard, "The Turtle Mountain 'Chippewa,'" *The North Dakota Quarterly* Spring 1956: 37-46; David P. Delorme, "'Emancipation' and the Turtle Mountain Chippewa," *The American Indian Magazine*. Spring 1954.

dissertation and are meaningful components of the tribal historiography. Tribal member Patrick Gourneau (who played a major role in the constitutional turmoil in the 1950s and who also went by Aun nish e naubay) penned “History of the Turtle Mountain Band of Chippewa Indians,” as he put it, to be, “effectively used in classrooms and short presentations.”⁸¹ This pamphlet is a brief overview of tribal history. Anthropologist Patricia C. Albers’ chapter, “Plains-Ojibwe,” in Volume 13 in the *Handbook of North American Indians* offers a general overview of the history and lifestyle of the peoples who became and are the Turtle Mountain Band of Chippewa Indians.⁸² Historian John Hesketh’s, “History of the Turtle Mountain Chippewa,” offers a glimpse into the community, most particularly during the nineteenth century.⁸³ Anthropologist Harold Hickerson’s, “The Genesis of a Trading Post Band: The Pembina Chippewa,” provides an earlier look at the community’s formation and early years.⁸⁴ Another article worthy of extra mention is historian Stanley N. Murray’s, “The Turtle Mountain Chippewa, 1882- 1905.”⁸⁵ This article provides the most concise and straightforward analysis of the community prior to and during the years in which the reservation was established, an agreement with the federal government was reached, and an inadequate land base forced a diffusion of the tribal population. Murray’s article deftly covers the pivotal period of time that provided the foundation for the tribal discontent that led to the first Turtle Mountain constitution.

⁸¹ Aun nish e naubay (Patrick Gourneau), *History of the Turtle Mountain Band of the Chippewa Indians* 9th ed. (self-published, 1993). 5.

⁸² Patricia C. Albers, “Plains Ojibwa,” *Handbook of North American Indians*, vol. 13, part 1, *Plains* (Washington D.C.: Smithsonian Institution, 2001), 653-660.

⁸³ John Hesketh, “History of the Turtle Mountain Chippewa,” in *Collections of the State Historical Society of North Dakota*, vol. 5 (Bismarck, ND: State Historical Society of North Dakota, 1923).

⁸⁴ Harold Hickerson, “The Genesis of a Trading Post Band: The Pembina Chippewa,” *Ethnohistory* 33, no. 4 (1956): 298-345.

⁸⁵ Stanley N. Murray, “The Turtle Mountain Chippewa, 1882- 1905,” *North Dakota History* Winter 1984: 14-37.

While also not centered on constitutionalism, some newer works have looked at more contemporary tribal history. Recently, Turtle Mountain has put additional effort and resources into its website. This has included web pages that reach out to community members, particularly one PDF file titled “Who I Am: A Guide To Your Turtle Mountain Home.”⁸⁶ This PDF file provides a general overview of several aspects of the community, including sections on history, language, government, geography, and current resources and demographics. In 1997 the North Dakota Department of Public Instruction published a short book entitled *The History and Culture of the Turtle Mountain Band of Chippewa*.⁸⁷ Written in collaboration with the Turtle Mountain Community College, the publication was intended for students and teachers of the state. Despite its younger target audience, the text nonetheless provides much useful information particularly concerning the community in a more contemporary setting. Another meaningful work by a tribal member is Daniel F. Jerome’s *The Trail of Misgivings: A Scourging Journey*.⁸⁸ Jerome, a teacher and administrator who worked within the community for a number of years, details the history of education on the reservation.

A handful of ethnographies that have either focused exclusively on the Turtle Mountain community or the larger Ojibwe collectivity are also helpful to this dissertation. Anthropologist James H. Howard’s *The Plains-Ojibwa or Bungi: Hunters and Warriors of the Northern Prairies with Special Reference to the Turtle Mountain*

⁸⁶ Les LaFountain, Orié Richard, and Scott Belgarde, “Who I Am: A Guide To Your Turtle Mountain Home,” Turtle Mountain Community College, <http://www.turtle-mountain.cc.nd.us/community/propeace/resources/WhoIAm.pdf>

⁸⁷ North Dakota Department of Public Instruction, *The History and Culture of the Turtle Mountain Band of Chippewa* (Bismarck, ND: North Dakota Department of Public Instruction, 1997).

⁸⁸ Daniel F. Jerome, *The Trail of Misgivings: A Scourging Journey* (Minot, ND: North American Heritage Press, 2006).

Band is a particularly useful tool for understanding the early governmental structure of the Turtle Mountain people.⁸⁹ Another unpublished dissertation, “A Socio-Economic Study of the Turtle Mountain Band of Chippewa Indians and a Critical Evaluation of Proposals Designed to Terminate Their Federal Wardship Status,” studies the community in the heart of the Termination Era.⁹⁰ Written by sociologist and tribal member David P. Delorme, this text is an invaluable source for understanding the attitudes and dire economic conditions of the tribal members at the mid-twentieth century. Frances Densmore’s *Chippewa Customs* outlines the lifestyle of the larger tribal collective in the first quarter of the twentieth century.⁹¹ Nuggets of information on Turtle Mountain are found in Densmore’s work.

A couple of additional works are notable for their contribution to a deeper understanding of the Métis segment of the tribal population. Verne Dusenberry began his career as an English professor before his various associations with tribal and Métis peoples in Montana led him to seek advanced degrees in anthropology.⁹² His article, “Waiting For a Day That Never Comes,” follows the disenrolled community members from North Dakota to Montana in the wake of the negotiations between Turtle Mountain and the federal government.⁹³ Historian Martha Harroun Foster’s *We Know Who We Are: Métis Identity in a Montana Community* traces the development and

⁸⁹ James H. Howard, *The Plains-Ojibwa or Bungi: Hunters and Warriors of the Northern Prairies With Special Reference to the Turtle Mountain Band* (Vermillion, SD: South Dakota Museum, 1965).

⁹⁰ David P. Delorme, “A Socio-Economic Study of the Turtle Mountain Band of Chippewa Indians and a Critical Evaluation of Proposals Designed to Terminate Their Federal Wardship Status” (Ph.D. diss., University of Texas, 1955). Delorme’s work is discussed in more detail in chapter 3.

⁹¹ Frances Densmore, *Chippewa Customs* (Washington D.C.: Smithsonian Institution, 1929; St. Paul, MN: Minnesota Historical Society Press, 1979). Citations are to the Minnesota Historical Society Press edition.

⁹² Carling Malouf, “Verne Dusenberry 1906-1966,” *American Anthropologist* 70, no. 2 (Apr. 1968): 326-27.

⁹³ Verne Dusenberry, “Waiting For A Day That Never Comes,” *Montana: The Magazine of Western History* 8, no. 2 (1958): 26-39.

difficulties faced by a mixed-blood Métis community on the American side of the border.⁹⁴ This text draws the connections between the Métis peoples who stayed at Turtle Mountain and those who left for Montana.

Primary sources found at various archives also make invaluable contributions to the historiography of Turtle Mountain. This literature will be discussed in greater depth later in this introduction in the note on sources.

Turtle Mountain Constitutional History

As noted above, four events, spanning over a century, have critically shaped Turtle Mountain constitutionalism. There is much that makes each event unique, including the different federal policy eras in which they occurred and the choices that were available to the community. Yet, there is one fundamental thread that ties them all together: Tribal agency was vital to the adoption and development of Turtle Mountain constitutionalism. Each chapter of this dissertation will examine one of the four events that shaped this history.

Chapter 1 will argue that Turtle Mountain's agreement with the federal government produced the necessary conditions for the community to consider and adopt constitutionalism. In 1892 the federal government sent a commission led by North Dakota Senator Porter J. McCumber to negotiate with the community for its lands. The McCumber Commission, as it came to be known, was in an advantageous negotiating position for two significant reasons. First, the American government had opened up the lands claimed by the people of Turtle Mountain for white settlement ten years earlier.

⁹⁴ Martha Harroun Foster, *We Know Who We Are: Métis Identity in a Montana Community* (Norman, OK: University of Oklahoma Press, 2006).

European and Euro-American settlers flooded into the North Dakota prairie and created significant pressures for the tribal community. Secondly, the McCumber Commission usurped the traditional leadership, led by Little Shell III. Until recently the consensus among the scholarship was that agents for the federal government established a “Council of 32,” consisting of sixteen full-bloods and sixteen mixed-bloods, to replace Little Shell III and his council and to negotiate with the McCumber Commission. However, Marmon’s master’s thesis argues that certain members of the community were responsible for establishing the Council of 32. This debate, through an analysis of the secondary literature concerning Turtle Mountain during the pre-constitutional period, will be discussed in greater detail in Chapter 1 as will how the disavowal of Little Shell III’s authority left a void in tribal leadership that was only exacerbated after his death in 1900. The lack of traditional leadership and anger over the agreement allowed constitutionalism to emerge as a legitimate possibility for the community.

Chapter 2 will argue that Turtle Mountain enacted its first constitution for the purpose of beginning a claim against the federal government to exact a measure of justice for the ill treatment and low price resulting from the 1892 McCumber Agreement. The first tribal constitution was enacted in 1932, around two years before the IRA became law. The prospect of a constitution had been part of the tribal discourse for sometime and attempts were made to write a document prior to 1932. Developing a constitution was becoming an ever more common occurrence within Indian Country in this era.⁹⁵ Constitutionalism was unofficially, and would soon be officially, the direction of federal policy. Despite this trend and despite Turtle Mountain’s willingness to adopt

⁹⁵ As noted above, Native America has had a long history of tribal constitutions prior to the IRA. Cohen, *Handbook*, 128-29.

a constitution, the 1932 document was, for many tribal members, at best a compromise that did not fully express tribal sovereignty. Nonetheless, the community ratified the constitution because the tribal superintendent stated that it was the only possible avenue for a tribal claim against the federal government. Ultimately, tribal members were more concerned with pursuing a lawsuit than they were with the text of the constitution. The people of Turtle Mountain had an opportunity to revamp their constitution in the wake of the enactment of the IRA. However, a combination of reasons led Turtle Mountain to reject the new law, including the continued belief that the 1932 constitution was necessary to pursue a claim and a change in the way that the votes concerning the IRA were counted. After the initial tally, some tribal members often requested the opportunity to vote upon the legislation for a second time, to no avail. This chapter is built upon primary documents, including various correspondences to and from tribal members, tribal superintendents, and federal officials in Washington D.C., and on contemporary newspaper accounts.

Chapter 3 will argue that the community adopted a new constitution in 1959 as a response to multiple discontents, including the threat of termination, dissatisfaction with the 1932 constitution and the tribal government that the 1932 constitution established, and with the glacial pace of the claims process. Not long after its enactment, the 1932 document rather quickly found itself without its already feeble support within the community. Yet, the impetus for change did not find its fullest expression until the tail end of the Termination Era. The possibility of the federal government ending its political relationship with Turtle Mountain was very real, as the community was one of the five specifically enumerated tribal communities in House Concurrent Resolution

108, which announced Termination as the new federal policy.⁹⁶ Turtle Mountain and its chairman, Patrick Gourneau, were forced to fend off the attacks to the community's very existence. The fight for survival characterized the political experience for Turtle Mountain in the first half of the 1950s. The experience in the second half of the 1950s was characterized by an intense anger and desire for change. Gourneau, who helped spearhead the movement against termination, came to see his authority erode and his attempts at constitutional revisions fail. Rather, power shifted to a different collection of individuals who were known in the local press and government documents as the "rebel" group. The rebel group's discontent with the tribal leadership, the constitution, and the direction of the tribal government led them to drafting a "rebel" constitution. When put to a vote amongst the community the rebel or "proposed" constitution bested Gourneau's "revised" constitution. Nonetheless, the so-called rebel document was not without its own flaws and difficulties. Gourneau roundly criticized it before the vote and, shortly after it was adopted, the rebel leadership, which was now the recognized leadership, called for several amendments to the document. When those amendments failed the new leadership of the community claimed that they were without the authority to make meaningful change happen at Turtle Mountain. This chapter will use sources such as correspondences between Washington D.C. and the reservation, documents generated by tribal members, and contemporary newspaper accounts.

Chapter 4 will argue that the people of Turtle Mountain used their votes in 2002 and 2003 on constitutional reform to express dissatisfaction with the tribal government and corrupt politicians, and with the reform movement which was led by an increasingly controversial tribal chairman. By this time, the community found itself in

⁹⁶ HR Con. Res. 108, *U.S. Statutes at Large* 67 (1953): B132.

yet another completely different set of circumstances. Termination had long since been repudiated as a national policy. In fact, tribal self-determination had been the avowed policy of Congress for decades. The claim against the federal government had also been settled for approximately twenty years. The community could count a thriving tribal college and a gaming operation amongst its assets. Yet, while much had changed since the 1950s, one remnant of the Termination Era remained: the constitution. The new constitutional committee produced a revised constitution in 2002. Although the movement met with considerable resistance from the established tribal power structure, a vote was eventually taken in late 2002 on the new document. 2002 proved to be a contentious year politically for Turtle Mountain and this first vote produced a narrow defeat. However, there was room for optimism for the supporters of a new constitution. Tribal elections produced a new council who favored a new constitution. The 2002 document was slightly revised and put to another vote in 2003. The chances of success grew dimmer as the document grew ever more connected to the tribal chairman. The narrow defeat of 2002 was replaced with a resounding defeat in 2003. This chapter is constructed through multiple newspaper accounts of the critical events and other literature produced through the constitutional reform efforts.

With the evidence presented in the four chapters, the conclusion will return to the central finding of this dissertation: The people of Turtle Mountain chose constitutionalism of their own volition and for their own reasons. Each of the four events discussed in the chapters allows one to think critically about the role of the community in the formation of contemporary tribal governments. The conclusion will

again argue that constitutionalism could not have developed either at Turtle Mountain or elsewhere without tribal agency.

Methodologies

American exceptionalism used to be the driving force behind the field of American Studies. Intellectual historian David W. Noble described the phenomenon of American exceptionalism as such: “[American historians] have thought and written as if the United States was absolutely independent, standing apart in its uniqueness from the rest of human experience.”⁹⁷ Yet, the popularity of this position has lessened within the academy. Noble also has noted, “Although popular culture since the 1940s has continued to assume that an exodus experience has separated the United States from the rest of the world, it has been increasingly difficult for professional historians to do so.”⁹⁸ The introduction to the book *Post-Nationalist American Studies*, co-written by the nine scholars who contributed essays to the collection, does not attempt to pinpoint exactly when it became, “increasingly difficult,” for historians to maintain their intellectual grip on American exceptionalism. However, it does note that, in the wake of the civil rights movement of the 1950s through the various other movements that are often associated with the 1960s and 1970, “American Studies practitioners could no longer sustain the fiction that Americans ‘shared’ a national character based upon common experiences.”⁹⁹

⁹⁷ David W. Noble, *The End of American History: Democracy, capitalism, and the metaphor of two worlds in Anglo-American historical writing, 1880-1980* (Minneapolis, MN: University of Minnesota Press, 1985), 7.

⁹⁸ Ibid.

⁹⁹ Barbara Brinson Curiel and others, introduction to *Post-Nationalist American Studies*, ed. John Carlos Rowe (Berkeley and Los Angeles: University of California Press, 2000), 5.

What emerged in the wake of the eras described by Noble and the *Post-National American Studies* introduction authors (*PNAS* authors) were multiple challenges by various peoples to the “American” experience. These challenges forced the field of American Studies to both rethink its purpose and address difficult questions about its legacy. These challenges also provided a space to think about multiple Americas and multiple American experiences where the borders between race, class, gender, sexuality, language, literature, knowledge, nations, and more were blurred.

This new space in American Studies has, at least conceptually, provided a place where traditionally underrepresented peoples are finding a voice and an audience. According to the *PNAS* authors, “The disciplinary crossroads of American Studies should provide a fertile ground for the growth of various cultural studies, Ethnic Studies, Women’s Studies, and other enterprises which thrive on criticizing the dominant within American society. The perspectives of dominated and excluded classes or groups within America have long helped us to challenge the ideological and nationalist presumptions of American scholarship.”¹⁰⁰ The *PNAS* authors call their approach, which places the non-dominant perspective at the heart of the field, post-nationalist American Studies. “As a critical perspective, post-nationalist American Studies values the work, both recent and historical, of scholars whose concept of the nation and of citizenship has questioned dominant American myths rather than canonized them.”¹⁰¹ This dissertation draws on the insights of post-nationalist American Studies by critically examining constitutionalism as applied in Indian Country.

¹⁰⁰ Ibid. at 11.

¹⁰¹ Ibid. at 3.

Yet, does a post-nationalist American Studies approach embrace a project concerning tribal constitutionalism? As outlined by the *PNAS* authors it would seemingly do so. However, it would also seem that the American Studies community has also required the occasional reminder that Native peoples and their histories, experiences, and legacies are absolutely vital to the reconceptualization of the field. At the 2002 American Studies Association (ASA) annual meeting three Native scholars took on that challenge in their panel, “American (Indian?) Studies: Can ASA Be an Intellectual Home?” American Studies scholar Philip J. Deloria noted the irony of the “progress” of American Studies as it concerned Native peoples and communities; the blurring of theoretical, social, legal, and other borders in the field often runs counter to tribal objectives.¹⁰² Yet, he also noted that no conversation in American Studies is complete without considering the Native experience. “Indian Studies scholars simply must be part of such a conversation, for their absence will make the dialogue painfully inadequate – and not simply on topical grounds. Indian histories, literatures, and anthropologies complicate in epistemological terms even the most sophisticated readings of nation and culture.”¹⁰³ Historian Jean M. O’Brien offered a series of questions that did not merely request that Native peoples and stories be considered, but demanded that they be central to any conception of America and Americanness. “How is it possible to think about this nation without a deep and abiding recognition that its

¹⁰² “Many Native scholars have pointed out that the decentering of the ‘nation’ comes at a particularly inauspicious time for Indian people, who have invested a great deal of political and intellectual energy building a careful argument in courts, Congress, and regulatory agencies that treaty rights and sovereignty rest upon an acknowledgement of themselves as *nations*. Wherever one stands on these debates, they suggest that *American studies* – no matter how broadly conceived or how deconstructionist – is not necessarily a natural home for scholarship concerned with Indian nationhood and motivated by a half-realized dream of political autonomy.” (emphasis in original) Philip J. Deloria, “American Indians, American Studies, and the ASA,” *American Quarterly* 55, no. 4 (2003): 669-80, 672.

¹⁰³ *Ibid.* at 678.

very existence is predicated upon conquest? That its principal task throughout its history has been the erasure of Indians and Indianness? That one of its most long-standing and enduring ‘problems’ has been its inability to complete this colonial mission?”¹⁰⁴ Literary critic Robert Warrior stressed that Native peoples were not only the original inhabitants of the land but the original owners as well. “I continue to believe that American studies as an academic field ought to be more interested in Native American topics, issues of indigenous presence being crucial to coming to grips with the American experience on literally every square inch of this continent and Hawaii.”¹⁰⁵

Native reflection and criticism of American law, policy, philosophy, and other subject matter is not new nor is it exclusive to the academy. However, such reflection and criticism is central to the continuing evolution of the field of American Studies. Studying the tribal “nation,” as noted by the scholars on their ASA panel, is central to the post-nationalist American Studies goal of decentering the nation. This dissertation intervenes into the field of post-national American Studies by examining constitutionalism and constitutionalist thought beyond the federal and state levels and on the tribal level. The promise and the perilousness of a constitution is reflected in the Turtle Mountain experience, as is the agency expressed by tribal peoples and the legacy of the American policy that, at various times, has both encouraged and discouraged tribal governments and constitutionalism.

¹⁰⁴ Jean M. O’Brien, “Why Here? Scholarly Locations for American Indian Studies,” *American Quarterly* 55, no. 4 (2003): 689-96, 690.

¹⁰⁵ Robert Warrior, “A Room of One’s Own at the ASA: An Indigenous Provocation,” *American Quarterly* 55, no. 4 (2003): 681-87, 684-85.

Notes on Sources and Terminology

Sources

In order to step beyond an analysis of tribal constitutionalism that ends with the tribal constitution itself or the American legislation that enabled it, one must also step beyond sources that have been recognized as appropriate for a study of tribal governments. As noted by historian Brenda J. Child, “Publications by the U.S. government, annual reports, and other correspondence that passed between Washington officials...have been indispensable to historians because they outline the broad contours of federal policy, but these documents fall short of being able to explain American Indian points of view.”¹⁰⁶

As Child’s statement suggests, gaining a truer understanding of tribal perspectives does not and cannot require devaluing or neglecting documents written by federal employees that are found in federal archives or repositories. Those sources, she notes, are “indispensable.” Rather, gaining a more accurate depiction of tribal perspectives requires a willingness to seek sources outside of the federal archives or repositories.

Historian Rebecca Kugel, writing about the Ojibwe political situation in Minnesota in the nineteenth century, also notes that finding tribal perspectives is not only a matter of seeking multiple and varied sources, but also of developing an ability and willingness to listen to what those sources have to say. This is especially true for written sources. “An astonishing amount of material can be mined from documents whose purpose was rarely to provide the Ojibwe with a public forum. The written

¹⁰⁶ Brenda J. Child, *Boarding School Seasons: American Indian Families, 1900-1940* (Lincoln, NB and London: University of Nebraska Press, 1998), xii.

record, so often disparaged in Native American history as incapable of presenting the Native view, has proven itself remarkably able and revealing.”¹⁰⁷ Writing about a time of less tribal fluency in the English language, Kugel does note that written sources are not without some troubling aspects. However, she argues, that the problems presented by written sources do not defeat their usefulness. “While their words were nearly always recorded in English translation, a process by which important cultural references were doubtlessly lost, Ojibwe thoughts, perceptions, concerns, and sometimes even their sense of humor emerge clearly.”¹⁰⁸

This dissertation uses several written sources to gain the more tribally-oriented understanding of tribal constitutionalism necessary to more fully understand the history of constitutionalism in Indian Country. This includes “official” sources found at the National Archives and in federal government publications, such as letters from the tribal agent, the early bills in Congress attempting to authorize a tribal lawsuit against the United States, and testimony before Congress regarding termination. The correspondence between federal officials often implicitly, and also often explicitly, reveals the concerns of a tribal community under the supervision of the bureaucrats. Additionally, the scope of Kugel’s work falls within the nineteenth century, while Turtle Mountain constitutionalism and the bulk of the focus of this dissertation occurs within the twentieth and twenty-first centuries. As such, the people of Turtle Mountain grew increasingly proficient in the English language during the time period of this dissertation, and that proficiency is reflected in the sources.

¹⁰⁷ Rebecca Kugel, *To Be The Main Leaders Of Our People: A History of Minnesota Ojibwe Politics, 1825-1898* (East Lansing, MI: Michigan State University Press, 1998), 2.

¹⁰⁸ *Ibid.* at 3.

The National Archives in Washington D.C. provides a wealth of primary documents on Turtle Mountain constitutionalism, particularly during the 1950s. This includes both the “rebel” or “proposed” constitution and the “revised” constitution upon which the community voted in 1959. Also to be found in Washington D.C. are letters from around the country decrying the allegedly communist activities of the “rebel” leadership, a transcription of an ominous meeting between the “rebel” group and bureaucrats in the Department of the Interior, and documents pertaining to the “rebel” group’s dissatisfaction with their own constitution after it had been ratified. Of equal if not greater importance to this project has been the Kansas City Branch of the National Archives. This repository provides much useful information, most particularly concerning the time period surrounding the first tribal constitution in 1932. This includes documentation concerning the dispersal of the tribal community after the McCumber Agreement and the agitation that it caused both for the community and the federal bureaucracy, the first tribal constitution, and the tribal rejection of the IRA in 1935. The Kansas City Branch also contains correspondence that passed through the Superintendent’s office during this critical time, including letters from tribal members and from higher-ranking officials in government to the superintendent and the superintendent’s response to those letters. These letters reflect the various concerns that the Turtle Mountain people were feeling at the time. The tribal claim against the federal government played not only an important (and perhaps dominant) role in Turtle Mountain constitutionalism, it played a role in Turtle Mountain governance as a whole for several decades. Two archives, the Charles “Steve” William Merton Hart Papers housed in the Special Collections of the Wichita State University Library and the Glenn

A. Black Laboratory of Archeology housed at Indiana University, both provide crucial details about the tribal claims against the federal government including the argument made by both sides. The Charles “Steve” William Merton Hart Papers also include various pieces of evidence used by Turtle Mountain. This evidence lends a perspective on the various parties and activities occurring during the time of the McCumber Commission. The Glenn A. Black Laboratory of Archeology provides some of the evidence used by the federal government during the claim. The voices of the tribal community emanate from all of these sources.

Those voices are also reflected in various writings done by tribal members themselves. Beyond the correspondence found in places such as the National Archives, tribal members have produced their own written histories of Turtle Mountain, as noted above.¹⁰⁹ The community was also active in the local press, writing dozens of letters to the editor of the local newspapers. The thoughts, feelings, and words of community members are often recorded in other secondary literature as well.

Newspapers and the insight they provide are crucial assets for this dissertation. While they must be read critically and be subject to challenges by contradictory evidence (as must all sources), newspaper accounts are vital to this project because they provide the immediate response of community members to the problems of the day that are not otherwise available in other sources. Additionally they not only offer the viewpoint of tribal leaders, but also average, everyday community members. This is especially important because it is the average, everyday community member whose

¹⁰⁹ See Aun nish e naubay (Patrick Gourneau), *History of Turtle Mountain*; DeCoteau, *Constitutional Convention*; Delorme, “Socio-Economic Study”; Jerome, *Trail of Misgivings*; LaFountain, “Who I Am”; LaRoque, “1934 Indian Reorganization Act”; Marmon, “Reservation Is No Refuge”; White Weasel, *Pembina and Turtle Mountain* and “Old Wild Rice.”

voice most often is missing from other records. Finally, for some portions of this dissertation newspaper accounts are the most reliable, most neutral source available. They are a record of a community member's statements either in public or to a reporter for public consumption.

One particular newspaper, the *Turtle Mountain Star*, has been an invaluable resource. One of its greatest benefits is its continuity, as it has been published in Rolla, North Dakota, a small town located just outside of the reservation, throughout the entirety of Turtle Mountain's constitutional history. Additionally, it has received a measure of local authority, as it has been voted the newspaper of record for its county throughout this time as well. The proximity of the newspaper's headquarters to the reservation, the small size of the newspaper's distribution and readership, and the relatively high population density of tribal members within the newspaper's distribution range has produced coverage that has been relatively thorough and generally (although not completely) devoid of the usual condescending language and attitudes employed by other media covering tribal communities and peoples during the varied times within the scope of this dissertation. In fact, the *Turtle Mountain Star's* coverage of the community has been award-winning.¹¹⁰

¹¹⁰ In 2003 Suzanne Nadeau, the primary reporter on tribal affairs and the constitutional revision process, won first place for government reporting from the North Dakota Newspaper Association for weekly newspapers with a circulation of 2000 or more (the largest circulation category for weekly newspapers) for her coverage of the ouster of the tribal chairman. Nadeau also won the Rookie Reporter of the Year in 2003, and in 2004 the *Turtle Mountain Star* won an honorable mention for reporting for its coverage of the constitutional vote.

Terminology

For any academic writing in the field of Indian Studies, the issue of terminology can be particularly thorny. Robert F. Berkhofer Jr., explained the problem thirty years ago. “Since the original inhabitants of the Western Hemisphere neither called themselves by a single term nor understood themselves as a collectivity, the idea and the image of the Indian must be a White conception.”¹¹¹ Thus, the descendants of the original inhabitants of the Americas are forced to engage with colonial impositions as it concerns their names for their peoples, communities, and themselves. However, in his particularly lucid discussion on terminology, Wilkins notes that a solution is not easily found by merely referring to tribal peoples as they refer to themselves, as there is often difference to be found there as well (among Wilkins’ examples are Navajo or Diné and Iroquois or Haudenosaunee).¹¹² For this dissertation I have chosen to use the word Native, as opposed to Indian, American Indian, or Native American, when describing that which defines or belongs to the descendants of the original inhabitants of the Americas. I believe that “Native” most fully encapsulates the purpose behind using such a word with less of the problematic consequences of the other words and terms. I use the term Turtle Mountain whenever possible and the word Ojibwe, as opposed to Chippewa, Ojibway, Ojibwa, and Anishinaabe, when referring to the larger tribal collectivity to which the people of Turtle Mountain belong. I use “Ojibwe” because of its relatively common usage and spelling. However, the full name of the community continues to be the Turtle Mountain Band of Chippewa Indians and I use the full name when appropriate.

¹¹¹ Robert F. Berkhofer Jr., *The White Man’s Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1978), 3.

¹¹² Wilkins, *American Indian Politics*, xix-xx

Yet, my voice and my writings are not the only voice nor the only writings that inhabit this story. In any Native history that encompasses two hundred or so years, one is bound to find words and terms that have fallen out of favor in a contemporary context. For example, the record contains several references to “half-breeds.” As a person of mixed ancestry, a mixed-blood if you will, I find the word “half-breed” to be particularly distasteful. Nonetheless, I have done my best not to impose my particular sensibilities on the voices of others and the word “half-breed” and other distasteful words and terms will appear as they appeared in their previous context.

Chapter 1

The Establishment of Turtle Mountain and its Claim

Introduction

The people of the Turtle Mountain Band of Chippewa Indians chose constitutionalism as their governmental structure of their own volition and for their own reasons. However, the tribal desire for a new governmental structure was the product of the disruption of traditional methods of governance by colonial and internal forces. This chapter argues that Turtle Mountain's agreement with the federal government, known as the McCumber Agreement (or the Ten-Cent Treaty), produced the necessary conditions for the community to consider and adopt constitutionalism.

The impetus for seeking out a new model of government was born in the nineteenth century, when the people of Turtle Mountain, consisting of Ojibwe people who had moved from the forests around the Great Lakes to the Plains, Métis people born of the fur trade, and individuals from various other Plains tribal communities, began serious interactions with settlers and the American government. As settlement grew, the community actively sought a treaty with the United States. Many non-Native settlers and government officials argued that the heavily mixed-blood community did not contain "real Indians" and did not deserve to negotiate with the United States. The federal government responded by negotiating with a complicit group of the Turtle Mountain leadership and offering to purchase tribal land for a fraction of what it had offered other Native communities in the area. The end result was a treaty substitute called the McCumber Agreement, which was named after the lead American negotiator, Porter J.

McCumber. The document almost immediately fell into disrepute within the community and the people of Turtle Mountain quickly began seeking a method for exacting a more equitable and honorable result for the loss of their land. That search eventually led to a constitution.

Turtle Mountain constitutionalism begins with the McCumber Agreement and the very origins of Turtle Mountain itself. This chapter will proceed as follows: a discussion of the origins of the Turtle Mountain Band of Chippewa Indians, the establishment and violation of tribal borders, and the tribal negotiations with the federal government.

Early Turtle Mountain History

In order to understand the political disruption at Turtle Mountain, and the community's subsequent decision to accept constitutionalism, it is important to understand the Band's origin, populace, and societal and governmental structure before that disruption.

The tribal genesis

The Turtle Mountain Band of Chippewa Indians came into being in the late eighteenth and early nineteenth century. Older scholarship has argued that the demands of the fur trade depleted resources in the woodlands surrounding the Great Lakes. This forced the increasingly destitute Ojibwe, who were dependent on the goods they received in trade, to move westward to the prairie in what was to become Manitoba and North Dakota to take advantage of the more abundant game and the growing number of trading

posts.¹ More recent scholarship has offered a more diverse set of motivations for the tribal migration. Historian and anthropologist Laura Peers has argued that the fur trade was important to Ojibwe life, but has been misunderstood.² “The Western Ojibwa came into being as a result of complex processes set in motion by the evolving fur trade. They were, however, neither ‘pawns in the game,’ as one scholar has accused their ancestors of being, nor direct products of it.”³ Peers argues several points that consider the westward migration from a more tribally-centered perspective: smaller groups who already lived further west may have come to be identified as Ojibwe by reason of interrelationship and eventual proximity to those who were coming from the east (thus heightening European perceptions that there was a mass migration), trade goods did not overwhelm Ojibwe peoples with their superiority but rather they “corresponded with existing aspects of Ojibwa culture,” European firearms were not as indispensable to Ojibwe peoples as previously believed, many Ojibwe participated in fur trade to obtain status and prestige and not merely as a source of income, many Ojibwe people claimed destituteness or starvation in order to provoke traders into behaving properly within a mutually dependent

¹ Murray, “Turtle Mountain Chippewa,” 15. For examples of this type of argument and discussions of the early trading post history around Pembina see Hickerson, “Genesis,” and Camp, “Plains-Chippewas and Métis.”

² According to Peers, the available sources, trade journals, contribute significantly to prior misunderstandings. “Tracing the first movements of the Ojibwa into the West is made difficult by the nature of the available documentary sources, all of which are fur-trade records. This bias may contribute to an over-emphasis on the fur trade within Ojibwa life at this time; we might do well to remember that, although the fur trade was important to the Ojibwa mentioned in its records, it may not have been as central to their lives as it seems.” Laura Peers, *The Ojibwa of Western Canada, 1780 to 1870* (Winnipeg, MB: University of Manitoba Press, 1994), 27. Another point worthy of note when considering Peers’ work is the overall scope of her book. Although the title of the book ostensibly limits the focus to Canada, the historical time period of the book extends to before there was a clear boundary between the United States and Canada. Additionally, it covers a time when Ojibwe peoples moved freely across what was to become the border. Thus, much of her research and analysis considers what was occurring on both sides of what was to become the border. One review of the work made note of this. “The study is not strictly Canadian in focus but includes pertinent events in the northern borderlands area, including the upper Red River country of present Minnesota, as well as the hills and plains of the Dakotas and upper Missouri River.” Helen Hornbeck Tanner, review of *The Ojibwa of Western Canada, 1780 to 1870*, by Laura Peers, *Ethnohistory* 43 no. 3 (Summer, 1996): 549.

³ Peers, *Ojibwa of Western Canada*, 3.

and reciprocal relationship, and smallpox was also a significantly contributing factor to westward migration.⁴ Peers perhaps best encapsulates her more sophisticated reading of Ojibwe migration in a paragraph that considers the question of Ojibwe peoples' dependency on the fur trade.

In answer to the question of whether the Ojibwa moved west because they were “dependent” on the fur trade...one can reply that the Ojibwa were intertwined with the fur trade, were changed by it, and were to some degree reliant on it; but they were also stimulated by the aspects of it that resonated with their own goals and perceptions of the world. The expansion of the fur trade into the West was for the Ojibwa an opportunity, not a desperate attempt to sustain themselves.⁵

Through her research and analysis, Peers recognizes the choices that Ojibwe peoples made in their westward movement. Ojibwe peoples who migrated, also often referred to as Plains-Ojibwe, were not swept up by the tide of history, as earlier scholarship has suggested, but rather they made decisions of their own volition amongst the options available to them. Turtle Mountain constitutionalism as a whole reflects a similar pattern.

To greater and lesser extents for the various peoples who moved westward, some aspects of Ojibwe lifestyle were altered. Like their new tribal neighbors, Plains-Ojibwe hunted buffalo, lived in tipis, and practiced horsemanship, among other changes.⁶ Yet, these changes were not always as dramatic or profound as previous scholarship has understood. Peers states both that Ojibwe peoples were able to find and create similarities to their woodland lifestyles and that Ojibwe westward migration was less of singular

⁴ Ibid., 5-21.

⁵ Ibid., 14.

⁶ Howard, “Turtle Mountain ‘Chippewa,’” 38. Other changes also occurred. Two noteworthy examples are that soft-soled moccasins were replaced by moccasins with a hard sole. Plains-Ojibwe continued to practice the traditional Ojibwe spiritual activity known as the Midewiwin, however the Plains practice known as the Sun Dance was adopted as well.

event that moved in one direction and more of a gradual, undulating process.⁷

Ultimately, she argues:

Though their way of life changed, in some cases drastically, they were still Ojibwa. Even those bands that adopted “plains” cultural features did so as one dons a new coat, and they retained their older, central core of identity beneath their new way of life.⁸

As it gradually became more pronounced and permanent, the migration to the prairie resulted in two major consequences that would come to affect Turtle Mountain constitutionalism. First, as the Ojibwe presence on the plains grew, so did the Ojibwe claim to an increasingly large territory. In the earliest days of the migration, trade activity found a center at Pembina, located in what was to become northeastern North Dakota. The Ojibwe who congregated at Pembina became known as the Pembina Band.⁹ Yet, while Pembina remained an important center for trade, smaller groups of Plains-Ojibwe began moving and camping even further westward. This led to some fighting with other tribes, most notably the Dakota.¹⁰ By as early as the second decade of the nineteenth century Ojibwe peoples were wintering in the Turtle Mountain area.¹¹ The Turtle Mountain Band emerged from this further migration and suffered several challenges to its claim to its relatively recently established homeland in the late nineteenth century.

Second, tribal demographics began to change at an increased rate. The confluence of

⁷ As it concerns adjusting to a plains lifestyle, Peers notes, “The wooded banks of rivers and isolated stands of timber in the Red River region, for instance, were essentially ‘islands’ of familiar resources within the less-familiar prairie region, so that the Ojibwa were not completely cut off from their familiar environment and resources.” Peers, *Ojibwa of Western Canada*, 28. As it concerns the flow of migration, Peers notes, “What evidence there is for this early period indicates that Ojibwa people did not move westward in an organized, large-scale exodus. Rather the ‘migration’ was a process of extended-family visits to relatives, of invitations to live with more westerly groups, and of traveling in both directions many times.” *Ibid.*, 28.

⁸ *Ibid.*, xi.

⁹ Murray, “Turtle Mountain Chippewa,” 15.

¹⁰ Hickerson provides perhaps the best synopsis of the early fighting between the Ojibwe and the Dakota on the prairie. At first, the Ojibwe were not able to make many inroads into the territory that the Dakota also claimed. However, the tide did eventually turn in the favor of the Ojibwe. Hickerson, “Genesis,” 316-22.

¹¹ Murray, “Turtle Mountain Chippewa,” 16.

Plains-Ojibwe peoples with other plains tribal peoples, Métis peoples, and European traders ensured that the Pembina Band, and thus the Turtle Mountain Band, became rapidly and increasingly heterogeneous.¹² In the future, multiple and various forces would point to the heterogeneity of Turtle Mountain as a reason for arguing against the community's legitimacy and rights.

Plains-Ojibwe socio-political structure

Plains-Ojibwe society was relatively diffuse and horizontal. The Plains-Ojibwe in the early nineteenth century were comprised less of a singular, unified nation than a collection of semi-autonomous smaller groups or bands. According to Historian Melissa Meyer:

Bands usually consisted of a married couple in the prime of life, plus related kin, broadly defined: siblings (the [Ojibwe] reckoned that first cousins were siblings), children (those of siblings as well) and their families, elderly parents or grandparents, aunts and uncles, and friends and associates who were close enough to be considered fictive kin. Bands typically had a stable core of households with more peripheral relatives who drifted in and out.¹³

Some of the bigger bands were associated with specific locations while others were identified by their leadership.¹⁴ The loose confederation amongst the groups allowed a fluidity whereby various individuals or families could move from place to place with relative ease and join or separate from one group to another for their benefit.¹⁵

¹² Patrick Gourneau (also known as Aun nish e naubay), a tribal politician and tribal historian has noted that the Turtle Mountain Band had connections to the Cree, Ottawa, Dakota and Assiniboine as well as other European nations, most notably the French. Aun nish e naubay, *History of Turtle Mountain*, 5.

¹³ Melissa L. Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation* (Lincoln: Bison Books, 1999), 20-21.

¹⁴ Howard, *Plains-Ojibwa*, 58.

¹⁵ Mary Jane Schneider, *North Dakota Indians*, 90.

Turtle Mountain leadership was as fluid and consensual as the rest of the communal tribal society. Anthropologist James H. Howard provides the most concise description of the basic structure of that leadership:

Each Plains-Ojibwa band usually had several chiefs, one of whom was acknowledged to be the head chief. The position on head chief was generally, though not always, hereditary, while a man might become a secondary chief by virtue of a good war record, demonstrated leadership ability, and generosity. Even a head chief, however, was usually only able to maintain his position through his own qualities of leadership and generosity. An incompetent head chief's son soon found himself without a following after his father's death. A head chief usually held his office for life, though he could be deposed by the tribal council.¹⁶

The diffuse nature of Plains-Ojibwe society and governance required several different men at various times to be able to speak for a particular band or collection of groups.¹⁷

As noted by tribal member Roland Marmon in his master's thesis, "Each group or band of hunters became separate units and had their own leaders conduct affairs for the band with the consent of fellow bandmembers. While still recognizing the head chiefs of their home villages, leaders of these small bands were more like petty chiefs fulfilling the role as chief when called upon by the group."¹⁸

Although political power was diffuse and different people might be called to lead during different occasions, the head chief continued to serve an important and centralizing function, particularly as the people of Turtle Mountain came to act as a more consolidated body. Throughout the nineteenth century the role of head chief more or less passed through the hands of one family, with each successive leader adopting the name of

¹⁶ Howard, *Plains-Ojibwa*, 59.

¹⁷ For a brief biographical sketch of some of the Plains-Ojibwe chiefs, particularly those who would influence Turtle Mountain history see White Weasel, *Old Wild Rice*.

¹⁸ Marmon, "Reservation Is No Refuge," 37.

Little Shell (or Little Clam in some of the literature).¹⁹ The Little Shell leaders were renown for their strength and bravery.

The most famous exploit of Little Shell I might also have been the one he may have least wanted to remember. During a fight with Dakota warriors, Little Shell I's favorite son was killed and scalped and a large medal was stolen from the body. Upon realizing the tragedy, Little Shell I rushed toward the Dakota warriors, shot one down, cut off his head, and shook it at the enemies. The sequence of actions turned the tide in the battle and the Ojibwe fought on until the Dakota fled.²⁰

John Tanner, a white captive who lived among the Plains-Ojibwe for several decades around the turn of the nineteenth century, stated that the death of the eldest Little Shell had been foretold. Little Shell extended an invitation to Tanner to accompany the tribal leader to his home encampment near Devils Lake in what is now east central North Dakota. A tribal member and friend of Little Shell, Se-gwun-oons, predicted the death of the tribal leader at Devils Lake. Nonetheless, Se-gwun-oons accompanied his friend to the encampment. Both suffered the same fate. Tanner described Little Shell I's "stout" body as being full of arrows and detailed a grisly scene in which none survived (except one tribal member of dubious courage).²¹ According the Tanner, the tragedy dampened the spirits of the people. "Thus died [Little Shell], the last of the considerable men of his age belonging to the Ojibbeways [sic] of Red River. Our village seemed desolate after the recent loss of so many men."²²

¹⁹ Other Ojibwe bands, including woodland bands, determined their leadership through hereditary channels. However, this was not the only method for determining leadership within the larger Ojibwe collective. Meyer, *White Earth Tragedy*, 22-23.

²⁰ Tanner, *Falcon*, 159-60 and Warren, *History*, 354-55.

²¹ Tanner, *Falcon*, 170-71.

²² *Ibid.*, 171.

The best summation of the early life of Little Shell II is found in the unpublished dissertation of historian John Morrison Shaw. According to Shaw, Black Duck, whose own encampment was a little southeast of Devils Lake, assumed the leadership role upon the elder Little Shell's death in 1808.²³ By 1815 Little Shell II was able to shoulder the mantle of leadership for the community.²⁴ Little Shell II played a part in the treaty history of the Ojibwe in the middle of the nineteenth century. His son, Little Shell III, played an integral role in the establishment of the Turtle Mountain reservation and the early pursuit of a tribal claim against the federal government. Each will receive more attention later in this chapter.

Métis influences

By the end of the nineteenth century, Métis concerns and population represented a dominant portion of the Turtle Mountain community. Their incorporation into Turtle Mountain had several effects, some more positive than others. The most negative impact was to provide a platform for those who argued that the community was not truly "Indian"; an argument that the community faced many times in the nineteenth century and well into the twentieth century. In order to understand the effect that the Métis had on Turtle Mountain, it is important to understand some of the early history of the Métis on the prairie.

The history of intermarriage amongst Native peoples (particularly Native women) and colonial peoples (particularly the French) and its effects on the fur trade and the development of the North American continent has a long history that reaches much

²³ Shaw, "In Order That Justice," 68.

²⁴ *Ibid.*, 77.

further back than the beginning of Turtle Mountain.²⁵ One of the most important consequences of this interaction was the development of a new society of people, the Métis, who were neither exclusively Native nor exclusively European, but rather a mixture of the many cultures that came together during the colonial period.²⁶ Defined by others as much by who they were not as by who they were, the Métis saw themselves as a distinct people with their own heritage, including a strong adherence to Catholicism and a unique brand of fiddle music.²⁷ The growing fur trade in the Pembina area was a draw to Métis people who made their way to the northern plains in greater numbers, made permanent homes on the prairie, and brought their culture with them.²⁸ Yet, they did not stay exclusively to themselves. Repeating a pattern that echoed their own genesis, the

²⁵ For a general history concerning this intermarriage and the relationship between tribal nations and colonial powers see Susan Sleeper-Smith *Indian Women and French Men: Rethinking Cultural Encounter in the Western Great Lakes* Amherst, MA: University of Massachusetts Press, 2001) and Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991).

²⁶ For a general history of the development of the Métis people, see Jacqueline Peterson and Jennifer S. Brown, eds., *The New Peoples: Being and Becoming Métis in North America* (St. Paul: Minnesota Historical Society Press, 2001). The Métis have had their own particular history in relationship to the colonizing nations of North America. While the designation or category of “Métis” is largely ignored or unknown in the United States, it carries its own legal distinction in Canada. In Canada, Métis peoples are recognized as a separate category of indigenous peoples who hold many of the same rights as Native peoples in that country.

²⁷ Other aspects of Métis culture deserve attention. Métis governance, much like Métis society, language, and other aspects of culture, blended Native and European understandings. The Métis social structure, according to one commentator, was, “inspired by elements of native Plains tradition such as elected chiefs, communal rights (*droits des gens*), and restitutive justice.” Diane Paulette Payment, “Plains Métis,” *Handbook of North American Indians*, vol. 13, part 1, *Plains* (Washington D.C.: Smithsonian Institution, 2001), 664. The greatest need for the most structure occurred during the buffalo hunts. During these times and a leader, known as the *governor*, and a soldier society, known as *les soldats*, were elected by the people to lead the hunt. The *governor* and *les soldats* decided upon and enforced various punishments and decisions for the group. Dusenberry, “Waiting For a Day,” 29. The language was also unique. “An important feature of Métis culture was the emergence of a distinct composite language. Michif (or Mitchif) was based primarily on Plains Cree and Canadian French with a distinctive [Ojibwe] element.” Payment, “Plains Métis,” 661.

²⁸ Murray, “Turtle Mountain Chippewa,” 16.

Métis intermarried and adapted to a plains way of life. Eventually, the Métis connection to the area grew strong enough that they claimed their own rights to the land.²⁹

The bonds between the Métis and the Plains-Ojibwe grew throughout the nineteenth century and Pembina became a focal point of that connection.³⁰ The confluence of Ojibwe, European, and Métis peoples as well as members of other tribes at Pembina created yet another space in colonial territory where Native peoples and interests were not just important but vital to the interests of all involved.³¹ The Plains-Ojibwe and Métis hunted buffalo together, which was advantageous considering the enmity other plains tribes felt toward the groups. Ojibwe peoples came to more greatly depend on their Métis neighbors and relatives as economic and cultural brokers. The Métis often served as interpreters and in other capacities that necessitated a knowledge of the multiple communities on the prairie.³² The Métis, for their part, depended on their Ojibwe neighbors and relatives for furs for trade. They would also often winter with their Ojibwe neighbors and relatives, having made bonds that ran deeper than those created during commerce.³³

Yet, there was conflict as well. Unsurprisingly, the buffalo herds and the buffalo hunt, the most important economic resource and activity in the area, were the cause of the

²⁹ Murray, writing about the genesis of the Turtle Mountain Band, stated, “As they increased in number to more than 5,000 by 1850, the Métis became a ‘new nation’ and the predominate group in the entire northern plains region. Equally as important, before 1820 the mixed-bloods had been encouraged to consider themselves as the true owner’s of ‘Rupert’s Land,’ that part of the prairie-plains granted to the Hudson’s Bay Company in its charter. They accepted this interpretation and were to express it at crucial times over the next half-century.” Ibid.

³⁰ Ibid., 15.

³¹ Legal scholar Robert A. Williams Jr. has noted that these places were common on the North American continent during the treaty period. “The new, heterogeneous, ‘modern’ society being generated from the expanding forces of the European world trading system required Indian cooperation. As opposed to being stubborn, ‘savage’ barriers to expansion, Indians now begin to emerge as active, sophisticated facilitators on a multicultural frontier.” Robert A. Williams Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Routledge, 1999), 29-30.

³² Meyer, *White Earth Tragedy*, 28-35.

³³ Murray, “Turtle Mountain Chippewa,” 18-19.

most friction. In the early 1850s one Plains-Ojibwe chief, Green Setting Feather, made his discontent known to an Office of Indian Affairs (the OIA was the progenitor of the Bureau of Indian Affairs) official:

In times past, whenever I looked over my hunting grounds, I found plenty with which to fill my dish, and plenty to give my children; but of late it is not so. I find that my provision bag is fast emptying – my dish is now often empty; and what is the cause of this? Why was it not so in former times when their [sic] were more Indians on the plains than there are now? The reason is this: it is none other but the children I once raised, the first [which] proceeded from my own loins, that were once fed from my own hands, [this] child is the half-breed.

The manner of his hunt is such not only to kill, but also to drive away the few he leaves, and to waste even those he kills. I also find that this same child, in the stead of being a help to me, his parent, is the very one to pillage from me the very dish out of which I once fed and raised him when a little child...It is my own I am looking at; I only wish to be master, and do as I please with what is my own. I now say, I hold back, and love all the Turtle Mountain.³⁴

Green Setting Feather went on to delineate the Turtle Mountain area as Plains-Ojibwe territory and Pembina as the region for Métis peoples. Any intrusion into Plains-Ojibwe territory would result in punishment. “Now whatever half-breed goes against this, our law shall pay a fine, a horse; and a half-breed having an Indian mother full blooded, wishing to spend the winter with us, may come; but he shall not be allowed to hunt [but] where we shall tell him.”³⁵

Despite this occasionally acrimonious relationship, the fates of the two peoples became inexorably intertwined. Particularly in the second half the nineteenth century, the Métis population at Turtle Mountain grew at a much larger rate than that of the full-blood

³⁴ *Annual Report to the Commissioner of Indian Affairs for 1854* (Washington: Government Printing Office, 1865) 190-91. Quoted in Camp, “Plains-Chippewas and Métis,” 73.

³⁵ *Ibid.* Quoted in Camp, “Plains-Chippewas and Métis,” 74.

population. As such, Métis influence within the community grew. As will be discussed later in this chapter, by the end of the nineteenth century, that influence dramatically affected the leadership structure at Turtle Mountain.

Establishing Boundaries

The early treaty history

By the 1820s, Turtle Mountain was a distinct sub-band of the Pembina band. By mid-1800s Turtle Mountain claimed both a territory of its own and independence from the Pembina Band. The American violation of that territory was a significant contributing factor to Turtle Mountain's eventual decision to adopt constitutionalism. A series of treaties contributed to both defining Turtle Mountain territory and establishing the community as its own distinct band of the larger Ojibwe collective.

The earliest treaty that was to have an effect on Turtle Mountain did not involve any Native participation at all. The Convention of 1818, among other things, separated American and British claims on the American continent by the forty-ninth parallel.³⁶ This new border cut through the heart of Plains-Ojibwe territory and eventually caused a host of legal and jurisdictional issues for the people of Turtle Mountain by creating two different classes of Turtle Mountain community members: those who were "American" and those who were "Canadian." American federal bureaucrats and negotiators sought to make that distinction as rigid as possible in future dealings with the Turtle Mountain people.

³⁶ "Convention with Great Britain," 20 October 1818, *Stats at Large of USA* 8 (1862): 248.

The Treaty of Prairie du Chien of 1825 called together several tribes and the United States to establish the boundaries between governments.³⁷ While the treaty did demarcate tribal lands, it only extended the boundary line between the Ojibwe and the Dakota from the east to the Red River (the eventual border between North Dakota and Minnesota). The Pembina Band, and consequently the Turtle Mountain Band, who resided west of the river, were not directly affected by the territorial demarcations. Yet, the negotiations at the Treaty of Prairie du Chien resulted in another agreement that did directly affect Ojibwes and Dakotas west of the Red River.

During negotiations of the Prairie du Chien Treaty, Ojibwe and Dakota leaders made a separate agreement amongst themselves that extended the Prairie du Chien boundary line into what was to become North Dakota; this separate agreement was known as the Sweet Corn Treaty. It was a written document that generally escaped the attention of federal negotiators at the time, but came to the attention of the American government in a subsequent 1867 treaty with the Dakota.³⁸ In their 1867 negotiations, Dakota leaders reconfirmed their commitment to the Sweet Corn Treaty and the boundaries set forth.³⁹ Turtle Mountain attorneys in the twentieth century used the 1867 Dakota treaty to indirectly establish the boundaries of Turtle Mountain territory in its claim against the United States.⁴⁰

³⁷ “Treaty with the Sioux and Chippewa, Sax and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, and Potawatommie, Tribes,” 19 August 1825, *Stats at Large of USA* 7 (1846): 272.

³⁸ “Treaty Between the United States of America and the Sissiton [sic] and Warpeton [sic] Bands of Dakota or Sioux Indians,” 18 February 1867, *Stats at Large of USA* 15 (1869): 505. For a discussion of when and how the Sweet Corn Treaty was negotiated, see Shaw, “In Order That Justice,” 110-12.

³⁹ *Agreement between Turtle Mountain band of Chippewa Indians and Commission appointed to negotiate with Indians for cession and relinquishment to United States of all lands claimed in North Dakota*, 52nd Cong., 2d sess., 1893, H. Exec. Doc. No. 229, serial 3105, 19-20. See also White Weasel, *Pembina and Turtle Mountain*, 104.

⁴⁰ The claim and its litigation will be discussed in greater depth in chapters 3 and 4.

In mid-century, the negotiations for an unratified treaty helped to legitimize and distinguish Turtle Mountain's leader. In 1851 the federal government appointed Minnesota Territorial Governor Alexander Ramsey as the lead negotiator for a treaty for the acquisition of land in the Red River Valley. An agreement was reached, but the 1851 treaty was never ratified by Congress and did not become law. Nonetheless, the negotiations were meaningful for Turtle Mountain. As the leader of the Turtle Mountain band, an ever-growing subset of the Pembina band, Little Shell II was able to make a name for himself within the larger Pembina community. Ojibwe historian William Warren, writing in the early 1850s, made note of him in his history. "Weesh-e-da-mo [Little Shell II], son of Aissance (Little Clam), late British Ojibway chief of Red River...is a young man, but has already received two American medals, one from the hands of a colonel of our army, and the other from the hands of the Governor of Minnesota Territory. He is recognized by our government as chief of the Pembina section of the Ojibway tribe."⁴¹ Little Shell II's ascension into a place of prominence was an indication of the Turtle Mountain Band's development as both an important participant in tribal-federal affairs and the growing differentiation between the Turtle Mountain and Pembina bands.

Another mid-century treaty marked the final separation of the Turtle Mountain Band from the Pembina band. In 1863 Ramsey, now a senator, was again charged by the federal government with the task of negotiating a treaty for the lands of Ojibwe peoples. Ramsey and the Red Lake contingent of Ojibwe arrived at the treating grounds on the same day in September at the Old Crossing site in west central Minnesota. The next day, Little Shell II brought over a thousand people with him to the negotiation site. The people

⁴¹ Warren, *History*, 47-48.

who followed Little Shell II reflected the demographics and interconnectedness of interests involved in the negotiations. Historian Stanley N. Murray noted, “Of the 1015 Pembina and Turtle Mountain people who gathered at the Old Crossing Treaty site near present-day Crookston, Minnesota, 663 were Métis and only 352 were full-blooded Chippewa.”⁴² Ramsey was clearly displeased with the enormity of the party that arrived, stating that such a large group, “was not expected or desired at all.”⁴³ Ramsey’s elaborations on the situation suggest contemptuousness on his part, presumably for having to negotiate with and provide for so many extra people. “I had explicitly instructed the messengers sent to summon the Indians to the rendezvous, that I desired the attendance only of their chiefs and principal men – though it was hardly expected this injunction would prevent the Indians from bringing their families.”⁴⁴

Despite Ramsey’s discontent, an agreement was reached after nine days of negotiation. The Old Crossing Treaty of 1863 both ceded approximately eleven million acres in the Red River Valley and established reservations at Red Lake and White Earth, Minnesota.⁴⁵ The treaty did not create a reservation in the Turtle Mountain region. The federal expectation was that the Pembina Band would move to the White Earth Reservation.⁴⁶

⁴² Murray, “Turtle Mountain Chippewa,” 19.

⁴³ *Message of the President of the United States Transmitting a Treaty between the United States and Chiefs, Headmen, and Warriors of Red Lake and Pembina Bands of Chippewa Indians, Concluded on the 2d of October 1863*, 38th Cong. , 1st Sess., 1863 [confidential], 7. (Found at Minnesota Historical Society, Reserve Call #: E151 .R35 v.2:26)

⁴⁴ Ibid.

⁴⁵ “Treaty Between the United States and the Red Lake and Pembina Bands of Chippewa Indians,” 2 October 1863, *Stats at Large of USA* 13 (1866): 667.

⁴⁶ Camp, “Plains-Chippewas and Métis,” 102-03.

Despite the favorable terms for the United States, the Senate decided to amend the treaty a year later in 1864.⁴⁷ Several of the benefits that the Pembina and Red Lake Bands had negotiated were changed. The money was rearranged so that more would arrive in the form of goods and less in per capita payments. Additionally, the payment period was reduced from twenty years to fifteen. The Métis, whose representation in the 1863 Treaty was great, suffered from a lack of that representation when the 1864 Treaty was signed in Washington D.C.⁴⁸

The two Old Crossing Treaties of 1863 and 1864 ceded almost eleven million acres in northwestern Minnesota and in the Dakota Territory to the United States, a large portion of which was the domain of the Pembina Band. The White Earth Reservation, located in west central Minnesota, was supposed to be an oasis where Ojibwe peoples would finally assimilate into an American way of life.⁴⁹ Although another Pembina chief, Red Bear, did sign both versions of the treaty, Little Shell II only signed the earlier version. While the federal government may have intended that the totality of the Pembina Band would relocate to Minnesota, Little Shell II and his followers were not prepared to leave the Turtle Mountain region. Prior to the Old Crossing Treaties the Turtle Mountain Band was still politically, if perhaps less so practically, a sub-band of the Pembina Band. After the treaties the Little Shell leadership and its followers exerted their rights as an independent band of the larger Ojibwe community and fought for the establishment of their own reservation. In fact, the Turtle Mountain Band came to see the Old Crossing Treaties and land cession as the final severance of their political connection to the larger

⁴⁷ “Supplementary Articles to the Treaty between the United States and the Red Lake and Pembina Bands of Chippewa Indians,” 12 April 1864, *Stats at Large of USA* 13 (1866): 689.

⁴⁸ Camp, “Plains-Chippewas and Métis,” 104.

⁴⁹ Meyer, *The White Earth Tragedy*, 1.

Pembina Band.⁵⁰ Around two hundred members of the Pembina Band made their way to the Minnesota reservation. Yet, people of the Turtle Mountain Band were less willing to do so.⁵¹

American policy

There may not have been a worse time in American history for Turtle Mountain to seek to exert its independence and autonomy. By the 1870s, the federal government was setting the foundation for a policy era that intended to destroy tribalism, reduce tribal land holdings, and assimilate tribal peoples into a Western worldview and way of life. By the end of the nineteenth century, tribal peoples across the United States were caught in the middle of the arguably the most destructive period of federal Indian policy in all of American history: the Allotment Era. Turtle Mountain efforts to gain recognition of the community's homeland were hampered by the policy era.

The most significant piece of federal legislation during this era was the Allotment Act, enacted in 1887. Also called the Dawes Act in recognition of its sponsor, Massachusetts Senator Henry Dawes, the Allotment Act sought to accomplish two main goals: to assimilate Native people into American society by making them individual landholders and farmers, and to open so-called "surplus" reservation land to white settlement.⁵² The law allowed the President to commission surveys of reservations for the purpose of allotting specific sections to individuals. If the land was suitable for

⁵⁰ Hesketh, *State Historical Society*, 111.

⁵¹ Murray, "Turtle Mountain Chippewa," 21.

⁵² For a thorough analysis of the Allotment Act, its supporters, its effect on federal policy, and the consequences of the legislation for Native peoples see Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln, NB: University of Nebraska Press, 1984; New York: Cambridge University Press, 1997). Citations are to the Cambridge edition.

farming then heads of households were to receive 160 acres, single persons over eighteen and orphans under eighteen were to receive 80 acres, and single persons under eighteen were to receive 40 acres. If the land was only suitable for grazing the acreage was doubled. The federal government was to hold the allotments in trust for twenty-five years, after which the Native allottee gained title to the land in fee simple. Once a Native allottee gained title to the land in fee simple, she or he was to become a United States citizen. If Native individuals did not choose an allotment for themselves, the tribal agent was authorized to choose an allotment for them. Once the members of a tribe received their allotments, the federal government was authorized to negotiate for the “surplus” lands of the reservation for the purpose of selling it to non-Natives.⁵³ The Allotment Act was unevenly applied in Indian Country and underwent changes during the nearly fifty years that it guided American policy. However, none of the changes were significant enough to stem its assimilationist purpose or its dramatic consequences.

Yet, the Allotment Act was not the only piece of legislation to shape the times, and in fact it was not even the first. In 1871 Congress attached a rider to an appropriations bill that stated, “Hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty.”⁵⁴ The law did not affect the status of existing treaties.⁵⁵ Regardless, the small rider, which was attached to a much

⁵³ Francis Paul Prucha. *The Great Father: The United States Government and the American Indians* (Lincoln, NB: University of Nebraska Press, 1984), 667-69.

⁵⁴ *An Act: Making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirty, eighteen hundred and seventy-two, and for other purposes, Stats at Large of USA 16 (1871): 566, now codified at “Future Treaties with Indian Tribes,” U.S. Code 42 (2006), § 71.*

⁵⁵ *Ibid.*

larger appropriations bill, declared that the federal government no longer considered tribes worthy of treating with.

It is possible to read the rider as the consequence of an American political spat. According to the 2005 edition of the Cohen Handbook, “Members of the House of Representatives resented the power the Senate wielded over Indian relations because of the Senate’s constitutional responsibility to ratify treaties.”⁵⁶ Additionally, it had little immediate impact, as the federal government continued to negotiate with tribes and continued to enact “agreements” – treaty substitutes that were passed by both houses of Congress – for years to come.

Nonetheless, it is more accurate to read the rider as the beginning of an era of unprecedented Congressional authority over tribes and tribal peoples. Political Scientist David Wilkins has stated, “The fact is that this action signaled a significant shift in indigenous-federal relations, as an emboldened Congress now frequently acted unilaterally to suspend or curtail Indian rights, including treaty rights, when it suited the government’s purpose.”⁵⁷ Other legislation also adversely affected tribal sovereignty.⁵⁸ The Allotment Era was also made possible by a complicit Supreme Court. In decisions such as *United States v. Kagama*, *Lone Wolf v. Hitchcock*, and *United States v. Sandoval*, the Supreme Court refused to place any limit on the authority that Congress exercised over Native peoples and tribes.⁵⁹

⁵⁶ Nell Jessup Newton, Editor-in-Chief. *Cohen’s Handbook of Federal Indian Law*, 2005 ed. (Newark, NJ: LexisNexis, 2005), 74.

⁵⁷ Wilkins, *American Indian Politics*, 116.

⁵⁸ Another notable piece of legislation was the Major Crimes Act of 1885. Through this law, the United States assumed jurisdiction over certain crimes committed by Native peoples in Indian Country. *Major Crimes Act*, Public Law 47-341, *U.S. Statutes at Large* 23 (1885): 385, codified at *U.S. Code* 18 (2006), § 1153.

⁵⁹ *United States v. Kagama*, 118 U.S. 375 (1886). *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *United States v. Sandoval*, 231 U.S. 28 (1913).

The consequences of the expansive view of Congressional authority over Native peoples and tribes in the Allotment Era was devastating. During this time, tribes not only lost political clout, they lost over 90 million acres of tribal land.⁶⁰ Additionally, federal policy targeted the social aspects as well as the political aspects of tribalism. Congress reached directly into tribal homes, removed children from their families, and sent them to boarding schools that were often significant distances from the home.⁶¹ According to historian David Wallace Adams, “The boarding school, whether on or off the reservation, was the institutional manifestation of the government’s determination to completely restructure the Indians’ minds and personalities.”⁶² Children were beaten for speaking their tribal language and were forced to wear Western-style clothes and eat unfamiliar foods that made many sick. Running away was a common occurrence and many children fell seriously ill and died in the schools. The effects of these policies continue to be felt in Native communities yet today. The full-fledged federal assault on the tribal lifestyle and worldview, fueled by nearly limitless Congressional authority and arrogance, meant that Turtle Mountain would run into major difficulties in seeking a fair negotiation with the United States.

Looking to secure a homeland

When the 1851 treaty went without ratification, the Plains-Ojibwe and the Métis began what became a longstanding pattern of seeking out a negotiation with American

⁶⁰ Newton, *Cohen Handbook*, 78-79.

⁶¹ *Ibid.*, 81-82.

⁶² David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence, KS: University Press of Kansas, 1995), 97. Adams provides a thorough study of boarding schools.

officials. They sent Father George Antoine Belcourt, a Catholic priest who had been working in the northern plains since the early 1830s, to Washington D.C. on their behalf to seek another treaty.⁶³ It was the first of many trips for representatives of the Turtle Mountain people to the American capital to argue their position.

Not long after the negotiations for the Old Crossing Treaty, the people of Turtle Mountain again began to clamor for their own reservation. The community sent another delegation to Washington D.C. in 1874. The trip was destined to be fruitless because of differing health issues of varying severity. The most serious issue was the passing of Little Shell II. The loss of the head chief essentially precluded the possibility of a settled negotiation. Nonetheless, a delegation did make its way to the American capital. The *New York Times* noted that the nine leaders who made the trip had a meeting with the Commissioner of Indian Affairs on November 21st to discuss possible land cessions, however, “they begged to be excused from a discussion of the subject at present, on the ground that they all had bad head colds, and couldn’t talk today.”⁶⁴

In 1875 Little Shell II’s son, subsequently named Little Shell III, assumed the mantle of leadership. Not long thereafter the Band both began rejecting annuities from the Old Crossing Treaties, undoubtedly to disassociate themselves with any obligation under the treaty that others were trying to attach to them, and it sent another delegation to Washington D.C.⁶⁵ The 1876 delegation was able to win at least one concession from the federal government. On April 6, 1876 Congress passed a Joint Resolution that stated that the United States recognized that the Turtle Mountain Band held Indian title over the

⁶³ Shaw, “In Order That Justice,” 137.

⁶⁴ “Washington Notes. Chippewa Indians in Consultation with the Commissioner of Indian Affairs,” *New York Times*, November 22, 1874.

⁶⁵ Murray, “Turtle Mountain Chippewa,” 21.

lands that they claimed.⁶⁶ Nonetheless, this effort, like previous efforts, was not successful in securing a reservation for the people of Turtle Mountain. A Senate bill authorizing a reservation did not pass.⁶⁷

Tribal members also made attempts a little closer to home in their efforts to secure a reservation. Without their own reservation, the people of Turtle Mountain appealed to the agent at the Devils Lake Sioux agency, James McLaughlin. McLaughlin clearly made a promise to aid the Turtle Mountain cause because in 1880 representatives of both full-blood and Métis, or mixed-blood, interests wrote to the agent looking capitalize on that promise. Early in their letter full-blood and mixed-blood representatives stated that, “We gladly accept the kind offer you made us – in saying that you will write to the Department of the Interior, to the Commissioner of Indian Affairs – and that you will work on our behalf and to the best of our interest.”⁶⁸

The letter echoed two themes that would continue to be prevalent in Turtle Mountain communications with the United States government: The first was a claim to the land and a willingness to cede some of the land. The letter to McLaughlin noted, “After consulting with each other in this our assembly we have thought it proper to make our Great Father know that we wish to surrender the tract of land that we claim which has not yet been ceded to the United States Government, it has always been recognized as belonging to the Turtle Mountain band of Chippewas and Mixed bloods, etc.”⁶⁹

The second theme in the growing communications between the two governments was the tribal desire for a reservation within tribal territory. The delegation explained

⁶⁶ Shaw, “In Order That Justice,” 255-56.

⁶⁷ *Ibid.*, 273.

⁶⁸ “Letter to Jas. McLaughlin,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁶⁹ *Ibid.*

why they sought both a buyer and a guarantee of a reservation from the federal government. “The reason why we ask our Great Father to buy our right of land in this land is because the White people are trespassing on our land – they are taking possession of it.”⁷⁰ The letter writers, who identified themselves as representing approximately 1300 families within the claimed territory, also complained of white settlers taking valuable timber resources and of Canadian settlers also encroaching on tribal lands and taking tribal resources. The letter ended with an appeal for aid in a growingly desperate situation. “Now after setting forth our grievances and the way that the whites are treating us, and our country is being ruined, all the chase is gone, we are living miserably – we hope that our Great Father who is good and just will do something to protect and help us this is all we have to ask for the present.”⁷¹ Regardless of this more localized appeal to McLaughlin, direct action on a reservation by the federal government would be stalled for another two years.

The pressures of settlement in the last three decades of the nineteenth century became more and more unbearable for the people of Turtle Mountain. Immigration to Dakota Territory boomed in the late 1870s and early 1880s with about 100,000 settlers making their way to the prairie during that time.⁷² The Métis population also increased dramatically. First in Manitoba in 1869 and then in Saskatchewan in 1885, Métis peoples, led by Louis Riel, engaged in armed conflict with the Canadian government. The Métis were unhappy with the lack of recognition for their land claims and the discrimination they faced as Catholics and French-speakers from Protestant, English-speaking Canadian officials. Both incidents of resistance met with defeat and many Métis people sought

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Shaw, “In Order That Justice,” 266.

refuge with friends and relatives on the American side of the border.⁷³ The increased population took their toll on the buffalo herds, as did the slaughter of animals perpetrated by non-Natives who were hunting either for sport or to deliberately diminish tribal food supplies. By the early 1880s they were almost hunted to extinction.⁷⁴ The increased pressures spurred the people of Turtle Mountain to further action toward a reservation, despite their prior failures.

Two happenings, the hiring of attorney John B. Bottineau in 1876 and the events of the summer of 1882, crystallized the Turtle Mountain efforts to secure their own reservation in their homeland. It is unclear exactly who hired Bottineau on behalf of Turtle Mountain, however Bottineau's strong association with Little Shell III suggests that Little Shell III made the decision or quickly endorsed it once it was made. Bottineau was Métis and had received scrip under the Old Crossing Treaties.⁷⁵ In fact, the Bottineau family had long had associations with the Turtle Mountain people and the events surrounding Pembina.⁷⁶ John B. Bottineau ended up arguing on behalf of Turtle Mountain in both Washington D.C. and in North Dakota for decades. During this time he became a controversial figure within the community.

Bottineau began his long professional association with the Turtle Mountain Band in 1878 with a fifteen page letter to the Secretary of the Interior. The letter made a plea to the Secretary to once again recognize Turtle Mountain claims. "The majority of them are now a struggling wretched, houseless people, and are a constant annoyance to the settlers

⁷³ Dusenberry, "Waiting For a Day," 31-32.

⁷⁴ Prucha. *Great Father*, 561.

⁷⁵ "Half Breed Scrip," Maquah Publications, <http://www.maquah.net/Historical/Scrip/B.html> (accessed May 21, 2008).

⁷⁶ Shaw, "'In Order That Justice,'" 273.

of northern Minnesota and Dakota.”⁷⁷ Bottineau also noted that removal to White Earth was not an option, as the people of Turtle Mountain did not want to relinquish their claim to their prairie homeland. Despite Bottineau’s appeal, the federal government once again failed to act on Turtle Mountain’s request. The situation only grew more bleak when the federal government opened United States Land Office at Devils Lake in 1880.

Local bureaucrats and politicians of the area often stood in the way of tribal efforts. In September of 1880, C.A. Ruffee, the Indian Agent at the White Earth Reservation, wrote to the Commissioner of Indian Affairs stating his position that the people of Turtle Mountain were merely an extension of the Pembina Band. Ruffee also did not paint a particularly flattering portrait of tribal members, especially in comparison to the alternative. “[The Turtle Mountain] Indians refered [sic] to in your communication prefer to roam at will begging for a livelihood living in Wigwams a drunken lot, this they prefer to a comfortable life at White Earth reservation which would entail upon them Industry and hard work.”⁷⁸ Richard Franklin Pettigrew, Dakota Territory representative to Congress from 1881 to 1883, also worked contrary to the desires of the people of Turtle Mountain and for removal for the Band to White Earth. In May of 1881 Pettigrew wrote a letter to the Commissioner of Indian Affairs that denied the tribal claim to the land. “These Indians do not cultivate the soil but live by hunting and fishing and have resided where they now reside a part of the time since 1863. These Indians never owned this country. They belong to the Red Lake and Pembina tribes of Chippewa who resided

⁷⁷ Jno. B. Bottineau, “Will the Government Recognize Their Claim and Provide for Them?” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁷⁸ Ruffee, C.A., “Letter to the Commissioner of Indian Affairs. Sep. 14, 1880,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

in the valley on the Red River and around Red Lake Minnesota.”⁷⁹ Pettigrew stated that the country should be open to settlement and not held up by, “a few thieving vagabonds.”⁸⁰ In March of 1882 the Grand Forks Chamber of Commerce (Grand Forks is a city on the northeastern edge of North Dakota), through a letter of remonstrance, let their feelings be known about the possibility of a settlement for the land claims of the Turtle Mountain Band. The Chamber of Commerce was also dubious as to the nature of Turtle Mountain’s claim to the land and to the number and makeup of the people making the claim. “The Indian title of occupation is confessedly of the most flimsy character, but is made a cover for throwing the whole vast region open to speculative purchase instead of actual settlement. The Indian occupants number about 250, all told, including their White and half-breed associates.”⁸¹ Using particularly florid language, the Chamber of Commerce framed the issue as a violation of the rights of, “hardy pioneers and industrious workingmens,” and begged Congress, “In the interest of justice and equal rights, and in behalf of the toiling millions who are looking to our fair land for a home, and in behalf of the brave settlers who are enduring the hardships of frontier life on the treeless prairies,” to open the land for settlement.⁸²

In May of 1882 Pettigrew took another stab at trying to kill Turtle Mountain claims to the lands, this time going over the head of the Commissioner of Indian Affairs and writing directly to the Secretary of the Interior. Pettigrew’s letter to the Secretary of the Interior was filled with harsher language and contradicted the letter he had sent to the

⁷⁹ Richard Franklin Pettigrew, “Letter to the Commissioner of Indian Affairs. May 2, 1881,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁸⁰ Ibid.

⁸¹ Grand Forks Chamber of Commerce, “Proposed Amendment Regarding the Disposition of the Pembina Reservation,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁸² Ibid.

Commissioner of Indian Affairs almost exactly a year earlier. In the 1881 letter to the Commissioner of Indian Affairs, Pettigrew stated that the land claimed by the Turtle Mountain Band was not owned by them because if it was owned by any tribe it was the Assiniboine.⁸³ One year later in his letter to the Secretary of the Interior he claimed that the land had been owned and ceded by the Dakota.⁸⁴ Like in his previous letter, and also like the Grand Forks Chamber of Commerce, Pettigrew stated that there were only 250 people who made up the Turtle Mountain Band; although, according to Pettigrew they were a particularly fierce collection of folks. “These two hundred and fifty Indians are well armed, and subsist by stealing, and by robbing settlers and travelers, and should be immediately disarmed and removed to the White Earth Reservation in Minnesota.”⁸⁵

As the prairie heated up during the summer months of 1882 so did tensions between Turtle Mountain peoples and the settlers flooding into tribal lands. In late June a group of settlers crossed south from Canada and attempted to settle. By mid-July Little Shell III, who had been living in Manitoba at the time, returned to the American side of the border to confront the settlers and to tell them they had to move from the area.⁸⁶ By the end of July there was enough trouble brewing on the northern plains that the *New York Times* took notice. The *Times* framed the issue as one where the Turtle Mountain people were not only the source of the conflict, but that they also failed to obey the law concerning the border.⁸⁷ As reported by the *Times*, the late July meeting between the customs agent and Little Shell III was simple and provided clarity not only as to each

⁸³ Pettigrew, May 2, 1881, Hart Papers.

⁸⁴ Richard Franklin Pettigrew, “Letter to Hon. Henry M. Teller. May 1, 1882,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁸⁵ Ibid.

⁸⁶ Hesketh, *State Historical Society*, 119.

⁸⁷ “The Turtle Mountain Indians: They refuse to pay custom duties and threaten to make trouble.” *New York Times*. July 27, 1882.

governmental representative's point of view, but the lack of common ground on which to forge any discussion:

A meeting was held by Little Shell and [customs agent] McCullum was invited. He went and found 200 half-breeds present. He was asked to state his business, and fully explained the Customs laws through an interpreter, and requested all who moved into the United States to call on him and pay their duties if any were due. Chief Little Shell extended his hand and answered, "There are all my lands and these are my people. They shall pay no duties and respect no Customs officers. I have as many more children across the line, and I shall bring them all over. We recognize no boundary line, and shall pass as we please." The Deputy told him he had no more to say. He could only make his report, and if anything unpleasant happened he should not be to blame... Mr. McCullum was told that he was included with those who must leave the reservation. At least 75 half-breeds have moved over, and all but 10, who have paid, are determined to resist to the last. Military interference seems necessary."⁸⁸

The settlers who prompted Little Shell III's return from Manitoba did move. Two in the settlers' party were American citizens and they wrote to Washington D.C. about the incident. This prompted the military response the *New York Times* prophesized when soldiers arrived from Fort Totten in late August. The major leading the forty to fifty soldiers, "rode up to Little Shell and told him he would kill him if he attempted any injury to white men."⁸⁹

No violence ensued from these incidents despite the fact the people of Turtle Mountain did not back down from their stance. That summer Little Shell III and others posted signs reading, "It is here forbidden to any white man to encroach upon this Indian land by settling upon it before a treaty being made with the American government."⁹⁰

⁸⁸ Ibid.

⁸⁹ Hesketh, *State Historical Society*, 120.

⁹⁰ Murray, "Turtle Mountain Chippewa," 22.

While the signs may not have stopped the push of settlers to Turtle Mountain land, they did reflect a tribal understanding of their right to the territory and signaled a warning to the folks who dared continued encroachment.⁹¹

By fall, as the prairie grew colder so did the hopes for the Turtle Mountain people to stem the tide of settlers encroaching on their lands. The most egregious blow to those hopes occurred on October 4, 1882 when the General Land Office opened up the Turtle Mountain lands without any negotiated agreement between the community and the federal government. Of little consolation must have been the ruling of the Secretary of the Interior that any Indians who had made improvements upon the lands would receive protection over their individual claims.⁹² Tribal land was now available for settlement.

The Turtle Mountain Reservation

Establishment and diminishment

It was under these trying conditions that the people of Turtle Mountain finally received the reservation that they had sought for decades. In late 1882 the Turtle Mountain people sent another delegation to Washington D.C. and were able to win some concession to their homeland. On December 21, 1882, two days after the delegation's visit with the Secretary of the Interior, President Chester A. Arthur signed an Executive Order creating a twenty-four by thirty-two mile reservation, "for the use and occupancy of the Turtle Mountain band of Chippewas and such other Indians of the Chippewa tribe as the Secretary of the Interior may see fit to settle thereon."⁹³ The tract of land set aside

⁹¹ Ibid., 22-23.

⁹² Ibid., 23.

⁹³ *Executive Order of 21 December 1882*, in *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1886* (Washington, DC: Government Printing Office, 1886), 323.

by the Executive Order contained nearly twenty-two townships. It is unclear exactly why Arthur chose to establish the reservation when he did, yet the circumstances allow reasonable speculation on his purposes. By the 1880s establishing reservations through executive order was a relatively common practice. According to scholar and activist Vine Deloria Jr. and David Wilkins, it was not the primary goal of a president to benefit Native peoples in establishing an executive order reservation. “It was actually an administrative ploy to handle the rapid settlement of some of the western regions and to provide land for tribes [apart from evil whites]. In other cases, executive orders were used on behalf of tribes with whom the United States did not wish to sign treaties.”⁹⁴ It is probable that Arthur sought to normalize relations and establish distinct boundaries between settlers and the people of Turtle Mountain.

It seemed that the people of Turtle Mountain finally were able to secure what they wanted from the beginning of their struggle for the recognition of their land claims. Yet, the situation rather quickly changed and more consternation was shortly to come. A division within the community also complicated matters. There was dissent among the Turtle Mountain people as to how to occupy the newly won reservation. According to Murray, this division was not only intratribal but international as well. “The full-bloods adamantly opposed settling upon individual tracts and preferred a smaller reservation where they could forever hold the land in common. In contrast, many Métis who were experienced at farming or gardening looked forward to owning 160 acre homesteads.

⁹⁴ Vine Deloria Jr. and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin, TX: University of Texas Press, 1999), 38.

Many in this latter group had given up or lost their claims in Manitoba reserves and now hoped to start over on the reservation created for their Chippewa kinsmen.”⁹⁵

A year after the establishment of the reservation a special Indian Agent, Cyrus Beede, was sent to the reservation to investigate. According to his 1883 report to the Commissioner of Indian Affairs, Beede, “counselled [sic] with the Indians there on several different occasions to wit; on the day of my arrival, at which time I made known to them fully the desires, and intentions of the Department [of the Interior].”⁹⁶ Although the Allotment Act was still four years away, the idea of allotment had already permeated the thinking of the Office of Indian Affairs officials and was being adopted by the OIA. Beede noted that, “I fully advised them of the preference of the Department, that they locate upon lands in severalty, and explaining [sic] to them the advantages to themselves and to their children, to arise from titles in severalty, over the Indian custom of holding lands in common.”⁹⁷ In fact, this “advantage” came backed with a threat that, “the reservation, if such they chose, would not exceed ‘two townships’, of land.”⁹⁸ Beede was also not particularly sympathetic to the fact that the boundary between the United States and Canada bisected Turtle Mountain lands, nor the mixed-blood character of some who were making their claim. “I also thoroughly impressed upon them and the Canadian half breeds, many of whom were present at all the Councils, that ‘Canadian Indians’ would be admitted to no share in these bounties of the Government, either on a reservation or otherwise.”⁹⁹ (emphasis in original)

⁹⁵ Murray, “Turtle Mountain Chippewa,” 23.

⁹⁶ Cyrus Beede, “Letter to the Commissioner of Indian Affairs. July 24, 1883,” Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

The people of Turtle Mountain responded to their conversations with Beede by sending him a letter. In the main body of the letter the Band made several requests that they wished to be honored: a reservation of two townships, “Provided however that such selected portion of ground contains prairie land enough to justify the Indians,” that action on tribal lands be delayed a year so that tribal members currently hunting in Montana could be included, and that provisions be given.¹⁰⁰ The letter also suggests that a compromise was made between the full-blood and mixed-blood camps on how the land should be used. The second request of the letter asked that it be recommended to Congress that, “some land be allotted to their children; and for all, a common in timber, & a common in pasturage, of which they will stand in the greatest need.”¹⁰¹ An addendum attached to the letter also requested that those members on the Canadian side of the international line be allowed to remain with their relatives at Turtle Mountain.¹⁰²

Nonetheless, the borders that Beede found in his time at Turtle Mountain, specifically the border separating the full-bloods and the mixed-bloods and the border separating the American Natives from the Canadian Natives, were solid enough to create real divisions for the Indian Agent. Under Beede’s rationale, the number of people who deserved the benefit of treatment with the federal government was not as great as the community claimed. Echoing previous American estimates, Beede stated that, “The ‘Full Bloods’, in the vicinity of Turtle Mountain according to the best information I can obtain will not exceed twenty five families and individuals without families, and I have been

¹⁰⁰ The Turtle Mt. Indians, “Letter to Cyrus Beede. July 19, 1883,” Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

¹⁰¹ Ibid.

¹⁰² Ibid.

unable to find any one able to enumerate that many.”¹⁰³ The cohesiveness of Turtle Mountain, in Beede’s eyes, was definitively separated by the international boundary. Thus, the Band members on the Canadian side of the border were not to receive the benefits of “American” Band members. Although perhaps deliberately blind to the difficulties solidifying such borders would cause, Beede nonetheless recognized that enforcing them would not come easily. “The same difficulty is liable to be experienced among the ‘Full bloods’ as among the half breeds in determining which side the international boundary line some of them actually belong.”¹⁰⁴

Beede’s letter to the Commissioner of Indian Affairs belies other important points. While a reduction of the reservation was clearly on the mind of Beede, the community did not meet the idea with acceptance. Beede noted this. “Both Indians and halfbreeds manifest considerable dissatisfaction at the proposed reduction of the present reservation, and claim with much apparent earnestness, that the delegation visiting Washington last winter were led to believe that the entire tract was granted them as a permanent home for themselves and their relatives on both sides of the International boundary line.”¹⁰⁵ (emphasis in original) Such a statement further suggests that the Turtle Mountain people continued to resist any outside definition of their international status and that they had come to an internal compromise about the use of land: that some within the original reservation boundaries would receive allotments and other lands would be held in common.

¹⁰³ Beede, “July 24, 1883,” Hart Papers.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

The Commissioner of Indian Affairs made note of Beede's findings in his 1883 annual report.¹⁰⁶ Presumably because of those findings, Chester A. Arthur executed another Executive Order on March 23, 1884, reducing the reservation to just two townships.¹⁰⁷ On June 3, 1884, some of the reservation land was exchanged (although this action neither enlarged nor reduced the reservation) through another Executive Order to create the boundaries of the reservation that continue to exist to this day.¹⁰⁸ The end result was that the reservation was reduced by about ninety percent.

Continuing trouble and division

The size of reservation, now a twelve mile by six mile tract, became inversely proportional to the number of problems within the community. Murray made note of the discontent, and the hardening of divisions identified by Beede within the community:

Overcrowding, disunity, and friction with white settlers also obstructed change at Turtle Mountain. At the time the reserve was reduced from twenty-two townships to two, 183 full-bloods, 731 Métis with the United States citizenship, and 400 persons described as Canadian Métis lived on the reservation. By 1887 the number of full-bloods had increased by 100 and the combined Métis groups by 230... The overcrowding added friction between the factions of the reserve population, and so strongly did the full-bloods resent Métis who began to lay out individual plats that in 1886 the farm teacher very narrowly averted an open clash. At the same time, neither the full-bloods nor the American Métis were kindly disposed towards the Canadian Métis who supposedly had given up or lost land in Manitoba but expected to gain tracts on the reserve.¹⁰⁹

¹⁰⁶ U.S. Dept. of the Interior, Indian Division, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1883* (Washington, DC: Government Printing Office, 1883).

¹⁰⁷ *Executive Order of 23 March 1884*, in *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1886* (Washington, DC: Government Printing Office, 1886), 323.

¹⁰⁸ *Executive Order of 6 June 1884*, in *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1886* (Washington, DC: Government Printing Office, 1886), 323.

¹⁰⁹ Murray, "Turtle Mountain Chippewa," 24

Settlers also still resented the continued tribal presence in territory they now considered theirs. After the Turtle Mountain reservation was established it was originally administered by the agent at the Devils Lake Sioux (currently Spirit Lake) Reservation. The Devils Lake agent, John W. Cramsie, felt it necessary to wire his superiors in Washington D.C. in early June of 1884 to refute reports that Turtle Mountain members were burning their forests and selling their farming equipment. *The New York Times* noted, “The agent says many such false reports are circulated by malicious whites to get Indians out of the country.”¹¹⁰

Nor were meteorological conditions on the harsh prairie of benefit to anyone living in Dakota Territory at the time. The freezing winters with their blizzards had as much affect on peoples and farms as the hot summer months of drought. The extreme weather caused many farms to fail. Turtle Mountain was in not spared from the difficult conditions. Starvation caused 151 people to die in the winter of 1886-87.¹¹¹

Despite the trying conditions, the leadership at Turtle Mountain continued to appeal for justice to the American government. They again asked for aid from the local agent in 1886 and Cramsie passed on two petitions to his superiors and also asked for the authority to send another delegation of six men to Washington D.C.¹¹²

The two petitions were written to the Secretary of the Interior and to the Commissioner of Indian Affairs. The petition to the Secretary of the Interior set down eight points as to why the people of Turtle Mountain were aggrieved. Those eight points centered around various issues of membership and land, including stating that the tribe

¹¹⁰ “Managing the Indians,” *New York Times*, June 3, 1884.

¹¹¹ Murray, “Turtle Mountain Chippewa,” 24.

¹¹² John W. Cramsie, “Letter to the Commissioner of Indian Affairs. Feb. 4, 1886,” Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

consisted of, “altogether some 2500 souls,” that those living within the original boundaries of the reservation but outside of the diminished boundaries were burdened with local taxes, and that tribal members were willing to live amongst the white population but did not want to be, “governed under Their Laws in regard to Land, School and Taxes.”¹¹³ The petition to the Commissioner of Indian Affairs was more historical and traced a legacy of promises that the Band felt had been broken. It characterized the Turtle Mountain perspective of the establishment of the reservation. “That on October 4, 1882, without even deeming it proper to consult the legitimate owners of the land an Executive Order was issued restoring to the Mass of the Public Domain, the lands [the Turtle Mountain People] had heretofore established good and reasonable title thereto.”¹¹⁴

While these petitions may or may not have had much effect on their intended recipients, the mood of those who were paying attention to the situation may have been turning toward the Turtle Mountain people. On February 4, 1886, the same day that Cramsie sent the two Turtle Mountain petitions to Washington, D.C., the *New York Times* ran a short article claiming a new knowledge that tribal land had been opened before tribal title to the land had been extinguished.¹¹⁵ Regardless, familiar refrains were also heard in the national conversation about the Turtle Mountain people. In his 1888 report, the Secretary of the Interior once again called for removal.¹¹⁶

By 1889, the various pressures surrounding the Turtle Mountain reservation had created an increasingly combustible situation and various spats began erupting. In

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ “Indian Lands in Dispute: The Discovery of Which Commissioner Sparks Has Made,” *New York Times*, February 4, 1886.

¹¹⁶ *Report of the Secretary of the Interior*, vol. 2, 50th Cong., 2d sess., 1888, H. Exec. Doc. 1, pt. 5, serial 2637.

February of that year, the Rolette County Sheriff impounded cattle in the Dunseith area that had been issued to tribal members for the failure to pay taxes on the cattle. According to Historian John Hesketh, “After several cattle had been taken from them by the sheriff, they rebelled and would not give up any more; they also ordered the sheriff to leave them alone.”¹¹⁷ Tribal members also removed the animals that had been impounded.¹¹⁸ As a result, the sheriff asked for aid from the major of a local National Guard unit; the major responded by ordering a troop to Dunseith.¹¹⁹ Fortunately for the National Guard Troops, the Territorial Governor Louis Church ordered the soldiers back to their barracks before any confrontation was to be had. Turtle Mountain members were prepared for the soldiers and had planned an ambush. According to historian John Hesketh, “the militia were to have been attacked in front as well as in the rear and it would have been a repetition of the Custer Massacre.”¹²⁰ Other incidents arose, including a brawl at a Fourth of July celebration between tribal members and settlers and accusations that settlers were maliciously poisoning any and all animals in the region.¹²¹

The situation finally became pressing enough in Washington that in August of 1890 Congress created a three-man commission to negotiate a price for tribal lands and to once again attempt to persuade tribal members to relocate.¹²² The commission failed in both missions. Turtle Mountain responded in a January 7, 1891, council meeting with a resolution that stated many things including that the community had not been informed about the commission prior to its coming, that they did not want to leave the Turtle

¹¹⁷ Hesketh, *State Historical Society*, 125.

¹¹⁸ Murray, “Turtle Mountain Chippewa,” 24.

¹¹⁹ Hesketh, *State Historical Society*, 125.

¹²⁰ *Ibid.*, 126.

¹²¹ Concerning the brawl see *Ibid.*, 121-22. Concerning the accusations of poisoning see Shaw, “In Order That Justice,” 349.

¹²² Murray, “Turtle Mountain Chippewa,” 25.

Mountain region, that they wanted the reservation to be expanded, and that John B. Bottineau was a tribal member and the tribal attorney.¹²³

By the summer of 1891, however, there was some confusion as to what solutions the Turtle Mountain leadership was willing to consider. In late August, the Commissioner of Indian Affairs received a letter from Bottineau stating that the Turtle Mountain people were committed to staying where they were and to fighting for a larger reservation. Yet, later that same month, Little Shell III sent a letter from Montana to the Commissioner of Indian Affairs stating that he might be willing to relocate to a larger territory in Montana.¹²⁴ Shortly thereafter other divisions within the community helped to lead to the dismantlement of tribal leadership.

The McCumber Commission and the Ten-Cent Treaty

In September of 1892 another commission was sent from Washington D.C. to the prairie. This time the commission was led by North Dakota Senator Porter J. McCumber and it found success. That path to this success began the prior year while Little Shell III was in Montana. Until recently, the scholarship on Turtle Mountain uniformly argued that in August 1891 the agent and sub-agent at the Devils Lake agency appointed a new tribal council consisting of sixteen full-bloods and sixteen mixed-bloods.¹²⁵ This newly created “Council of 32” was notable not only for lacking the authority of Little Shell III, but of consisting of only tribal members from the American side of the international border.¹²⁶ Among the first orders of business for the Council of 32 was to purge the names of over

¹²³ Senate Committee on Indian Affairs, *Papers Relative to an Agreement with the Turtle Mountain Band of Chippewa Indians in North Dakota*, 56th Cong., 1st sess., 1899-1900, S. Doc. No. 444, 108-18.

¹²⁴ *Ibid.*, 113-18

¹²⁵ House Exec. Doc. 229, 9.

¹²⁶ Murray, “Turtle Mountain Chippewa,” 26.

500 people from the tribal rolls whose membership was considered questionable by the federal government.¹²⁷

In his 2001 master's thesis, Marmon argued that the mixed-blood portion of the Turtle Mountain population was more involved in creating the Council of 32 than were American officials. Marmon stated that by at least 1884 a Grand Council comprised of both a full-blood council and a mixed-blood council was in place and was led by Little Shell III.¹²⁸ This Grand Council, particularly because of the large mixed-blood contingent (Marmon states that Métis on the American side of the border referred to themselves as Mitchifs), created levels of complication.

On the one hand [Little Shell III] was the head chief of the traditional full-blooded Chippewa and the head of the Grand Council, but also he was the presiding officer for the Mitchif council. The presence of a large Métis population accustomed to governing themselves posed a variety of problems for Little Shell in reaching a consensus between the two groups. Because the Mitchifs came under the auspices of the Turtle Mountain Chippewa – and since the American government tended to disallow Indian rights for mixed-bloods – they were subordinate to the Grand Council. However, the official tribal letters coming from the Turtle Mountains in the 1880s indicate that Mitchif participation in both councils continued to dominate Turtle Mountain affairs from the 1880s on. For Little Shell, the presence of dual councils and the heavy influx of Mitchifs into Turtle Mountain tribal affairs must have been difficult to sort out.¹²⁹

Marmon traced other fissures between the full-blood and mixed-blood populations at Turtle Mountain. Métis peoples who suffered scorn and prejudice because of their Catholic heritage must have felt plenty of trepidation when Little Shell III and

¹²⁷ House Exec. Doc. 229, 10.

¹²⁸ Marmon, "Reservation Is No Refuge," 63-64.

¹²⁹ *Ibid.*, 72-73.

most of the rest of the full-blood population became Episcopalians in 1889.¹³⁰ In February of that same year some members of the mixed-blood population threatened violence against county tax commissioners who had seized their livestock. Little Shell III wrote to the tribal agent at Devils Lake to state that the mixed-bloods had acted without his consent.¹³¹ Additionally, the mixed-blood population continued to seek recognition as a tribal entity separate and distinct from the full-blood population.¹³²

According to Marmon during the very same time tempers were flaring over the seized livestock, a three-man delegation consisting exclusively of mixed-bloods went to Washington, D.C. to meet with the Commissioner of Indian Affairs. The delegation asked the Commissioner what could be done to alleviate the tensions and strengthen tribal claims to the land. The Commissioner replied that Canadian Indians needed to be purged from the tribal rolls.¹³³ This caused so much infighting amongst the mixed-blood population that the full-bloods became lost in the shuffle.¹³⁴ In the meantime a new council, ready to replace Little Shell III and Bottineau and to negotiate with the federal government, was secretly forming. Members of this new council approached American officials about negotiating an agreement for tribal lands, rather than the other way around as previous scholarship has argued. This new council eventually became the Council of 32.¹³⁵

Marmon's argument is particularly compelling for a couple of reasons. First, Marmon's thesis addresses areas left unaddressed by the previous scholarship on the

¹³⁰ Ibid., 78.

¹³¹ Ibid., 93-94.

¹³² Ibid., 94-95.

¹³³ Ibid., 96.

¹³⁴ Ibid., 104.

¹³⁵ Ibid., 107-12.

issue. Whereas, previous writings about Turtle Mountain hint at or even acknowledge some level of divisiveness between the various populations (full-bloods, American mixed-bloods, and Canadian mixed-bloods) during this critical time period, those writing nonetheless uncritically accept the proposition that federal agents assembled the Council of 32. Second, Marmon's argument is compelling because it fits a pattern of tribal activity both before and after the Council of 32 was established. The people of Turtle Mountain as a whole were routinely active in looking to negotiate with the federal government and to secure a reservation. In the wake of the negotiations with the federal government and the diminishment of Little Shell III's authority, tribal members eventually sought out constitutionalism to reestablish tribal governmental authority. Whereas previous scholarship readily accepts the federal government as the lone arbiter of influence concerning the Council of 32, Marmon offers a vision that fits the pattern of Turtle Mountain governmental activity and agency.

There does not appear to be any primary evidence to determine why mixed-blood members of the community formed the Council of 32, however it is possible to make reasonable suppositions. Marmon states that the leading members of the mixed-blood portion of Turtle Mountain were unhappy with Bottineau and his influence over Little Shell III and they presumably felt threatened by the full-blood decision to embrace Episcopalianism (and implicitly reject Catholicism).¹³⁶ Beyond Marmon's analysis, it is also reasonable to suppose that mixed-blood members of the community, whose rights as indigenous peoples has already suffered numerous assaults, identified an agreement with the federal government as a way to legitimize their rights and identity as Natives. It is also possible both that mixed-blood members of the community may have thought that

¹³⁶ Ibid., 112-15.

Little Shell III's goals were unrealistic during increasingly difficult times and that, as the larger segment of the Turtle Mountain population, they were entitled to a greater say in the future direction of the community.

In the wake of the formation of the Council of 32, Little Shell III continued to fight for his authority over the community. Prior to traveling to Montana, Little Shell III left one of his sub-chiefs, Red Bear, in charge. In Little Shell III's absence, Red Bear called a Grand Council of the community in January of 1892. According to Murray, this Grand Council involved, "nearly 300 adult males [who] reaffirmed the appointment of John B. Bottineau...as their attorney. At the same time, it resolved that all mixed-blood descendants of the tribe were to be recognized as Indians and be fully entitled to benefits accorded full-blood members."¹³⁷

The McCumber Commission's own goals were clear. The commission's first order of business was to attempt to convince tribal members to relocate yet again, this time to the Fort Berthold reservation in west central North Dakota. A small group of Turtle Mountain tribal members, including Little Shell III, accompanied the McCumber Commission to Fort Berthold where the commission attempted to convince the three affiliated tribes of the reservation to accept their Native neighbors.¹³⁸ The Hidatsa, Mandan, and Arikara were not particularly receptive to the idea of including a fourth tribal community upon the reservation.¹³⁹

With that possibility closed, the McCumber Commission returned to Turtle Mountain to negotiate a price for the tribal land. The Commission began the negotiations by stating, among several things, that the community should set aside factional

¹³⁷ Murray, "Turtle Mountain Chippewa," 26.

¹³⁸ House Exec. Doc. 229, 10.

¹³⁹ Ibid., 10-11.

differences, that a larger reservation was out of the question, that the people needed to give up their old way of life, and that they owed it to their children to adapt to a new way of life.¹⁴⁰

At that point, according to the McCumber Commission, “Speech making was then freely indulged in by many members of the band.”¹⁴¹ The many tribal members who spoke stated, among other things, that they had always been friendly with the United States, they had never ceded any land, and that the federal government should be ashamed to arbitrarily take their land.¹⁴² According to the McCumber Commission, Little Shell III and his followers left when the Commission reiterated that a larger reservation was not possible.¹⁴³ Negotiations carried on with the Council of 32.¹⁴⁴

Little Shell III and his followers had a different understanding of the events in question. Before the McCumber Commission left for Fort Berthold, Red Thunder, a member of Little Shell III’s council, admonished the Commission for purging the tribal rolls. “When you (the white man) first put your foot upon this land of ours you found no one but the red man and the Indian woman, by whom you have begotten a large family... These are the children and descendants of that woman; they must be recognized as members of the tribe.”¹⁴⁵ The difficulties for Little Shell III and his followers continued when Bottineau was not provided the proper documentation concerning those who had been stricken from the tribal roll.¹⁴⁶ When the Commission returned from their trip from Fort Berthold, Bottineau was banned from the reservation and was not able to lend his aid

¹⁴⁰ Ibid., 12.

¹⁴¹ Ibid., 13.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid., 13-14.

¹⁴⁵ Senate Doc. 444, 34-35.

¹⁴⁶ Ibid.

to the negotiations. Little Shell III's followers threatened trouble at this turn of events, but cooler heads prevailed and violence was averted.¹⁴⁷ Finally, Little Shell III and his contingent did not leave the negotiations until it was clear that they would not be allowed meaningful participation. The space chosen for the negotiations, the agency storehouse, was only big enough for the McCumber Commission, the Council of 32, and their followers.¹⁴⁸ The discouragement and ill-feeling was great enough that McCumber thought it wise to write to the Commissioner of Indian Affairs to request that American soldiers be sent to make sure there was no trouble.¹⁴⁹

Whatever other differences the McCumber Commission and Little Shell III's contingent had concerning their respective perception on the negotiations, the biggest difference between the two was the price to which each valued the land. The McCumber Commission's offer of ten cents an acre paled in comparison to Little Shell III's asking price of \$1.25 per acre. Nonetheless, with Little Shell III, his council, his followers, and his attorney squeezed out the negotiations, the McCumber Commission had its way. On October 22, 1892, the McCumber Commission and the Council of 32 came to terms. The document, known as the McCumber Agreement, cemented the diminished borders of the reservation boundary and paid one million dollars for the ceded land in the state of North Dakota. Because of the pittance of the payment for the ten million acre claim, the agreement earned a derisive nickname: the "Ten-Cent Treaty." Little Shell III never signed the document.

¹⁴⁷ Ibid., 35

¹⁴⁸ Ibid., 35-36.

¹⁴⁹ P.J. McCumber, "Letter to the Commissioner of Indian Affairs," Sept. 29, 1892, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

And yet the legal struggle was not over. The McCumber Agreement still needed Congressional ratification, which did not come easily. In December of 1893 Little Shell III and his followers convened in council. The council rejected and repudiated the McCumber Agreement as well as the Council of 32 and requested further negotiations.¹⁵⁰

Murray has suggested that the Council of 32 lost its authority after the McCumber Agreement.¹⁵¹ Nonetheless, a group that identified itself as the “Committee of 32,” perhaps a vestige of the Council of 32, was active enough to write a letter of protest in mid-December of 1893 to the Indian agent at Devils Lake. In the letter the “Committee of 32,” among other things, complained to the agent about the activities of John Bottineau and requested that the Ten-Cent Treaty be ratified by Congress.¹⁵²

The proposed agreement did not placate the non-Native interests in the region. White settlers continued to fight against the Turtle Mountain claim and the reservation. In July of 1894 the Rolette County Board of Commissioners enacted a resolution addressing their grievances with the McCumber Agreement (the reservation is wholly located within Rolette County, North Dakota). The resolution made two arguments against ratification: first, the tribal claim was “illegal” and that most tribal members were not Indians but “half-breeds” unworthy of tribal rights. Second, the passage of the agreement would be a, “hardship and an injustice,” to the settlers of the area.¹⁵³ This resolution further suggests, through its contemptuous language against “half-breeds,” that the mixed-blood members

¹⁵⁰ Senate Doc. 444, 124-32

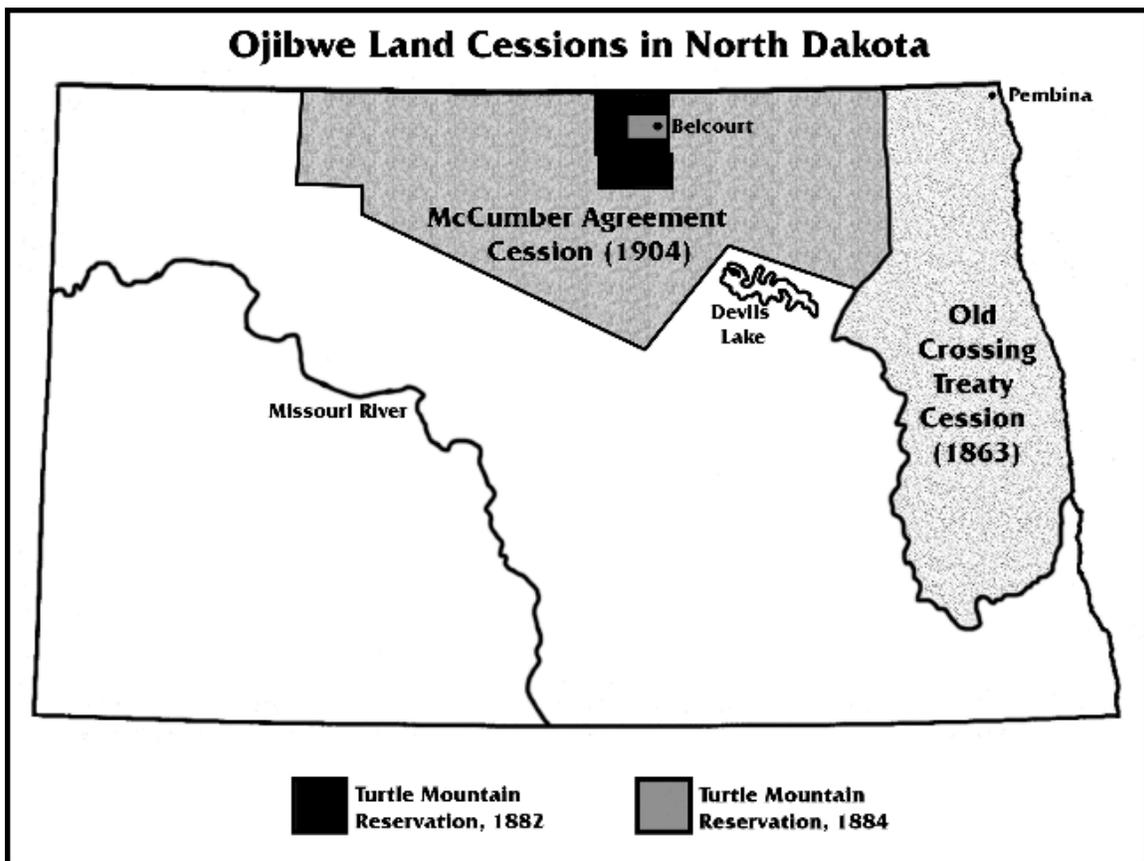
¹⁵¹ Murray, “Turtle Mountain Indians,” 28.

¹⁵² Committee of 32, “Letter to Major Ralph Hall,” Dec. 11, 1893, Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

¹⁵³ Resolution of the Rolette County Board of Commissioners, July 1894, Charles “Steve” William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections.

of the community who formed the Council of 32 chose to negotiate with the federal government at least in part to claim rights and identity as Native people.

In the interim conditions continued to worsen at Turtle Mountain. The severity of the weather patterns, including harsh winters with severe frosts and trying summers with droughts, pushed farming on the too-small reservation from difficult to nearly impossible.¹⁵⁴ The land had also been severely depleted of game and other useful animals by the mid-1890s.¹⁵⁵ The community even suffered an outbreak of smallpox at the end of the nineteenth century.¹⁵⁶



¹⁵⁴ Murray, "Turtle Mountain Indians," 28-29.

¹⁵⁵ Ibid., 29.

¹⁵⁶ Shaw, "In Order That Justice," 398.

Despite all of these hardships and whatever strife there may still have been within the community, Little Shell III and Bottineau kept pushing for more adequate resolution to the tribal claim. In 1896 Little Shell III once again made a trip to Washington D.C. and appeared before the House Committee on Indian Affairs.¹⁵⁷ Two years later the House Committee on Indian Affairs proposed another solution; a special jurisdictional act that would settle the matter in the United States Court of Claims.¹⁵⁸ However, no bill was passed.

By the end of the nineteenth century and into the twentieth, the resolve of Little Shell III and his followers seemed to be waning under the stress of the situation. As the years stretched into a new decade some fissures appeared amongst those continuing the fight against the Ten-Cent Treaty. Murray noted that, “In Bottineau’s case, he had moved away from Little Shell’s position about the size of the reserve.”¹⁵⁹ While Bottineau and Little Shell still agreed on much, the fact that the two allies no longer continued to march in lock step foreshadowed the events that were yet to come.

In 1900 the community was dealt a major blow; Little Shell III died, creating a void in the traditional leadership position after he passed on.¹⁶⁰ Most likely due to Little Shell III’s death and the resentment of mixed-bloods toward him, Bottineau’s participation in tribal politics also seriously decreased. After fending of another series of bills in Congress in 1900, it appears that Bottineau ceased to be tribal attorney sometime thereafter.¹⁶¹

¹⁵⁷ Murray, “Turtle Mountain Indians,” 29.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid., 30.

¹⁶¹ Ibid.

The McCumber Agreement was finally ratified by Congress in April of 1904 as an addition to an appropriations bill; almost twelve years after it was originally negotiated and with but a few minor amendments.¹⁶² In a gesture that was to become meaningful much later during the claims process, the people of Turtle Mountain voted on the amended agreement yet again, agreeing to the new terms in a meeting on January 26, 1905 meeting. “We voted for the ratification of the amended treaty submitted to us; with a full knowledge of its contents; and are anxious that its stipulations be speedily carried out; the money is badly needed, and the delay in making the expected payment is causing destitution and suffering among us.”¹⁶³ The community met anew in general counsel in mid-February and again submitted their approval to the revised agreement.¹⁶⁴ It is unclear who voted during these meetings, let alone why they voted they way they did. But it is possible to speculate that without the traditional leadership structure in place, the immediate economic relief that the McCumber Agreement promised was too tempting to pass up during difficult times. Additionally, the mixed-blood members of the community presumably believed that the agreement lent legitimacy to their claims to their rights and identity as Natives.

The vote ended a significant chapter of the Turtle Mountain Band’s claim for recognition and justice. Yet, a new chapter was about to begin. The community became seriously dissatisfied with the McCumber Agreement almost as soon as it was ratified. Consequently, the community began seeking a new method for finding a measure of

¹⁶² *1904 Indian Appropriations Act*, Public Law 58-1402, *U.S. Statutes at Large* 33 (1904): 189. McCumber Agreement found at 194-96.

¹⁶³ Proceedings of a meeting, Jan. 26, 1905, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 6, Wichita State University Special Collections.

¹⁶⁴ Answer given by the Turtle Mountain Indians to the proposed Amended Agreement of April 21, 1904, Feb. 17, 1905, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 6, Wichita State University Special Collections.

justice from the federal government. That search eventually led the people of Turtle Mountain to constitutionalism.

Conclusion

The foundations of Turtle Mountain constitutionalism begin with the origin of the Turtle Mountain Band itself and with the McCumber Agreement. Turtle Mountain began out of the westward migration of Ojibwe peoples. Whereas earlier scholarship has argued that the fur trade pushed Ojibwe peoples onto the prairies, more recent scholarship has offered a more complex understanding of many reasons that Ojibwe people chose to move out of the woodlands.

The newly forming Plains-Ojibwe did experience change in their shift from a woodland lifestyle to a plains lifestyle. Yet, much remained the same for these Ojibwe peoples. Tribal leadership and structure continued to be diffuse. Even so, at Turtle Mountain the position of head chief became an ever more important and centralizing position that passed through the Little Shell lineage in the nineteenth century. Additionally, the Métis grew in both population and influence during the nineteenth century. Considered distinct from both Native and European peoples both by others and by themselves, the Métis had their own culture, beliefs, and interests. Generally those interests intersected with the Plains-Ojibwe and there was a great deal of interaction and exchange between the groups, often, but not always, for the positive.

In the early to mid nineteenth century a series of treaties helped to delineate the borders of the Turtle Mountain territory for the community. Nonetheless, the people of Turtle Mountain ran into constant difficulty in their efforts to get the federal government

to recognize their rights to their territory, to establish a reservation, and to sell some of their territory during the final quarter of the nineteenth century. The United States was in the midst of the Allotment Era and the goal of federal policy was to limit tribalism and tribal claims to land. Local American governmental officials at many different levels challenged the validity of Turtle Mountain's right to the land that it claimed, most often by challenging the racial characteristics, heritage, and population of the increasingly mixed-blood community.

The federal government opened the lands that Turtle Mountain claimed before it negotiated any settlement for that land. The people of Turtle Mountain gained a measure of relief when President Arthur issued an executive order creating a reservation for the community in 1882. However, two years later, Arthur issued another executive order that severely shrank the reservation. This, along with other contributing factors, such as diminished buffalo herds, severe weather, and the influx of settlers to the area, increased the pressures and difficulties for the people on their too-small reservation. During these trying times, the community continued to appeal to the federal government for a larger reservation and recognition and payment for the lands that they claimed.

The federal government did eventually send a commission, led by Porter J. McCumber, to come to terms on a price for the land claimed by the people of Turtle Mountain. Until recently, the scholarship on the community argued that agents of the federal government established a Council of 32 to disrupt the traditional leadership and to negotiate with McCumber. More recent scholarship, written by community member Roland Marmon, argues that mixed-blood members of the community spearheaded the movement for the creation of the Council of 32. While documentation on the motivations

of the mixed-bloods who helped to create the Council of 32 is sparse, it is reasonable to speculate that they wanted to gain a greater political voice for the mixed-blood portion of the community, by far the larger population subset at Turtle Mountain, and that they wanted to establish their identity and rights as Natives in the eyes of the federal government. The previously recognized leader of the community, Little Shell III, was shut out of the negotiations. The end result, called both the McCumber Agreement and the Ten-Cent Treaty, paid ten cents an acre for approximately ten million acres of land.

Despite the seeming ease with which it was negotiated and the beneficial terms for the federal government, the McCumber Agreement lingered in Washington D.C. without Congressional ratification. Little Shell and his followers continued to challenge the validity of the document, and were able to stall its enactment for years. Yet, they could not hold it off forever. Even before his passing in 1900 there were growing divisions between Little Shell III and tribal attorney and member John Bottineau. After Little Shell III's passing no one was able to replace his leadership or direct the resistance against the McCumber Agreement. Congress finally ratified the derisively-nicknamed Ten-Cent Treaty in 1904 and the people of Turtle Mountain voted to accept it as well in 1905, presumably to ease the economic hardship on the reservation and to solidify the heavily mixed-blooded community's identity and rights as Natives.

Despite its willingness to accede to the document, it was not long after the McCumber Agreement was ratified by the community that the majority of the people, both full-bloods and mixed-bloods, became disenchanted with the terms and consequences of the document and sought to initiate a lawsuit against the federal government. After the Council of 32 and the death of Little Shell III the traditional

leadership structure was essentially unavailable to the community. As such, approximately a generation after the final ratification of the McCumber Agreement, the people of Turtle Mountain sought out constitutionalism to undo the damage of the Ten-Cent Treaty.

Chapter 2

The First Turtle Mountain Constitution

Introduction

The McCumber Agreement, both in its development and in its enactment, produced several difficult effects for the people of Turtle Mountain, not the least of which was to dismantle the traditional leadership structure of the community. Tribal discontent with the document began almost as soon as it came into force; tribal discontent with limited control over governmental functions and the still-constant threats to the identity of the heavily mixed-blood community also grew in the early decades of the twentieth century. This chapter argues that the people of Turtle Mountain ratified their first constitution for the purposes of beginning a claim against the federal government for the deficiencies of the McCumber Agreement and to legitimize their political authority to the greatest extent possible.

Passed by Congress in 1904, the McCumber Agreement not only paid a paltry ten cents an acre for tribal land, it forced many members of the community to take allotments far away from the reservation. The resulting displacement and consequent land loss, coupled with the low price for land and a 1916 decision in the Department of the Interior to no longer allow children born after the McCumber Agreement to obtain allotments, fueled the tribal desire for a claim against the United States. The anger with these developments led tribal members to seek to reestablish a greater authority over tribal governance in the tail end of the Allotment Era. As American policy was on the cusp of

shifting once again, Turtle Mountain responded, as did many other tribal communities, by enacting a constitution.

This is not to suggest that the people of Turtle Mountain invested all of their political authority in their new constitution. On the contrary, tribal members were wary of the limitations of the document before and after its ratification and, for a time, other political groups continued to wield less formal political power within the community. Nonetheless, the people of Turtle Mountain made the decision to adopt the constitution in an effort to accomplish the tribal goals of a claim against the United States and greater political autonomy. This chapter will proceed as follows: a discussion of the immediate aftermath of the McCumber Agreement, an analysis of the political situation within the community prior to the ratification of the constitution, a detailing of the first tribal constitution and its ratification, and the tribal decision to reject the Indian Reorganization Act.

The Legacy of the Ten-Cent Treaty

In order to understand Turtle Mountain's decision to adopt its first tribal constitution, it is important to understand the political, social, and economic circumstances in which the community found itself in the wake of McCumber Agreement. The waning decades of the Allotment Era were a dark time for the community in which most of the off-reservation allotments were lost and tribal political autonomy was at its lowest point.

Turtle Mountain allotment

In keeping with the spirit and the policy of the era, the McCumber Agreement stipulated that the Turtle Mountain reservation was to be allotted.¹ This process began not long after the Turtle Mountain people finally voted to accept the final version of the Ten-Cent Treaty. The tribal population and six by twelve mile reservation meant that over half of the enrolled tribal members had to accept allotments outside of the reservation boundaries.² The McCumber Agreement seemingly addressed this problem in Article 6 by providing for allotments on the public domain.³ Yet, this article created more problems than it solved. As a consequence of the General Land Office opening tribal lands to settlement in October of 1882 – two months before the establishment of a reservation, ten years before the negotiations for the McCumber Agreement, and twenty-three years before the people of Turtle Mountain finally agreed to accept the final version of the McCumber Agreement – much of the land around the reservation had already been claimed by American settlers. Tribal members were forced to accept allotments near Devils Lake and in western North Dakota and even into Montana and South Dakota.⁴ Adding to the burden, tribal members often quickly lost their allotments in a variety of ways. By one estimate, nearly ninety percent of tribal landholdings were lost to mortgages, tax sales, or defaults.⁵ Some tribal members sold their lands with the

¹ McCumber Agreement, 194-96, art. 3 (see chap. 1, n. 4)

² Murray, “Turtle Mountain Indians,” 32.

³ McCumber Agreement, 194-96, art. 6 (see chap. 1, n. 4)

⁴ Stephen Janus, 1911 Annual Report of the Superintendent, Sep. 14, 1910; Frame 19 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

⁵ Camp, “Dispossessed,” 70

intention of purchasing land closer to the reservation.⁶ Additionally, the one million dollar payment stipulated by the McCumber Agreement dissipated almost as quickly as the allotments. After expenses and a couple of per capita payments, enrolled tribal members received an average of \$2.00 in cash and the equivalent of \$14.00 in goods and services for the rest of the annuity period.⁷

Although allotment was intended to end the federal government's control over Native peoples and property, it had the unintended effect of creating more work for federal bureaucrats at Turtle Mountain. Originally administered as a sub-agency under the Devils Lake Agency, Turtle Mountain became its own full agency on July 1, 1910.⁸ The first superintendent, Stephen Janus, was faced with the task of administering not just reservation activities, peoples, and resources, but also allotments in several different places. Janus complained to his superiors about the extensive travel his appointment required.⁹ Subsequent superintendents complained about the workload produced by allotments as well.¹⁰

⁶ Camp, "Working Out," 33. Some of those who were disenrolled during the original McCumber Agreement negotiations left the reservation for Montana in search of a new land base and new opportunities; nonetheless, questions of identity and a rightful claim to the land continue to plague the descendants of those who left for Montana to this day. Perhaps the best detailing of the complicated situation is Martha Harroun Foster's *We Know*. Foster's discussion of the disenrolled Turtle Mountain members who made their way to Montana in the wake of the McCumber Agreement is found on pages 167-174 of her book. Also, see Dusenberry, "Waiting For a Day."

⁷ Three lawyers who expedited the agreement saw the first fifty thousand dollars. In both 1905 and 1906 the tribal council decided to make per capita payments of fifty dollars to tribal members. This left approximately \$710,000 left over the rest of the twenty-year annuity period. Murray, "Turtle Mountain Chippewa," 32-33.

⁸ Camp, "Plains-Chippewas and Métis," 167.

⁹ Stephen Janus, 1913 Annual Report of the Superintendent, Nov. 29, 1913; Frame 72-73 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

¹⁰ See R. C. Craige, 1915 Annual Report of the Superintendent, July 20, 1915; Frame 138 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.; Henry J. McQuigg, 1926 Annual Report of the Superintendent, July 10, 1926; Frame 640 (National Archives Microfilm Publication M1011, roll 157);

Janus and subsequent Turtle Mountain superintendents also complained about the lack of finality for the allotting process. Janus's comments in 1913 are typical of the danger that he and other superintendents saw. "Attention is called to the necessity for legislation looking to the termination of the treaty. Apparently it is endless and unless action is taken looking to that end the Turtle Mountain Band of Chippewa Indians will forever have the right to file upon 160 acres of the public domain."¹¹ The Department of the Interior did take action, handing down an administrative decision in 1916, known as *Voight v. Bruce*, that declared that children born after the Congressional ratification of the McCumber Agreement were no longer eligible to receive allotments.¹² The decision initiated a fair amount of correspondence between the tribal agency and Washington D.C. concerning the administration of the decision, particularly when non-Native settlers attempted to settle on lands they now believed were reopened because of the administrative action.¹³

Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

¹¹ Janus, 1913 Annual Report, Frame 73.

¹² *Voight v. Bruce*, Decision of the Department of the Interior, Jan. 15, 1916; *Voight v. Bruce*; 509250/297; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹³ See Franklin K. Lane, Secretary of the Interior to Senator Henry F. Ashurst, Chairman of the Committee on Indian Affairs, Feb. 23, 1916; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. Craige recognized the extra work that the decision would have for the agency and him personally and asked for a rehearing. The request was denied. C.T. Hawke, Chief Clerk Department of the Interior to Roscoe [sic] C. Craige, Feb. 29, 1916; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. Craige also had to respond to settlers who were attempting to seize lands that had been previously allotted to tribal members and attorneys who had been hired by a tribal member to fight the decision. Roger C. Craige to Mr. A. J. Thibert, June 13, 1916; *Voight v. Bruce*; 509250/297; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO and Roger C. Craige to Mess. McLaughlin & Brown, July 17, 1916; *Voight v. Bruce*; 509250/297; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. The Department of the Interior also sought to gain some control over the situation by declaring that no contests to land would be allowed under the Department's decision and that it would handle all matters internally. Bo. Sweeney, First Assistant Secretary to Registers and Receivers, U.S. Land Offices, Nov. 10, 1916; *Voight v. Bruce*; 509250/297; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

The decision was unpopular within the community and grew into another reason to seek a claim against the federal government. At least 859 children lost their right to an allotment.¹⁴ The decision caused enough rancor to provoke a, “representative gathering of the Turtle Mountain band of Chippewa Indians,” to draft a resolution decrying the situation.¹⁵ The resolution detailed the tribal belief that children born after the Congressional ratification would receive allotments and that, “We call upon the United States...to fulfill its agreement made with us by perfecting all allotment selections and allotments already made to our children born since October 8, 1904, and to proceed to allot land to all such children who have not yet received allotments or allotment selections and to continue allotting land to such children.”¹⁶ Nonetheless, the federal government quit allotting land for children, providing the community with another reason to seek a fairer settlement through a claim.

Tribal governance in the Allotment Era

During the first decades of the twentieth century, in the final years of the Allotment Era, the greatest source of tribal political authority lay in the hands of the tribal superintendent and the other members of the agency. In addition to the superintendent, the federal bureaucracy at Turtle Mountain included a farmer-in-charge or a “boss

¹⁴ According to the tribal superintendent in 1919, Henry J. McQuigg, 1539 children in total were affected by the Voight v. Bruce decision. Of that group, 859 had their selections canceled, however, 680 had already had their selections approved and were presumably exempted from the Voight v. Bruce decision. Despite his belief that the approved allotments were valid and legal (and thus exempt from revocation) he asked his superiors to pass legislation to make clear that the approved allotments were still good. H. J. McQuigg, 1919 Annual Report of the Superintendent, Aug. 6, 1919; Frame 276 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C. I have been unable to find any evidence that any such legislation was passed.

¹⁵ “representative gathering of the Turtle Mountain band of Chippewa Indians”; Voight v. Bruce; 509250/297; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁶ Ibid.

farmer” to aid the community in agriculture, a chief clerk to assist the agency in its paperwork and smaller issues, and a “land man” to address the complicated issue of land and allotments.¹⁷ During the week one day was set aside for members of the community to come to the agency to have their concerns heard; it was known as “Indian Day.”¹⁸

Despite an environment hostile to tribal sovereignty, the people of Turtle Mountain looked to exercise as much autonomy as possible and eventually sought to maximize their authority through a constitution. During the Allotment Era the federal government allowed a certain measure of local, tribal control in an effort to acclimate tribal peoples to so-called “civilized” life. Two of the more meaningful programs of this time were the Indian police and the Court of Indian Offenses.

Beginning in the 1870s Indian Country saw a proliferation of Indian police forces. Staffed by tribal members, the Indian police were charged with maintaining law and order on the reservation.¹⁹ Beginning in the 1880s Indian Country also saw a proliferation of Courts of Indian Offenses. Also staffed by tribal members, these courts (otherwise known as CFR courts) adjudicated disputes on the reservation.²⁰ Both the Indian police and the Courts of Indian Offenses derived their authority from the agency superintendent.²¹ As such, the courts, and the punishments that they imposed, were of

¹⁷ *St Ann’s Centennial Book*, 99.

¹⁸ *Ibid.*

¹⁹ Prucha, *Great Father*, 646.

²⁰ *Ibid.*, 646-47. CFR stands for Code of Federal Regulations. These tribunals were originally established by the Department of the Interior, which published the regulations for the CFR courts in the Code of Federal Regulations.

²¹ Deloria Jr. and Lytle noted, “It is difficult to determine whether [Courts of Indian Offenses} were really courts in the traditional jurisprudential sense of either the Indian or the Anglo-American culture or whether they were not simply instruments of cultural oppression since some of the offenses that were tried in these courts had more to do with suppressing religious dances and certain kinds of ceremonials than with keeping law and order.” Deloria Jr. and Lytle, *American Indians, American Justice*, 115.

dubious legality.²² According to the 2005 edition of the Cohen Handbook, “The primary aim of the Courts of Indian Offenses was to end Indian culture.”²³ The Indian police were charged with the same goal. The jobs produced by a police force or court, very often among the few economic opportunities on a reservation, were regularly given to tribal members most willing to comply with a superintendent’s wishes. Yet, neither body was universally disparaged within tribal communities and sometimes prominent members of the community served as either as judges or members of the police.²⁴

By 1900 Turtle Mountain had its own Indian police force of six.²⁵ Around the same time a Court of Indian Offenses was established on the reservation.²⁶ Despite its limited attempt to place some decisionmaking in the hands of the community, the real authority of the court still lay with the federal government. One superintendent, writing in 1926, noted:

Indian court is held on the fifteenth and the last days of the month. At such times in cases in which no direct arrest has been made, the parties are summoned to appear together with their witnesses. They state their cases before the Indian judges, two in number, who render their decisions. *The superintendent sits with the judges, hears the evidence, and approves or disapproves of the decisions.*²⁷ (emphasis added)

²² Sydney L. Haring, *Crow Dog’s Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (Cambridge: Cambridge University Press, 1994), 186-88. For a general overview of Indian Courts of Offenses and the Indian police, see chapter 6, “Sitting Bull and Clapox: the application of BIA law to Indians outside of the Major Crimes Act,” in *Crow Dog’s Case*.

²³ Newton, *Cohen’s Handbook*, 81.

²⁴ Deloria Jr. and Lytle noted this in their discussion about a member of the Navajo nation. “Although the rise of Courts of Indian Offenses certainly indicated the increasing application of the white laws over the Indians, they were not wholly without respect among the Indians. Manuelito, one of the most respected and beloved of the Navajo war chiefs, served for a time as an Indian policeman and performed duties in a Court of Indian Offenses. Deloria Jr. and Lytle, *American Indians, American Justice*, 114.

²⁵ *St. Ann’s Centennial Book*, 192-93.

²⁶ *Ibid.*, 193.

²⁷ McQuigg, 1926 Annual Report, frame 642.

Although limited in nature, these jobs also provided economic opportunity for some members of the community; yet the income and work was not always steady. The correspondence from the tribal agency headquarters indicates that as early as 1919 tribal police officers and judges were supposedly making \$20 per month for their services.²⁸ In 1925 the tribal agent, Henry J. McQuigg, wrote to his superiors requesting permission to pay two tribal judges \$10 per month for three months that the judges worked after the agency's funds had run out.²⁹ This act, a seemingly benevolent gesture toward tribal employees on its surface, has to be measured against other evidence. Another source indicates that the tribal police only received between \$5 and \$8 per month and that some members of the force only received rations for their work.³⁰ Additionally, in a report to the Commissioner of Indian Affairs, one of McQuigg's superiors noted that he was, "not altogether diplomatic," with the community and that McQuigg's practice of using rations to foster participation in federal governmental programs, "was a mistake and will doubtless be rectified by his successor."³¹

The federal government sought to shape the behavior of the people of Turtle Mountain in other ways as well. In the fall of 1924 the tribal agency organized nine different "farm chapters" to promote an individualistic, agrarian lifestyle on the

²⁸ H. J. McQuigg to the Commissioner of Indian Affairs, April 3, 1919; Central Classified Files, 1907-1939; Turtle Mountain, 41624-1937-162 to 48072-1932-174; Record Group 75; National Archives Building, Washington D. C.

²⁹ H. J. McQuigg to Honorable Commissioner of Indian Affairs, Feb. 23, 1925; Central Classified Files, 1907-1939; Turtle Mountain, 41624-1937-162 to 48072-1932-174; Record Group 75; National Archives Building, Washington D. C.

³⁰ *St. Ann's Centennial Book*, 193.

³¹ F. C. Campbell to Honorable Chas. H. Burke, Commissioner of Indian Affairs, June 9, 1926; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C. Also, see R. C. Craige, 1917 Annual Report of the Superintendent, Sep. 8, 1917; Frame 194 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

reservation.³² Each chapter was governed by a set of ten by-laws that ranged from the typical (“There shall be a President, Vice-President and Secretary;” “A meeting shall be held once a month; and oftener if necessary upon the call of the President”) to the very specific (“Each member shall get a flock of chickens, and build a good warm chicken house, instead of having the chickens with the stock”). One by-law in particular was meant to maintain the focus of the meetings squarely on the farm chapters and away from anything that might distract from the purpose of crafting individual farmers: “These meetings are held for the promotion of farming and stock raising, and there shall be nothing but farming and stock-raising, with related subjects, discussed at these meetings.”³³ Nonetheless, like other allotment policies, it is possible that the farm chapters had the unintended consequence of reinvigorating the community as a political unit. One superintendent, describing what he saw as the success of the farm chapters, perhaps unintentionally foreshadowed the push toward organization and constitutionalism to shortly occur at Turtle Mountain. “The enthusiasm engendered by these nine chapters among the Indians...*has kindled the desire among practically all the Indians to take part in such organizations.*”³⁴ (emphasis added)

Most importantly, while the events surrounding the McCumber Agreement dismantled the traditional leadership structure, by at least 1911 the community had a tribal council in place.³⁵ The various writings of the tribal superintendents, the richest source of information about the community at this time, are not careful to trace the

³² H. J. McQuigg to Hon. Commissioner of Indian Affairs, Jan. 12, 1926; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C.

³³ Ibid.

³⁴ Ibid.

³⁵ Janus, 1911 Annual Report, frame 22.

continuity, workings, or even the existence of the tribal council. The limited nature of the superintendents' reports (and the lack of other sources) make it difficult to paint a complete picture of tribal governance at this time. Nonetheless, the influence of the tribal council, particularly as the community transitioned into constitutionalism grows clearer with a deeper reading. The various Turtle Mountain superintendents generally found the tribal council (or business council) to be some combination of harmless and useful.

Writing in 1917, superintendent Roger C. Craige provided a typical federal assessment.

There is no real necessity for this council and they do no work, in fact they have nothing to do, but I have had a few meetings with them and thus far have found them to be of considerable assistance in presenting matters to the tribe when it would have been otherwise difficult to do so. I believe the council is a benefit to me rather than a hindrance and I should not like to see it discontinued.³⁶

Despite this statement, the council did wield influence and did speak on behalf of the community. A fuller discussion of the tribal council and its role in pursuing a claim will be taken up in the next section.

Other opportunities also allowed the people of Turtle Mountain to reestablish a sense of control over their own lives and their political situation. Despite decades of assimilationist policy, community members were still seeking the council of medicine men, much to the chagrin of federal officials who sought to squelch such activities.³⁷ The community also performed traditional dances, usually on the two days of the month that rations were distributed. According to Craige, "Rations are issued twice a month at the

³⁶ R. C. Craige, 1916 Annual Report of the Superintendent, July 31, 1916; Frame 183 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

³⁷ H. J. McQuigg to Honorable Commissioner of Indian Affairs, Nov. 7, 1922, Circular No. 1819 – Industrial Program; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C.

agency, and it has been the custom for several years past for a few of those Indians to dance for a short time in the evening before the rations are issued.”³⁸ It is also possible that the community covertly engaged in Sun Dance ceremonies, despite the federal banishment of the practice and various superintendents’ declarations to the contrary. Janus stated in 1914 that the traditional dancing on the reservation was, “purely social and without religious significance or superstition,” and that, “the Sun Dance is no longer allowed, even though all elements of torture have been eliminated.”³⁹ However, members of the community continued to request the opportunity to Sun Dance.⁴⁰ The requests were routinely denied, even though on at least one occasion a member of the community attempted to draw a parallel to Christianity. “It appears that one old Indian is very anxious to appease the Lord, and believes that the sacrifice and suffering that he makes during such a dance is similar to that of Christian religion.”⁴¹ Yet, one incident in the annual reports suggests that perhaps members of the community participated in the Sun Dance despite the denials from the tribal superintendents. According to Craige, “We have but one celebration and that is held by the Catholic Church during the month of August each year. It is purely a religious celebration and usually lasts about four days.”⁴²

³⁸ Craige, 1916 Annual Report, frame 195. Other reports also note the semi-regular dances.

³⁹ Stephen Janus, 1914 Annual Report of the Superintendent, 1914; Frame 83 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

⁴⁰ Craige, 1915 Annual Report, frame 118, and H. J. McQuigg, 1920 Annual Report of the Superintendent, Aug. 8, 1920; Frame 283 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

⁴¹ McQuigg, 1919 Annual Report, frame 255.

⁴² R. C. Craige, 1918 Annual Report of the Superintendent, Oct. 19, 1918; Frame 245 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

It is possible that the people of Turtle Mountain used this period of time to covertly engage in the Sun Dance under the guise of, or perhaps alongside, Catholic services.

Tribal peoples also flexed their muscles as American citizens in state elections as well. In 1930 the people of Turtle Mountain helped to elect a new county sheriff and state attorney on their platform of non-cooperation with tribal agency in enforcing liquor laws on the reservation.⁴³ The vote was undoubtedly viewed by members of the community as an affirmation of their rights as American citizens and as a blow against the federal bureaucracy that kept them in a wardship status. The tribal superintendent recognized the results of the election as both a threat to his authority and, in a backhanded fashion, an expression of the strength of will of the Turtle Mountain people to control their own affairs. “The defeat of [the incumbent sheriff] is a direct challenge to law and order; and the election of the opposing candidate on the platform [of non-enforcement of liquor laws] is sufficient evidence of the determination of these people to remain unmolested in their lawlessness.”⁴⁴

Precursors to a Tribal Constitution

The beginning of a tribal claim

Tribal discontent with the McCumber Agreement began almost immediately after it was ratified. That discontent quickly grew into a desire for a claim against the United States in American courts. The people of Turtle Mountain expressed their desire for a

⁴³ James H. Hyde to Commissioner of Indian Affairs, Nov. 1930; Central Classified Files, 1907-1939; Turtle Mountain, 41624-1937-162 to 48072-1932-174; Record Group 75; National Archives Building, Washington D. C.

⁴⁴ Ibid.

lawsuit against the federal government both collectively and individually and pushed to initiate the claims process in the 1910s and 1920s.

The tribal council sought to begin a claim during the last decades of the Allotment Era. As noted above, Turtle Mountain had a new council in place by at least 1911 and that most of the tribal superintendents found the body to be some combination of benign and moderately helpful.⁴⁵ Some Turtle Mountain superintendents did not consider it a tribal council per se, but rather a business council that remained in the aftermath of the administration of the McCumber Agreement. Writing in 1916, Craige provided a typical example of this attitude. “This reservation has no tribal council and there is no need of one... There is still remaining from the old days when these people had both money and land in common a business council consisting of twelve men.”⁴⁶

However, the council itself engendered respect within the community. One tribal superintendent, writing in 1920, captured both the sense of the federal agents and the community at the time.

The personel [sic] of the council is fairly representative of the tribe and while it no longer has anything to do in affairs affecting the tribe as a whole, there appears to be no reason why it should be disbanded. In fact, I believe it would be unwise for such a step to be taken as it would undoubtedly cause needless dissatisfaction... *The people as a whole still have considerable confidence in the council and whatever comes from it is always given careful consideration.*⁴⁷ (emphasis added)

⁴⁵ Writing in 1917, Craige stated that the tribal council was formed before Turtle Mountain was allotted and payment under the McCumber Agreement was made. He also stated that while the original council consisted of twelve members, only eight currently survived. Craige felt no need to dismantle the group. “There is no apparent reason for the further existence of this council...At the same time, I should dislike to see it discontinued, because they have never been antagonistic to me and I have used them on several occasions to disseminate information among the people.” Craige, 1917 Annual Report, frame 215.

⁴⁶ Craige, 1916 Annual Report, frame 183.

⁴⁷ McQuigg, 1920 Annual Report, frame 301.

Despite the superintendent's statement that it, "no longer has anything to do," in tribal affairs, the tribal council pushed for a claim against the federal government. As early as 1911 the council approached the superintendent several times about a lawsuit. Janus noted, "They have frequently counseled with me on the subject of further claims against the government."⁴⁸ The superintendents often tried to discourage the discussion of a lawsuit, but the council persisted in arguing for a claim and stating that the McCumber Agreement had been violated.⁴⁹

Turtle Mountain superintendents also had to respond to various correspondences with individual community members, and often the lawyers they hired or attempted to hire, concerning the claim. Additional compensation for the lands ceded under the McCumber Agreement was routinely on the minds of individuals and discussions seemed to heat up as the 1910s gave way to the 1920s. In September of 1918 Craige responded to a letter from a Mrs. Wm. Meacham who inquired about a possible settlement with the federal government concerning an "old claim." Craige stated that, "In answer, I have to advise that this tribe of Indians has no claim pending before the Government at this time and that none has been settled by the Government in favor of these Indians for the past several years."⁵⁰ Despite this answer, the record suggests that Turtle Mountain pursuits for a claim were a constant source of maneuvering among the people.

In late July and early August of 1921 McQuigg received a fair amount of correspondence from Medicine Lake, Montana, concerning a claim. Most of the correspondence came from Theodore Brien, a displaced tribal member who had been

⁴⁸ Janus, 1911 Annual Report, frame 22.

⁴⁹ McQuigg, 1919 Annual Report, frame 264, and McQuigg, 1920 Annual Report, frames 293, 304.

⁵⁰ Roger C. Craige to Mrs. Wm. Meacham, Sep. 27, 1918; Claims Against the Government; 509196; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

elected the Chairman of the “Committee of the Turtle Mountain Band of Chippewa Indians now residing in Medicine Lake Montana and vicinity.”⁵¹ Brien wrote a letter asking about the status of a bill in Congress that would have permitted the claim and expressing a willingness to send a delegation to Washington D.C.⁵² About a week later Brien wrote another letter to McQuigg expressing a desire for solidarity with Turtle Mountain members living on the reservation.⁵³ In response, McQuigg stated that the bill had not passed through Congress and echoed the orders he received from the Department of the Interior concerning the preparation of a claim. McQuigg suggested that Brien take the situation up with other members of his committee and that, “It is best that some of the oldest and best versed Indians...prepare a sworn statement as to what the claims consist of and what provision of the treaty or agreement the Government has not complied with.”⁵⁴

Attorneys also engendered correspondence with the tribal agency. In 1922 an attorney, P.D. Norton, requested information concerning a tribal claim and stated that, on a trip to Washington D. C. for other reasons, he would discuss the matter with the Commissioner of Indian Affairs.⁵⁵ Norton must have displayed some persistence because in March of 1923 McQuigg responded to Norton.⁵⁶ A little over a month later, the Acting Commissioner of Indian Affairs, E.B. Merrill, sent a letter to Norton stating that other

⁵¹ Committee of the Turtle Mountain Band of Chippewa Indians now residing in Medicine Lake Montana, Jan. 26, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵² Theo Brien to H.J. McQuigg, July 18, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵³ Theo Brien to H.J. McQuigg, July 28, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵⁴ Henry J. McQuigg to Theodore Brien, Aug. 2, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵⁵ P. D. Norton to H. J. McQuigg, Aug. 28, 1922; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵⁶ Henry J. McQuigg to P.D. Norton, Mar. 16, 1923; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

attorneys, located in Washington D.C., were involved in the matter. “Recently a firm of attorneys of this city submitted a brief statement of certain claims of these Indians alleged against the Government and requested a hearing for the purpose of presenting the case more fully. They have been promised a hearing to be held soon.”⁵⁷

The people of Turtle Mountain remained persistent. In January of 1924 the Department of the Interior wrote to McQuigg seeking clarification about a request made for funds for Turtle Mountain community members to send a delegation to Washington D. C. to discuss a claim.⁵⁸ McQuigg explained that tribal members on the reservation as well as those from western North Dakota and Montana had been meeting to organize to present a claim and that he had explained the futility of such a maneuver to the people.⁵⁹ McQuigg also recommended that permission not be given to send a delegation to Washington D.C.⁶⁰ Undaunted, Brein tried again to receive permission to send a delegation to Washington D.C. In May of 1924 he was turned down again, this time by the acting Commissioner of Indian Affairs.⁶¹

In June of 1924, the people of Turtle Mountain were able to have a Washington D.C. lawyer visit the reservation. The lawyer, A.C.J. Farrell, had permission from the Commissioner of Indian Affairs to meet with the community.⁶² Farrell was not the only Washington D.C. lawyer who visited the North Dakota prairie. In February of 1925,

⁵⁷ E. B. Merill to P.D. Norton, received at the Turtle Mountain Agency on Apr. 21, 1923; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵⁸ E.B. Merill to Henry J. McQuigg, Jan. 22, 1924; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵⁹ Henry J. McQuigg to the Commissioner of Indian Affairs, Jan. 26, 1924; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁶⁰ Ibid.

⁶¹ E. B. Merill to Theodore Brine [sic], May 22, 1924; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁶² Chas. H. Burke to Henry J. McQuigg, June 16, 1924; Claims Against the Government; 509196; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

attorney Abram R. Serven was also given permission to visit the reservation.⁶³ Serven found little success. The Department of the Interior wrote to Serven in March of 1926 to explain the situation. “Your statements as to the claims of these Indians against the Government have been carefully considered. However, it is not seen that such merit is shown that would justify the Office in sanctioning a contract with these Indians.”⁶⁴

As the Allotment Era came to an end, the tribal conversation concerning a claim grew. This was no easy task, as obtaining the right to make a claim at the end of the Allotment Era was a difficult process. The people of Turtle Mountain needed more than the support of their superintendent; they needed a special jurisdictional act from Congress. The federal government, under the doctrine of sovereign immunity, cannot be sued without its consent. In several instances and for many policy reasons, the federal government has waived its sovereign immunity; Congress established the Court of Claims in 1855 to hear such cases.⁶⁵ Shortly thereafter, in 1863, Congress amended the Court of Claim’s jurisdiction to exclude tribes from bringing a case in the court.⁶⁶ Thus, the only recourse for a tribal community was to convince Congress to pass a jurisdictional bill that allowed the Court of Claims to hear the tribal community’s claim. A number of tribal communities were able to obtain jurisdictional bills, yet they often were not successful in their lawsuits.⁶⁷

⁶³ Chas. H. Burke to Abram R. Serven, Feb. 17, 1925; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁶⁴ Chas. H. Burke to Abram Serven, Mar. 23, 1926; Claims Against the Government; 509196; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁶⁵ H. D. Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York: Garland Publishing, Inc., 1990), 10.

⁶⁶ *Ibid.*, 11.

⁶⁷ Rosenthal notes that Congress did not begin passing jurisdictional acts for tribes until 1881 and, “From 1881 to 1946, 219 claims were filed with the Court of Claims. Of these cases only thirty-five won awards which totaled \$77.3 million or an average \$1.2 million per year in net recovery.” *Ibid.*, 24.

The people of Turtle Mountain sought such a bill, but were unable to make it come to fruition.⁶⁸ One of the earliest efforts is indicative of the persistence of the community, the minor success of initiating a bill, and the opposition they faced. In late August 1921 the Department of the Interior wrote to McQuigg concerning a jurisdictional bill that was pending in the Senate.⁶⁹ Nearly two months later, Senator Porter J. McCumber, the man who led the commission that negotiated the Ten-Cent Treaty, also wrote to McQuigg. Despite a somewhat odd statement of sympathy, considering his involvement in their situation, McCumber noted how long the Turtle Mountain fight for a claim had been a presence in Washington.

*This matter has been in Congress and in the Indian Department for about twenty years... The Treaty speaks for itself and while I have always felt that those Indians did not secure the recognition to which they were entitled yet, under the terms of the Treaty and the decisions of the Secretary of the Interior, I do not believe there is any possibility of their getting the relief asked for.*⁷⁰ (emphasis added)

⁶⁸ The summer of 1921 was busy for those concerned with a tribal claim against the federal government. The main push for a claim at the time came from the Turtle Mountain members who were living in Montana who hired attorneys to lobby for a bill in Congress. In mid-July McQuigg received a letter from the Department of the Interior concerning a possible bill which requested that McQuigg make a report on the situation. Chas. H. Burke to Henry J. McQuigg, July 7, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. The same day, McQuigg received a copy of a letter from the Department of Interior to the Chairman of the Senate Commission on Indian Affairs promising an investigation into the matter. E.C. Finney, Acting Secretary of the Interior to Charles Curtis, Chairman of the Senate Committee on Indian Affairs, May 27, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁶⁹ E. B. Merill, Assistant Commissioner to H.J. McQuigg, Aug. 30, 1921; Claims Against the Government; 509196; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁷⁰ P.J. McCumber to H. J. McQuigg, Oct. 29, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

The letter is indicative of the almost immediate dissatisfaction with the McCumber Agreement and the persistence of the desire for a claim within the community.⁷¹

The jurisdictional bill being contemplated at the time did not make it through Congress, yet the push for a tribal claim against the federal government continued. Theodore Brein and others moved forward in their attempts to be heard in American courts. In late 1922 Brein sent a communication to Washington D.C. outlining the subject matter of some of the claims against the government. This communication prompted a letter exchange between Senator McCumber and Charles Burke, the Commissioner of Indian Affairs. In their exchange the three grievances outlined by Brein were discussed: Turtle Mountain allottees were made to pay for their allotments when the McCumber Agreement stipulated that they would not have to pay, off-reservation tribal members did not enjoy the same advantages as on-reservation tribal members most particularly as it concerned medical treatment, school facilities, and relief for the poor, and that interest should have been paid on the one million dollars for the delay between the negotiation of the McCumber Agreement and its ratification in Congress.⁷² Not much came from this particular exchange; nonetheless, it is a further example that, by the middle of the 1920s, the people of Turtle Mountain were regularly engaged in pursuing a claim. The community sought both the council of lawyers and a jurisdictional bill in Congress on multiple occasions. This desire eventually led the community to choose a constitution to accomplish its goals.

⁷¹ Despite his lack of belief in the cause, McCumber promised to try to offer some aid. Ibid. McQuigg's response shared the Senator's pessimism on the possibility of a jurisdictional bill for the people of Turtle Mountain. Henry J. McQuigg to Porter J. McCumber, Nov. 10, 1921; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁷² Chas. H. Burke to Porter J. McCumber, Dec. 19, 1922; Claims Against the Government; 509180; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

Struggles with superintendents

Through the end of the Allotment Era, as Turtle Mountain became its own agency, the tribal superintendents held a tremendous amount of political authority. These superintendents generally thought of tribal political authority as either non-existent or vested in the remnants of a harmless council. Yet, as the early decades of the twentieth century wore on, tribal discontent with the political situation grew in conjunction with the desire for a claim. Eventually the people of Turtle Mountain sought a constitution not just to begin a claim, but also to reclaim political authority.

One of the sources of friction between the superintendents and the community was the fact that the superintendents generally did not consider the people of Turtle Mountain to be Native. Janus, the first superintendent, was particularly pointed in his characterization of the community. Writing in 1914, he stated that the reservation population was 3063, only 169 of whom were full bloods.⁷³ However, according to Janus, even this was questionable. “A number are not real full-blood Indians, but have more or less white blood and are classified as full-blood Indians, by reason of their affiliation.”⁷⁴ Additionally, Janus’ description of the mixed-blood members of the community echoed the challenges that they faced during the time of the McCumber Commission. “Most of them could not be distinguished from the average citizen were they mixed in a crowd of people. So far as their complexion is concerned, they are not darker than many of the persons of pure French extraction from both sides of the Canadian boundary.”⁷⁵ Remarking upon the history of the tribe, Janus stated, “They are descendents of the trappers and voyagers...who married the Cree and Chippewa women,”

⁷³ Janus, 1914 Annual Report, frame 77.

⁷⁴ Ibid.

⁷⁵ Ibid.

and, “since the early days, the tendency has been to get further and further away from the Indian blood.”⁷⁶ Ultimately, according to Janus, what little Native heritage within the community there was to begin with was now more or less gone. “The Turtle Mountain Band of Chippewa Indians, therefore, is composed of people, who when the Band was organized under the law in 1892, were of very little Indian blood, and at that time, very few Indian characteristics were preserved.”⁷⁷ Another superintendent, writing in 1932, stated:

There seems to be a very small percentage of full-blooded Indians enrolled. I have not attempted yet to ascertain the exact percentage but this will show on the Annual Census probably, but the average Indian (?) that I have met since coming here might just as easily be taken for a white man as for an Indian. Some of them might be taken for Swedes; some for Italians; some for Mexicans; but relatively few there are that would necessarily pass for Indians outside of an Indian country, and many of them are quite as white and look just as much like white people as my own daughters do.⁷⁸

Referring to the people of Turtle Mountain as “Indian (?)” and stating that they could pass for Swedes, Italians, and Mexicans was a clear signal from the superintendent to his superiors that he did not believe that the community had a rightful or complete claim to a Native identity or heritage.

The superintendents’ attitudes concerning the makeup of the Turtle Mountain people undoubtedly colored their assessments of the community; this was perhaps most evident as it concerned allotments. Craige, writing in 1918, stated, “The issue of the

⁷⁶ Ibid., 77-78.

⁷⁷ Ibid., 78.

⁷⁸ Charles H. Asbury, 1932 Annual Report of the Superintendent, Mar. 12, 1932; Frame 962 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

patent in fee, according to my observation, awakens the so-called Indian to a greater realization of his responsibility towards society, brought about through his receiving the right of franchise and through his having to assume the duties that go with citizenship.”⁷⁹ Craige was forced to admit that, “Many who receive the patent in fee do not procure as good value for their lands as more experienced people would,” but he nonetheless stated that this was the exception and not the rule.⁸⁰ Despite their beliefs about the Turtle Mountain people, later superintendents were forced to acknowledge that allotment had been devastating for the community.⁸¹

Sometimes a superintendent’s temperament, as well as his decisions, were a source of conflict. James H. Hyde, superintendent from 1926 to 1931, was emblematic of the consternation that could be created by the wrong person at the wrong time. Hyde’s abrasiveness was evident both in his correspondence with Washington and in the complaints made against him by tribal members. Among other accusations, tribal members stated that Hyde denied them money that was rightfully owed to them, made them work for their rations when they were sick, and even laid a gun on his desk within

⁷⁹ Craige, 1918 Annual Report, frame 250.

⁸⁰ Ibid.

⁸¹ Writing in 1927, tribal superintendent James H. Hyde stated, “It is regretted that the results of the issuance of Patents in Fee have invariably resulted in the loss of the land by the Indians, and their return to ‘squat’ on the allotments of relatives, thereby complicating a problem that is deeply involved. Ninety-five percent of the patented land is sold... The Indian does not receive full value for his land when it is sold by himself. He will take whatever he can get, and the price he gets is determined by the honesty of the person with whom he is dealing. Whether or not he gets full value for his land does not materially effect [sic] his ultimate condition. If he has received full value for his land his period of squandering can be prolonged somewhat longer, but ultimately he is without funds or the proceeds thereof, and becomes a liability on the county.” James H. Hyde, 1927 Annual Report of the Superintendent, July 12, 1927; Frame 672 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.

arm's reach when some tribal members went to see him about their concerns.⁸² Hyde was even accused of distributing rancid pork amongst the rations.

I am Boe Bonneaup.

This is my first reaching [ration?] Mr. Hidg [sic] give me. I dont [sic] fell [sic] to eat this pork. Even the dog don't eat that pork. if [sic] you don't believe me just cook that pork.⁸³

Hyde's response was that both the agency and tribal members knew that the pork was inedible, but that it still retained some use.

It would undoubtedly save some criticism if we were to burn what remains of this pork and refrain from issuing it at all, but because use can be made of it I dislike to do so. The Office knows of this pork and its condition, and the Indians also know the circumstances under which they get the pork. I am aware that it furnishes a medium for agitators to make a great to-do about but nevertheless if these people can get some benefit from the pork, I shall continue issuing it until the supply is exhausted and the agitators can make as much capital if it as they see fit.⁸⁴

Perhaps Hyde's biggest foe was a tribal member named J.G. Brien (it is unclear what, if any, relationship J.G. had to the previously mentioned Theodore Brien from Montana). Brien sent several letters to Washington D.C. to which Hyde was forced to respond. Hyde's caustic tone is particularly evident in one exchange in November 1929 when he responded to a petition begun by Brien to protest unfair hiring practices on the reservation. "I have carefully gone over each paragraph in the so-called petition and find that each contains an admixture of truth and falsehood so intermingled that one

⁸² Charles Cree, Jr., Wazie Oldman, William Skinner, Jack Littleboy, Thomas Wazire, and Sam Standing Chief; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁸³ Boe Bonneaup; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁸⁴ James H. Hyde to Commissioner of Indian Affairs, Feb. 24, 1930; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

unacquainted with the actual conditions and the character of the petitioners would believe that they are suffering from an ‘unjust situation and the rottenness of the system.’”⁸⁵

Hyde even took a bit of a swipe at his superiors. “It is regretted that time must be spent in analyzing the various items of the complaint, for the majority of them are wholly unfounded and to spend time and effort in refuting the charges is giving undue attention to that which is unworthy of a second thought.”⁸⁶

Brien and Hyde clashed on many other occasions as well. Another particularly noteworthy incident occurred when Hyde managed getting a tractor stuck on a frozen lake. Brien sent a letter to the Secretary of the Interior detailing the event and asking for recourse.

Hon Sir

I want to relate to you, an incident which took place here on the reservation on New Years Eve, about one and one half (1½) miles of Belcourt is what is known Belcourt Fish Lake, where fish has been put in for a number of years. Indian Agent James H. Hyde of the Turtle Mountain Reservation went on this Fish Lake with a Government Bates 80 Caterpillar, and grader to clean the ice and went through the ice with the machine by carelessness, knowing that this big monster of an engine could not stand up to the ice. Supt. Hyde and his crew got a number of pounds of dynamite [sic] and put a number of charges on the ice, to break the ice so they could get the tractor out. The charges were so strong on the water of the lake that even, shook & clatter The windows in near by buildings, and no doubt killing many fishes in the surrounding of the lake now then is their [sic] a law prohibiting the use of any explosives in where fish, is layed [sic] and kept on public waters.

It is very surprising to every human being in the County of Rolette, N. D. That Indian Agent Hyde, has so much power, and privilege to do whatever he wants to do and get by with, if Their [sic] is a law for such offenders, leave the law take its course.

⁸⁵ James H. Hyde to Commissioner of Indian Affairs, Nov. 27, 1929; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁸⁶ Ibid.

Hoping that the department will take the matter up
and see if Supt. Hyde is a (Kaiser) or a public servant⁸⁷

Brien even wrote to the North Dakota Fish and Game Commission to complain about Hyde's actions. The Fish and Game Commissioner declined to pursue any action against Hyde.⁸⁸

Despite whatever shortcomings they may have had personally and professionally, Hyde and other superintendents were saddled with difficult circumstances under which they were forced to operate. One difficulty was the mess caused by the particular history of the Turtle Mountain reservation, and its consequent enrollment issues, allotments in various places in different states, questions concerning American citizenship, and the international character of the people. Hyde described the situation as such:

As the Office is doubtless aware, one of the greatest problems here is the continual passing back and forth of non-enrolled part-blood Canadian Indians. These people are not enrolled in any agency either in the United States or in Canada. Many of them have sought enrollment with this tribe and were denied such enrollment by the McCumber Commission. Since that time they have been roving here and there, first on this side of the line and then on the other. They have degenerated into worthless, shiftless nomads who will not work when the opportunity is present, would rather steal than earn an honest living, would rather lie than tell the truth, and are a continual source of trouble to the officers and people of this Reservation. Of course we can put them off the Reservation but they will merely move onto a Fee Patented Allotment which is no longer of Reservation status and defy us to interfere with them.⁸⁹

⁸⁷ J. G. Brien to Secty of the Interior, Jan. 3, 1930; James H. Hyde to Commissioner of Indian Affairs, Feb. 24, 1930; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁸⁸ John W. Benson to J.G. Brien, Jan. 22, 1930; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁸⁹ James H. Hyde to Commissioner of Indian Affairs, Aug. 13, 1930; Letters Sent; 509154-155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

Hyde also handled arguments from tribal members about other people believed to be either worthy or unworthy of being enrolled as well as a variety of other complaints from tribal members and other people.⁹⁰ The situation was not aided by the fact that the agency headquarters, the superintendents believed, did not have enough resources to accomplish all of the tasks required of the office; a situation of which Hyde in particular complained bitterly.⁹¹

Another difficult circumstance under which Hyde and later superintendents were forced to operate was the beginning of the Great Depression. In some ways, the economic downturn did not greatly affect those on the reservation, as times were already difficult for the community. Eventually the New Deal programs that were established in the 1930s, after Hyde's tenure, provided economic opportunities that had not existed even before the advent of the Great Depression. However, during Hyde's tenure dozens of letters were sent to the Turtle Mountain agency seeking some relief. The limited funds that Hyde could distribute inaugurated a period where the divisions between tribal members – between enrolled and non-enrolled, between fee-patented American citizens and wards, between allotted and non-allotted, between American and Canadian Natives – became hardened. Hyde's response to Mrs. Alex Martin's request for relief in July of 1931 not only was typical of the many letters Hyde wrote in response to such requests, but it also addressed the levels of complexity concerning the status of tribal individuals during this time period:

⁹⁰ James H. Hyde to Commissioner of Indian Affairs, Sep. 24, 1930; Letters Sent; 509154-155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁹¹ James H. Hyde to Commissioner of Indian Affairs, Apr. 15, 1931; Letters Sent; 509154-155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

Dear Mrs. Martin:

The calls for help received by this Agency are becoming so numerous that it is necessary for us to confine our activities to the bona fide wards of the government.

Although it is true that you still have 40 acres of land held in trust, which makes you a ward, nevertheless the records show that you are married to a white man and that your children, if any, would not be considered wards of the Government.

In view of this, I would advise you that your husband being a white man, has as much right to receive County aid, if it is required, as any other person, and the fact that you are an enrolled Indian, will not prevent him from securing, for his wife and children, such help as may be required.⁹²

Regardless, the letters and requests for relief kept coming from various sources. Some people were looking for aid, some people were asking to be included on the tribal rolls, others were making yet other requests for help; one enterprising person even requested that her allotment be put back into trust. The request was denied.⁹³

Hyde was not the only superintendent to face the dissatisfaction of the community. Other incidents indicate that the people of Turtle Mountain were unhappy with their status and sought to reclaim a sense of autonomy over their own lives. Parents let Craige know that they did not approve of the industrial training that their children received from the federal government. "They claim that their children can get at home all the training of that kind they need."⁹⁴ McQuigg heard similar complaints.⁹⁵ Craige's writings suggest that the parents were displeased with education they saw as limiting and ineffectual. Those students who went to off-reservation boarding schools often returned

⁹² James H. Hyde to Mrs. Alex Martin, July 14, 1931; Letters Sent; 509155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁹³ James H. Hyde to Mary Louise Girage, July 22, 1921; Letters Sent; 509155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁹⁴ Craige, 1918 Annual Report, frame 234.

⁹⁵ McQuigg, 1919 Annual Report, frame 261.

disillusioned and unhappy.⁹⁶ But they also found ways to contribute to the life of the community. For at least some period of time, the returned students held monthly meetings. As noted by Craige, “The time of these meetings is taken up in the discussion of some topic of common interest to all.”⁹⁷ It is possible that this time was used to discuss an ever-present topic of discussion: the claim. Additionally, community members not only fought for a claim, they fought for resources. One superintendent framed the issue in a manner that placed the onus on the community. “They have been helped so readily year after year that they have come to regard it as a right, as an obligation on the part of the Government, or County, or some other agency, and they look forward to receiving rations, under certain conditions, without question.”⁹⁸ It is probable that the people of Turtle Mountain viewed the aid in other ways: as an undeniable necessity, as part of the ongoing commitment of the relationship engendered by the McCumber Agreement, or perhaps even as a fulfillment of (or even retribution for) the price paid for tribal land.

Formal organization through a written document

Throughout his tenure, Hyde routinely stated either that there was no tribal council or that attempts to organize a council were thwarted because of the community’s

⁹⁶ According to McQuigg, “The returned student presents rather a peculiar problem. When he first returns from school, he appears unable to adjust himself for some time and does not care to assume much responsibility. It usually takes several years for him to settle down and get busy and this the most of them do not do until they are married. Unfortunately, for practically all of your young people their lands are located far distant from the reservation and they have nothing here with which to make their start.” McQuigg, 1919 Annual Report, frame 270.

⁹⁷ Craige, 1916 Annual Report, frame 166. The meetings also contained, “a literary program consisting of readings, songs and instrumental musical selections, and the evening usually closes with a social dance which lasts for about two hours.” Ibid., 166-67.

⁹⁸ Asbury, 1932 Annual Report, frame 987.

inability to agree on council members.⁹⁹ As sources concerning tribal governance during this time are limited, it is possible that by Hyde's time at Turtle Mountain, beginning in the mid-1920s, the tribal council that previous superintendents had referenced was no longer viable.¹⁰⁰ Regardless, as the 1920s gave way to the 1930s, tribal organization and governance, particularly through the means of written document, was of the utmost importance to the community.

In August of 1931 some community members requested that Hyde send a copy of the by-laws for a business council to the Secretary of the Interior for approval. The superintendent obliged, but was dismissive about the proceedings that inaugurated the by-laws in his letter to his superiors.¹⁰¹ Nonetheless, the community had already begun to move forward. On page four of the July 2, 1931, edition of a local newspaper, the *Turtle Mountain Star* – over a month before Hyde's letter to his superiors – there appeared a large ad taken out by the “Executive Committee of the Chippewa Tribe.” The ad stated, “Pursuant to the Provision of Section 1 of the By-laws, Notice is hereby given that the annual meeting of the Tribal Council of Turtle Mountain Chippewa Indians of North Dakota and Montana, will be held on the 10th day of July, 1931, at Belcourt, N. Dak., for the purpose of electing officers for the ensuing year and transacting any tribal business

⁹⁹ James H. Hyde, 1929 Annual Report of the Superintendent, 1929; Frame 851 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.; and James H. Hyde, 1930 Annual Report of the Superintendent, 1930; Frame 889 (National Archives Microfilm Publication M1011, roll 157); Turtle Mountain, 1910-1935; Annual Narrative and Statistical Reports From Field Jurisdictions of the Bureau of Indian Affairs, 1907-1938; Record Group 75; National Archives Building, Washington D.C.; and James H. Hyde to Commissioner of Indian Affairs, Aug. 12, 1931; Letters Sent; 509155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁰⁰ The annual reports by the superintendents at Turtle Mountain only contain statistical information for the years 1921-1925.

¹⁰¹ “In this election only 86 ballots were cast, although there were more than 800 people resident on the reservation who were eligible to vote.” Hyde to Commissioner of Indian Affairs, Aug. 12, 1931, National Archives, Kansas City, MO.

that may come before the Council.”¹⁰² Every adult enrolled in the tribe was invited to attend and participate.¹⁰³ The discussions of a tribal claim were also still very much alive at this time as well.¹⁰⁴

In early September of 1931, the new council, on paper with the letterhead, “TURTLE MOUNTAIN TRIBE OF CHIPPEWA INDIAN COUNCIL,” wrote to Hyde asking if he received some information that the council had sent and requested that he forward it to the Commissioner of Indian Affairs.¹⁰⁵ It did not take long before Hyde began angrily complaining to his superiors about the new council. Hyde’s mid-September letter to the Commissioner of Indian Affairs is important for several reasons: It makes clear that a tribal claim against the federal government was the major impetus for political movement at Turtle Mountain:

At the time the tribal council was formed, it was stated as their purpose to present and push tribal claims...¹⁰⁶

It reflects a people who were trying to regain a measure of agency over themselves and over the superintendent:

... but since the Council has been formed, I have had evidence of a desire on the part of the Council to designate policies of administration. The majority of the Council members are patent-in-fee Indians and they have assumed a belligerent attitude toward my administration. Yesterday afternoon the Council met at some place over town unknown to me; and four of the Councilmen afterwards came to my office with a proposal to dictate who should be

¹⁰² Advertisement, *Turtle Mountain Star*, July 2, 1931.

¹⁰³ Ibid.

¹⁰⁴ James H. Hyde to Mrs. Percy Dennis, Aug. 22, 1931; Letters Sent; 509155; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁰⁵ Turtle Mountain Tribe of Chippewa Indian Council to James H. Hyde, Sep. 1, 1931; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁰⁶ James H. Hyde to Commissioner of Indian Affairs, Sep. 17, 1931; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

employed on the road work and building program and the number of days that they should be employed. After learning the trend of their proposal I advised them that matters of administration would continue to be handled by this office without interference on the part of the Council. I further advised them that I would gladly discuss with them at any time matters pertaining to the tribe, or in which the tribe as a whole was interested, but that matters of policy and administration for which I was solely responsible, I could not and would not make the subject of Council conferences.¹⁰⁷

And it again reveals Hyde's paternalistic and caustic attitude concerning the people of Turtle Mountain:

I realize that with a sympathetic cooperative Council, much could be accomplished through them in forming public opinion, but in view of the characters of the individuals who make up this particular Council, I know that cooperation is impossible. They have stated that it is their purpose to bring about a change in the Agency and Hospital personnel and particularly in the position of superintendent, and to hope for constructive cooperation with them is out of the question.¹⁰⁸

Beyond the generally acrimonious relationship Hyde had with the people of Turtle Mountain, he seemed to legitimately have reason to fear for his job. The Council was acting quickly to make things happen on the reservation. By November of 1931 the Council was anxious to hear from the Secretary of the Interior as to whether their constitution and by-laws had secretarial approval.¹⁰⁹ The constitution and by-laws did not receive secretarial approval.¹¹⁰ Nonetheless, the correspondence is a clear indication

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Turtle Mountain Tribe of Chippewa Indian Council to Secretary of the Interior, Nov. 3, 1931; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹¹⁰ Turtle Mountain Constitution and By-Laws; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

that the desire for political maneuvering had reached a heated point, and that a claim against the federal government was a dominant motivation for this maneuvering.

The First Turtle Mountain Constitution and the IRA

A new superintendent, a new constitution

Hyde left the Turtle Mountain Reservation in 1931. After his departure, the community continued to press for recognition of their new tribal government. In the summer of 1932 the tribal council again wrote to Washington D.C. in the hopes of receiving information about their proposed constitution and by-laws. The Commissioner of Indian Affairs, C.J. Rhodes, responded by noting that amendments and other changes had been taken up with the new superintendent, Charles H. Asbury, for consultation with the community.¹¹¹

Asbury's short time at Turtle Mountain was generally unremarkable, with two exceptions: the first being trying to bury the, "sundry petitions and complaints mard [sic] by Brien and others," which he described as "petty matters" in the general files;¹¹² the second being contacting John A. Stormon, a local non-Native attorney, concerning the claim against the federal government.¹¹³ Stormon's responsibilities quickly moved beyond the claim and the attorney's long association with Turtle Mountain left an indelible mark on the community's political history. Francis J. Scott, Asbury's successor,

¹¹¹ C. J. Rhoads to Louis M. Marion, Aug. 9, 1932; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹¹² C. H. Asbury, note, Feb. 20, 1932; Complaints; 509163-164; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹¹³ John A. Stormon to C. H. Asbury, April 25, 1932; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

picked up where Asbury had left off and was also instrumental in bringing a constitution to Turtle Mountain.

Scott came to the Turtle Mountain reservation in October of 1932 with a certain amount of ambition and resolve. The new superintendent also knew how to convey a sense of leadership to the local press. In an interview with the *Turtle Mountain Star* he stated, “It is my strongest hope and greatest desire that under my direction the aims and ideals of the Indian Service will be carried out. With the organization we have and the interest of Washington, I am sure that the progress made at Belcourt will prove an eye-opener to those interested.”¹¹⁴

Just below Scott’s profile in the *Turtle Mountain Star* there is an announcement for a tribal meeting to be held in two days. The purpose of the meeting was to be, “for the purpose of electing tribal officials and adopting a constitution for the tribe.”¹¹⁵ Scott wasted little time in enacting his vision in his new post. According to the announcement, “Mr. Scott feels that the benefits of such an organization will be valuable to the residents of the local reservation.”¹¹⁶

Two days later the Turtle Mountain Band of Chippewa Indians had a constitution. (See Appendix A) The preamble of this new document deceptively suggests that it was

¹¹⁴ S.A. Lavine, “Agency Superintendent Sees Interesting Work,” *Turtle Mountain Star*. Oct. 6, 1932. Scott was a family man, bringing a wife and two daughters along with his twenty years of experience to the North Dakota prairie. He began his career in the Indian Service in 1912 in Umatilla, Oregon as an industrial teacher. A year later Scott moved to the Prairie-Band Potawatomie reservation to become an assistant clerk. Six months later he was named chief clerk. Scott continued to bounce around different reservations until World War I broke out and he resigned his post with the Indian Service in order to join the cause. At first, this proved to be a rash decision as he was rejected for service. Eventually, however, Scott was accepted into the armed services. He achieved the rank of corporal which, according to Scott, gave him, “the right to tell everyone where to get off.” After a year in the armed services Scott was right back in the other service he had known professionally. He once again made his way from different reservation to different reservation, eventually becoming acquainted with the upper Midwest with stops in Red Lake, Cass Lake, and Pine Ridge. Ibid.

¹¹⁵ “Tribal Meeting Called For Belcourt Saturday,” *Turtle Mountain Star*, Oct. 6, 1932.

¹¹⁶ Ibid.

the product of debate and discussion amongst tribal members. “We, the Indians of the Turtle Mountain Reservation of North Dakota, in general tribal council assembled, do hereby establish an organization to be known as the Turtle Mountain Advisory committee, and do hereby adopt the following Constitution and by-laws to govern the same.”¹¹⁷

The text of the Constitution is both conciliatory and somewhat preoccupied with itself. Article 2, of six total articles, is the only place in the text where the powers the tribal governing body are discussed. “The duties of said committee shall be to promote co-operation of the Turtle Mountain Band of Chippewa Indians with the Superintendent and the plans of the government, and to assist the Superintendent in an advisory way in promoting the social, financial and industrial welfare, and the best interests of the tribe.”¹¹⁸ Article 2 continues by stating that the tribal governing body is also empowered to consider tribal business and to execute tribal papers. The final sentence of Article 2 allowed for meetings of the general tribal population. “When in the opinion of the Superintendent or a majority of the members of the [tribal governing body] a matter requires action of the general tribal council, the Superintendent may take appropriate steps for the calling of a general council of the tribe.”¹¹⁹

Thus, the lone article of the tribal constitution that specifically deals with the powers of the government that it establishes gave tremendous deference to the Superintendent of the tribe. The text of the document stated that the purpose of this new tribal government was to “promote co-operation” with the agents and laws of the United

¹¹⁷ Turtle Mountain Tribal Constitution. 1932 edition preamble. (Found at DeCoteau, *Constitution Convention*, 236-39)

¹¹⁸ Ibid. art. 2.

¹¹⁹ Ibid.

States government. Tribal decisionmaking, while established and legitimate, was pyrrhic at best and the true authority of the tribe continued to be in the hands of the Superintendent. No other powers of the tribal governing body were enumerated in the text beyond “co-operation” and the ability to conduct tribal business and execute tribal papers. In addition, the last sentence of Article 2 suggested that the Superintendent was at authority to override a decision of the tribal governing body and to call a general council of the tribe. In fact, the constitution created some confusion as to whether or not the tribal governing body itself could call a general council without the Superintendent’s permission. Perhaps the greatest indication of how the newly established government of Turtle Mountain was understood by those most closely involved in its creation comes from Article 1. In Article 1, the governing body of the Turtle Mountain is named. “The name of this organization shall be the Turtle Mountain Advisory Committee.”¹²⁰ As such, the lone branch of government was an “Advisory Committee.”

If the community met on October 8, 1932, in order to establish a constitution and by-laws, then Article 2 reads like the constitution and the rest of the other five Articles read like the by-laws. Article 1, discussed above, merely established the name of the governing institution. Article 3, titled “Memberships and Elections” established the rules governing who could sit on the Advisory Committee and how they would be chosen.¹²¹ Article 4 established an oath and duties for officers in the new government.¹²² Article 5 made the constitution effective upon its adoption by the tribe.¹²³ Article 6 provided for the adoption of amendments to the constitution. Amendments could be approved by

¹²⁰ Ibid. art. 1.

¹²¹ Ibid. art. 3.

¹²² Ibid. art. 4.

¹²³ Ibid. art. 5.

either the Advisory Committee or a general tribal council, but the amendments could not go into effect until they had approval from the Commissioner of Indian Affairs.¹²⁴

The conciliatory tone of the constitution toward of the Commissioner of Indian Affairs provides some insight into the origin of the text itself. The 1932 Turtle Mountain Tribal Constitution could hardly be described as an organic document originating from the people. One lone piece of evidence suggests that there was some tribal involvement in writing the original draft of the document; yet, this lone piece of evidence, along with other sources, also mitigates the possibility of significant tribal influence on the document.¹²⁵

In the National Archives Building in Washington D.C. there is an undated memo titled Turtle Mountain Constitution and By-Laws which briefly summarizes some of the pertinent correspondence between the tribal agency and Washington D.C. during this period. According to this memo, a letter from Asbury to his superiors suggests that tribal members participated in writing the first draft of a constitution.¹²⁶ While the summary implies that the document was, at least initially, tribally generated, there is other evidence in the memo that implies otherwise and makes clear that the final draft was a product of the federal government. Prior to the tribal meeting with Stormon, copies of the constitution and by-laws of two other tribal communities were sent to the Turtle Mountain Agency to provide models of documents that had been approved by officials in Washington D.C.¹²⁷ Additionally, revisions and amendments were suggested by federal

¹²⁴ Ibid., art. 6.

¹²⁵ Turtle Mountain Constitution and By-Laws, National Archives Building, Washington D.C.

¹²⁶ “Letter not too clear but apparently this constitution was drafted by the executive committee which had been elected in 1931 with the assistance of Mr. John Stormon, Attorney-at-law, Rolla, North Dakota.” Ibid.

¹²⁷ Ibid.

officials and implemented by Stormon.¹²⁸ Interestingly, the correspondence from Washington D.C. noted that the final draft of the constitution left an inordinate amount of authority in the hands of the tribal superintendent, a point which would not be lost on the community.¹²⁹

The constitution was a creation of Scott, Stormon, and to a lesser extent, Asbury. Scott announced in the ratification meeting that, “In view of previous action taken by the government at various other reservations, I have had a constitution for an organization drawn up that will, I trust, serve your purpose.”¹³⁰ As such, it is unsurprising that the document so readily bent to the will of the Commissioner of Indian Affairs and stressed “co-operation.” The totality of the evidence also makes clear the Stormon was the primary, and likely dominant, author of the constitution. The text of the constitution was even printed on Stormon’s stationary.¹³¹

Thus, on October 8, 1932, the people of the Turtle Mountain reservation voted to adopt a tribal constitution that was not of their own making and left little actual governing power in the one official body that the constitution created; an unfortunately, yet revealingly named Advisory Committee. Considering the movement toward a tribal constitution prior to Scott’s arrival on the reservation and the political maneuvering that also occurred beforehand, the adoption of this new constitution seems, on its face, to have been a step backwards for the people of Turtle Mountain. Yet, beneath its surface, the tribal ratification begins to make sense when it is considered in the context of the major

¹²⁸ Ibid.

¹²⁹ “Letter [from Assistant Commissioner of Indian Affairs J. Henry Scattergood] contains a post script noting that superintendent has considerable authority in nominating and approving candidates in advisory committee. No objection to this if Indians desire it but Indian Office does not require it.” Ibid.

¹³⁰ S. A. Lavine, “Indians Organize to Present Tribal Claim,” *Turtle Mountain Star*, Oct. 13, 1932.

¹³¹ DeCoteau, *Constitution Convention*, 236-39.

force driving the political action of the day at Turtle Mountain: a claim against the federal government.

The possibility of a lawsuit dominated the discussion in the tribal meeting concerning the adoption of the constitution. Scott was up front about the purposes of the document. “You have been called together today in order to organize yourselves. This step is most necessary in view of the fact that some of you people believe that you have a claim against the government...any action you may wish to take is hindered because of your lack of unity and organization.”¹³² Scott was also up front about what he expected from the people of Turtle Mountain. “The constitution is so arranged as to provide for that tribal organization that is approved by the office at Washington. Our task today is not to amend or change it, but rather accept it so that the Turtle Mountain people may hire lawyers to take their claim to the Court of Appeals.”¹³³ Scott may have slightly misspoken or may have been misquoted, as any lawsuit against the federal government would first have to have been taken to the Court of Claims. Nonetheless, the point was made.

Stormon was also at this meeting and was also forceful in his statements concerning the tribe’s need to adopt the constitution. He echoed Scott in stating that this constitution was the only means available toward accomplishing the goal of a lawsuit. Stormon, “told of drawing up the paper and his reasons for wording it as he did. He also told of the need of presenting a well-constructed case to the government, a matter which

¹³² Lavine, “Indians Organize.”

¹³³ Ibid.

needed perfect organization and told the people that the adopting of the constitution was the only and sole means of securing any action whatsoever.”¹³⁴

Despite the declarations of both Scott and Stormon and the admonition of Scott that the constitution was not to be amended or changed, a dialogue about the constitution ensued. Scott and Stormon had their say in the morning session of the October 8 meeting. Tribal members were heard in the afternoon session.

Robert Bruce, a prominent community member (whose involvement in another organization at Turtle Mountain will be detailed later in this chapter), was a lead discussant. A preliminary vote on the constitution in the afternoon session showed that the community was fairly evenly split on the issue of adoption. Bruce voiced strong opposition to the paternalist tone of the document. “‘I feel,’ he said, ‘that this constitution invests altogether too much power in the hands of the superintendent. The various articles all seem to be so constructed as to give the balance of power to the Agency office and on these grounds I think the plan is not only unfair, but unjust.’”¹³⁵

The example of Robert Bruce is particularly instructive because it reflects the difficult decision that the community faced and the deep desire for a claim against the federal government. The response to Bruce’s objections is unknown. What is known is that whatever was said was enough to lead to the ratification of the constitution. Eventually even Bruce himself came around and voted in favor of the document.¹³⁶ The proposed constitution was unsatisfactory to Bruce and assuredly to others. Yet, the possibility of finally beginning a claim was too much to resist. At least some, if not many or even most, of the members of the community recognized the shortcomings of

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

their new constitution; but those shortcomings could not outweigh the potential of seeking some retribution for the McCumber Agreement through American courts.

The new constitution called for the election of members to the Advisory Committee. Bruce not only was elected to the Advisory Committee, he received more votes than anyone else. Of course, the new constitution needed not only the support of the people of Turtle Mountain, but also the support of the Commissioner of Indian Affairs. Such approval was granted by Commissioner C. J. Rhoades on December 23, 1932.¹³⁷ Two-and-a-half months after agreeing to it, the people of Turtle Mountain were now officially governed by Scott and Stormon's document.

As the claim was the biggest political concern at Turtle Mountain, it is unsurprising that movement toward a lawsuit was first and foremost on the minds of the newly established Advisory Committee. The first meeting of the new governing body occurred on January 2, 1933, and seven elected officials were sworn in.¹³⁸ Interestingly enough, in a meeting intended to begin legal action against the United States, a distinctly American feel inaugurated the proceedings, including a boy scout presenting the American flag and a rendition of "America."¹³⁹ Scott spoke at the opening of the meeting. He detailed the steps that were taken in enacting the constitution and made statements suggesting a large measure of tribal self-determination. Scott then stated that he did not want to influence the community in its business and that the members of the Advisory Committee had his confidence in their ability to perform their sworn duties.¹⁴⁰

¹³⁷ C. J. Rhoades to Mr. F. J. Scott, Dec. 23, 1932; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C.

¹³⁸ "Turtle Mountain Chippewa Officially Prepare Claims Against Government," *Turtle Mountain Star*, January 5, 1933.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

Scott also went on to say that he expected that the Advisory Committee would cooperate with him and that tribal members would cooperate with the Advisory Committee.¹⁴¹

The Advisory Committee eventually did proceed into the business of the day. The meeting, “attended by a large number of the Turtle Mountain Indians,” came up with seven different complaints against the United States: (1) Children born after the McCumber Agreement should receive allotments, (2) Allotments off of the reservation were limited to surface rights whereas they should have included full rights to the land, (3) The government exercised their rights over the land before the McCumber Agreement was ratified and interest should be paid, (4) The community never ceded a particular piece of land and was never paid for it, (5) Tribal members had to pay a fee for their allotment when they were supposed to receive them for free, (6) Interest should be paid on the twelve years between the negotiations on the McCumber Agreement and its ratification, and (7) The price of ten cents and acre was unconscionably low.¹⁴² Despite some initial friction within the community, the people of Turtle Mountain were ready to move forward on their claim.¹⁴³

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Controversy concerning the claim arrived almost as soon as the new constitution was ratified. North Dakota Senator Lynn Frazier introduced another jurisdictional bill on behalf of Turtle Mountain in January of 1933. “Indian Claim Bill Is Introduced By Frazier,” *Turtle Mountain Star*, Jan. 26, 1933. In March of 1933 three members of the Advisory Committee wrote to the Secretary of the Interior with three complaints: a recent contract with three attorneys to pursue a claim against the federal government was not explained properly to them and when it was properly explained they did not approve of the contract, certain fellow Advisory Committee members were not officially tribal members, and they felt that the new jurisdictional bill that was before Congress was not in the best interests of the community. Gregare Brien, Severt Poitra, and John B. Azure to Secretary of the Interior, Mar. 4, 1933; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. These disgruntled Advisory Committee members were able to create action in the tribal agency and in Washington D.C. Although by the time that the three tribal members had sent their letter the jurisdictional bill was dead, the Secretary of the Interior, Harold Ickes, responded with a return letter noting that the three men had signed the contract with the attorneys. Ickes also suggested that the three men meet with Scott to discuss their objections to a jurisdictional bill and their objections to some of their fellow Advisory Committee members. Harold L. Ickes to Gregare Brien, Mar. 22, 1933; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

Organization at Turtle Mountain and elsewhere

The 1932 Turtle Mountain tribal constitution was part of a trend. Prior to the enactment of the IRA in 1934 there were already over fifty tribal constitutions on file with the Bureau of Indian Affairs. Political scientist Elmer Rusco has argued that these pre-IRA constitutions shared two characteristics, both of which benefited the federal government: (1) the responsibility for writing a constitution was an “administrative prerogative” that appears to have lacked tribal input during the writing process, and (2) the writing of tribal constitutions was “relatively routine” with the main office in Washington D.C. making suggestions and providing documents that had been used elsewhere.¹⁴⁴ It is probable that Scott believed that the Turtle Mountain tribal constitution would simplify the administration and assimilation of the community by consolidating political authority in one body under his authority. The fact that Scott had the document drawn up by a local non-Native attorney also suggests that the Turtle Mountain situation fits into Rusco’s analysis.

Yet, for the community, the constitution was something much different than a simple instrument of federal authority imposed upon them. The flaws in the document

Scott did meet with one of the three and found the objections of the group relatively without merit. F.J. Scott to Secretary of the Interior, Mar. 30, 1933; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. New Commissioner of Indian Affairs John Collier even responded to the situation. In his reply to the group Collier noted that, “Your objection to the jurisdictional bill is merely that it is not for the best interests of the members of the Turtle Mountain Band. No action can be taken on this general statement.” John Collier to Gregare Brien, May 1, 1933; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. Collier also noted that if a more thorough complaint were to be made it would be given further attention and that the three fellow Advisory Committee members of whom the disgruntled group complained were on the tribal rolls. Ibid. Regardless, by July of 1933 the controversy had not gone away and the Advisory Committee was forced to wrestle with the issue in its quarterly meeting. Nor had the pursuit of a claim against the federal government gone away either. Turtle Mountain Advisory Committee, Minutes for meeting held July 3, 1933; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁴⁴ Rusco, *Fateful Time*, 102.

were apparent to those who voted on it. Despite these flaws, the community voted to ratify the constitution spearheaded by Scott because they believed that it would lead to a claim against the federal government. Thus, the constitution and the vote on the constitution, for the people of Turtle Mountain, was an instrument of autonomy and resistance.

Similar patterns of seeking out, adopting, and reforming constitutions to meet tribal goals were emerging elsewhere in Indian Country. Anthropologist Thomas Biolsi focuses on the failure of the IRA constitutions at the Rosebud and Pine Ridge reservations in his book, *Organizing the Lakota*. While Biolsi does not deeply consider the pre-IRA constitutions of those reservations, another reading of his evidence and analysis suggests both that Rusco's argument about pre-IRA tribal constitutionalism is correct and that the people of Rosebud and Pine Ridge, like the people of Turtle Mountain, engaged in constitutionalism as a method for reclaiming tribal autonomy. In 1916 the people on the Rosebud reservation adopted a constitution that had been drafted by the agency. This new document, much like the Turtle Mountain constitution to come later, stressed complicity.¹⁴⁵ The Rosebud tribal superintendent viewed the constitution as a positive step away from tribalism.¹⁴⁶ Yet, while the federal government certainly looked to influence and "civilize" the Rosebud community through a constitution, the people had other ideas. The tribal government set up by the 1916 document was immediately unpopular. There were several calls for a governing structure outside of the constitution and in 1920 a large majority of the community voted to disestablish the

¹⁴⁵ Biolsi, *Organizing the Lakota*, 47.

¹⁴⁶ *Ibid.*, 48.

constitutionally established council.¹⁴⁷ Also in 1920, a new constitution was adopted. The tribal council that was created by the 1920 constitution, according to Biolsi, “Operated in only loose conformity with the constitution.”¹⁴⁸ This new document, perhaps because it was not stringently followed and because it provided a method for the community to establish a governing structure that was more familiar to the community, was much more successful and remained until it was replaced by an IRA-established constitution in 1935.¹⁴⁹

The people of Pine Ridge adopted a tribal constitution in 1916. Although it appears that members of the community actually wrote the document without federal governmental oversight, by 1918 several different factions were claiming political authority, prompting the tribal superintendent to step in and call new elections.¹⁵⁰ The results of the election proved to be unsatisfactory for the community. According to Biolsi:

The new council was authorized to meet only at the pleasure of the superintendent and to operate under his supervision. He would not approve a constitution the councilmen had drafted.... His general reason for not approving the constitution was most likely that he did not want the council to have jural authority to exist as a recognized body beyond his administrative discretion. Indeed, this council did not meet regularly and quickly became defunct.¹⁵¹

In the wake of the defunct council there were other requests by community members to enact other constitutions. Another document, ratified in 1928, established the Oglala Business Council. Yet, even this body would find controversy. In 1931 the Oglala

¹⁴⁷ Ibid., 48-49.

¹⁴⁸ Ibid., 50.

¹⁴⁹ Ibid., 50-52.

¹⁵⁰ Ibid., 52-53.

¹⁵¹ Ibid., 54.

Business Council was challenged by members of the community as antithetical to a more traditional and recognizable method of governance. The Oglala Business Council was disbanded and replaced by another constitution that was more in line with a traditional structure.¹⁵²

Jurisdictional bills for other tribal communities also multiplied at this time, further suggesting that other tribal communities were seeking out constitutions in order to begin claims against the federal government. Historian Harvey D. Rosenthal has noted in his study of the Indian Claims Commission that 219 tribal claims were filed between 1881 and 1946, when Congress established the ICC (the ICC will be discussed in more detail in the next chapter).¹⁵³ He also noted that only thirty-nine of those claims were filed in the Court of Claims prior to Congress passing an act in 1924 that granted all tribal peoples American citizenship.¹⁵⁴ Thus, 180 claims were filed after 1924 but before the Indian Claims Commission came into effect. Rosenthal stated that in the period from 1924 to 1928 almost as many claims were filed (37 claims) as had been filed in the previous forty-two years (39 claims).¹⁵⁵ While it is not within the scope of this project to study the histories of all of these pre-IRA tribal constitutions, it certainly seems probable that the proliferation of both tribal constitutions and tribal filings in the Court of Claims is more than mere coincidence.

Even with its constitutional authority, the Advisory Committee was just one of the groups that was organized at Turtle Mountain at this time. Other groups were formed both before and after the Advisory Committee was established. Generally short-lived,

¹⁵² Ibid., 54-59.

¹⁵³ Rosenthal, *Their Day in Court*, 24.

¹⁵⁴ Ibid., 18.

¹⁵⁵ Ibid.

these various organizations spoke, or attempted to speak, for the community, or interests within the community, at various times (thus leaving an often-confusing legacy). The Turtle Mountain Co-Operative Association was the most prominent and influential of these groups. The Turtle Mountain Co-Operative Association was formed sometime shortly before the tribal constitution was ratified and the Advisory Committee was established. Membership often overlapped amongst the Advisory Committee and the leadership of the Co-Operative Association.

The tribal agency consistently tried to downplay the influence of the Co-Operative Association; Scott wrote to his superiors in the summer of 1934 claiming that the organization, “plays no part in tribal matters.”¹⁵⁶ However, the Turtle Mountain Co-Operative Association did play a role in tribal matters. Robert Bruce, who voiced objections about the paternalist tone of the eventual tribal constitution, was the president of the Co-Operative Association at the time. By 1933 the organization was claiming a membership of over 1200 people and sending letters to Washington D.C. to ask specific questions about the law and to ask for further aid on the reservation.¹⁵⁷ Additionally, although there was conflict between the Co-Operative Association and the Advisory Committee, the overlap in members among the leadership meant that the two groups often worked in concert with each other and sometimes the Co-Operative Association exerted authority over the Advisory Committee. An example of the intermingling of the two groups was evident in late 1933 and early 1934. In December of 1933 the Advisory

¹⁵⁶ F. J. Scott to Commissioner of Indian Affairs, July 19, 1934; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

¹⁵⁷ Robert E. Bruce, Pres. to Mr. Harold Ickes, Secretary of the Interior, Nov. 6, 1934; Central Classified Files, 1907-1939; Turtle Mountain, 41624-1937-162 to 48072-1932-174; Record Group 75; National Archives Building, Washington D. C.

Committee sent a proposal for the rehabilitation of Turtle Mountain to the Commissioner of Indian Affairs.¹⁵⁸ The plan included sections on health, education, and economic development.¹⁵⁹ Approximately five weeks later the new president of the Co-Operative Association wrote to the President of the United States and included a nearly word-for-word reproduction of the Advisory Committee proposal.¹⁶⁰

The Co-Operative Association also had its own constitution and bylaws.¹⁶¹ (see Appendix B) This document, in many ways, was not all that different from the tribal constitution as it stressed a compliance with federal authorities. “We stand for law enforcement at all times and cooperation with the agency officials and especially the farm program.”¹⁶² In fact, there is a spirit of collaboration (perhaps unsurprisingly, as it was the “Co-Operative Association”) that inhabits the text that is best embodied by Article 12: “There can be no division or authority there for [sic] in working out our program with the Government, we shall offer suggestion [sic] and dictate [sic], but in the event our requests or suggestions are absolutely ignored we shall bring about a better understanding of our attitude.”¹⁶³

The exact relationship between the Co-Operative Association, whose leadership appears to have generally consisted of the younger, more-educated members of the community, and other organizations (such as the tribal council that took out the

¹⁵⁸ John B. Azure #1, President Advisory Council to Commissioner of Indian Affairs, Dec. 15, 1933; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C.

¹⁵⁹ Ibid.

¹⁶⁰ Z. J. Dauphanais, President to The President of the United States, Jan. 19, 1934; Central Classified Files, 1907-1939; Turtle Mountain, 53924-1931-057 to 57873-1912-110; Record Group 75; National Archives Building, Washington D. C.

¹⁶¹ Alex Martin to Honorable John Collier, received Aug. 30, 1934; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

¹⁶² Ibid.

¹⁶³ Ibid.

advertisement in the newspaper in 1931) is not completely clear. Nonetheless, the evidence allows reasonable suppositions. It is probable that, as the community came to recognize that formal organizations were growing in popularity and held the promise of increasing tribal autonomy and addressing tribal concerns, different groups were established to address different, specific issues. Another group worthy of mention is the Turtle Mountain Chippewa Indian Tribal Association because it reflects this possibility and it also had its own constitution by the fall of 1934.¹⁶⁴ (see Appendix C) It is most likely that this group was an offshoot of the Co-Operative Association that was meant to take advantage of the recently enacted Indian Reorganization Act and its provisions for a tribal corporation. The tribally-generated letter that accompanied the constitution was written by the Co-Operative Association's president and was written on paper with Co-Operative Association letterhead.¹⁶⁵ Additionally, the Co-Operative Association appears to have had more traction than other groups because it sought to act in a more general governing capacity. While the community decided to ratify the constitution produced by Scott and Stormon in order to initiate a claim, it is clear that at least some people were uncomfortable with the document and it is possible that many in the community hoped that the tribally-generated alternative would eventually replace the federally-generated tribal government. In fact, when the IRA was introduced, the Co-Operative Association presented itself as a viable alternative to the Advisory Committee and a champion of reorganization. According to a prominent member of the group who was writing to the Commissioner of Indian Affairs, "Another thing, my dear commissioner – as the law

¹⁶⁴ Z. J. Dauphanais, President to The Honorable Commissioner of Indian Affairs; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

¹⁶⁵ Ibid.

stands now we have to organize and then select our own officers. [The Co-Operative Association] is already organized and could take over the management right away and give the plan a trial. Otherwise those who are not organized will buck our organization and it will make it hard to organize in the future.”¹⁶⁶

The Indian New Deal and John Collier

By the late 1920s, allotment and its sister assimilationist efforts were coming under increasing scrutiny for not just their inability to raise the standard of living for Native peoples, but for often having the opposite consequence of leaving Native peoples more destitute and poverty-stricken than before. In 1928 the Washington D.C. think tank The Brookings Institute produced a major publication, nicknamed the *Meriam Report* after its lead author, that was highly critical of the federal government’s administration of Native peoples.¹⁶⁷ The *Meriam Report* ultimately did not disavow assimilationist policies, and its actual influence on future policy is a subject of debate.¹⁶⁸ Yet, it was important in that, as the 2005 edition of the Cohen Handbook has noted, “it brought to public attention the deplorable living conditions of Indian people.”¹⁶⁹ With the failures of the Allotment Era increasingly evident, the time was ripe for change. The time was ripe for John Collier.

¹⁶⁶ Alex Martin to Honorable John Collier, received Aug. 30, 1934, National Archives, Washington D.C.

¹⁶⁷ Brookings Institute, *The Problem of Indian Administration: report of a survey made at the request of honorable Hubert Work, secretary of the interior, and submitted to him, February 21, 1928*, (Baltimore: The Johns Hopkins Press, 1928).

¹⁶⁸ The 2005 edition of the *Cohen’s Handbook* argues, “The Meriam Report... was the primary catalyst for change. Newton, *Cohen Handbook*, 84. However, Deloria Jr. and Lytle argue, “Although almost every commentator on Indian matters credits the Meriam Report with providing the motivation and framework for the subsequent reforms initiated by the New Deal, there is not much evidence to support such an idea conceptually or in execution.” Deloria Jr. and Lytle, *The Nations Within*, 44.

¹⁶⁹ Newton, *Cohen Handbook*, 84.

Perhaps the most controversial figure in federal Indian policy in the twentieth century, Collier had long been an advocate for Native peoples before he was approved as Commissioner of Indian Affairs on April 20, 1933.¹⁷⁰ A strong critic of the federal government's assimilationist policy, he sought an end to allotment and other programs designed to destroy tribal ways of life. He also attempted to relieve the poverty that existed throughout Indian Country.¹⁷¹ The new era of policy that Collier brought to his post, including new legislation and other efforts, is often referred to as the Indian New Deal.¹⁷² The defining piece of legislation of the Indian New Deal was the Indian Reorganization Act of 1934.

The IRA was a gigantic, omnibus bill that sought to alleviate several of the ills in Indian Country that Collier identified. Perhaps most importantly, the IRA sought to reinvigorate tribal sovereignty and economic development by reestablishing tribal governments through constitutions and corporate charters. Collier's complicated, highly technical bill ran into opposition from many sides, including within Indian Country, most likely due to the fact that Collier introduced the bill to Congress without consulting with either Native peoples or members of Congress.¹⁷³ In response, Collier announced that he

¹⁷⁰ Two excellent resources upon which this dissertation relies, Rusco's, *A Fateful Time* and Deloria Jr. and Lytle's *The Nations Within* combined provide a nice synopsis of Collier's activities prior to his appointment as Commissioner of Indian Affairs.

¹⁷¹ Deloria Jr. and Lytle, *Nations Within*, 62.

¹⁷² Deloria Jr. and Lytle argue that, although he didn't win many fans among politicians, Collier was able to utilize the New Deal legislation of the times to bring much needed economic relief to Indian Country. "He was a skillful administrator and even more skillful at bringing the resources of other agencies into the field of Indian affairs. During his time as commissioner, he was able to get the Resettlement Administration, the Farm Security Administration, the Civilian Conservation Corps, the Works Progress Administration, the Soil Conservation Service, and the Federal Emergency Relief Administration to fund Indian projects and using these agencies and their programs enabled him greatly to expand the scope of federal services available to Indians." *Ibid.*, 184.

¹⁷³ It is possible that Collier had nothing to present to Indian Country or Congress before it was introduced on Capitol Hill. Rusco argues that Collier came to his major policy initiatives, particularly the Indian Reorganization Act (IRA), more deliberately than has been previously reported. Rusco, *Fateful Time*, 151-52. The bill that was to become the IRA took longer to prepare than was anticipated because of Collier's

would hold a series of Indian congresses to explain the bill to Native peoples. Vine Deloria, Jr. and Clifford M. Lytle noted the significance of this effort. “For the first time in decades, the government was actually going out to the tribes to obtain their views on proposed Indian policies.”¹⁷⁴ Deloria and Lytle also noted the purpose behind these congresses. “A master of self-confidence, Collier was convinced he could turn the Indian congresses to his advantage.”¹⁷⁵

Turtle Mountain and the IRA

Turtle Mountain sent a delegation, consisting of eight tribal members, four members of the agency staff, and an interpreter, to the first of the ten Indian congresses, held in Rapid City, South Dakota, from March 2 to March 5, 1934. A passage from the *Turtle Mountain Star* prior to the delegation’s departure is particularly revealing in that it suggests that the constitution and the Advisory Committee had yet to consolidate political authority or gain the complete trust of the community:

Suggestions for consideration of the Indian Bureau in its announced plan to radically alter the entire administration of Indian affairs have been submitted by members of the Turtle Mountain band of Chippewa Indians, as requested by the Bureau. While these suggestions have not been officially acted on at a regular meeting of the Advisory Council, they have been signed by certain officers and members of such council. The Turtle Mountain Co-operative association was active in drawing up the suggestions.¹⁷⁶

inexperience as an administrator, the enormity of the omnibus bill itself, and the desire to seek the aid of anthropologists and other experts to help draft the bill. Rusco’s seventh chapter, “Drafting the IRA Proposal,” details the difficulties and delays that Collier experienced in creating the IRA. Ibid., 177-219. In fact, the first draft Congress saw may not have been complete. Collier and Assistant Commissioner William Zimmerman rode to Capitol Hill together making last-minute changes to the IRA on the way to turn the bill over to Congress in February of 1934. Ibid., 208.

¹⁷⁴ Deloria Jr. and Lytle, *Nations Within*, 102.

¹⁷⁵ Ibid.

¹⁷⁶ “Turtle Mountain Tribe Offers ‘New Deal’ Plan,” *Turtle Mountain Star*, Mar. 1, 1934.

The Co-operative Association provided a total of seventeen suggestions for the Turtle Mountain delegation to bring to the Indian congress. Among the suggestions were a call for greater self-government, better enforcement of law and order regulations, and for the federal government to provide lands for tribal members around the reservation.¹⁷⁷ One particularly provocative suggestion would have expanded tribal membership beyond the scope of the rigid racial borders that were the established norm of the day.

Those who will be entitled to membership of the proposed community shall be as follows: Must be an enrolled member of the tribe, or those who should have been enrolled. Citizenship should be granted to whites, either man or woman, who are married to Indians who are members of the tribe. The holding of whites who are married to Indians cease upon their death; same to revert to the heirs of the deceased when in relation to the Indians, and if no heirs, same to revert to the Indian Community for proper disposition.¹⁷⁸

This bold recommendation appears to have been designed as a counter-punch to the ever-present criticism that the community was not truly “Indian.” It would have addressed both the mixed-blood character of the community, and some of the issues, particularly intermarriage, that arose due to living on a small reservation in proximity to non-Native communities.

Nonetheless, the Turtle Mountain delegation would do more listening than speaking during this first Indian congress. Collier had a lot to say; so much so that by the third day some Native delegates were thinking about naming him Iron Man for his endurance and ability to tire out translators.¹⁷⁹ Yet, the idea of naming Collier was not

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Vine Deloria Jr., ed., *The Indian Reorganization Act: Congresses and Bills* (Norman, OK: University of Oklahoma Press, 2002), 74.

only used for levity among the congress. It was also used for reminding Collier of the troubles Indian Country faced. Upon adopting Collier into the Blackfeet community, Mr. Brown of the Blackfeet delegation had this to say to Collier and the other audience members: “The name which we are going to give our leader here, and you may call him by his Indian name when you meet him, is Spotted Eagle. That name, Spotted Eagle, represents the Indian Reservations, the way they are checkerboarded. We hope that those spots will be rubbed off so that every Indian Reservation will be all in one spot.”¹⁸⁰

Despite these sentiments and other apprehensions to the bill, Collier was at ease with his audience and spoke openly with the delegates.¹⁸¹ Collier also spoke passionately about the bill.¹⁸² Additionally, Collier also reflected a willingness to listen to the delegates and a willingness to adapt to their wishes. Originally, the bill would have provided for the Secretary of the Interior to transfer individually allotted land back to a tribal community. The subject caused much consternation for many of the delegates. Collier conceded some ground on this point. “We are going to recommend to the Committees of Congress that this transfer of title by the allottee to the community, this transfer shall be exclusively voluntary and that the compulsion feature shall be stricken out.”¹⁸³ This statement was noted by the transcriber to have elicited “Great applause.”¹⁸⁴

¹⁸⁰ Ibid. 88.

¹⁸¹ When discussing the evils of the allotment policy and its consequent issues of the fractionalization of individual interests in land, Collier even made a joke. “Under the allotment law, as it stands, the situation has to get worse every year as the original allottees die. This complicates this crazy quilt as heirship holdings increase year by year. Nothing can stop it because people insist on dying. We cannot stop them.” Ibid., 33.

¹⁸² “I am informed that some of you here, on the strength of things you heard before you came here; things that you read in the newspapers or that people have told you, have crystallized your thinking against any change, and I desire for you to realize what I know to be the truth; that beyond your power, beyond my power, beyond the power of the President himself, the forces are moving which are going to make the change in a way to destroy you unless it is made in a way to save and help you.” Ibid., 34.

¹⁸³ Ibid., 82.

¹⁸⁴ Ibid.

When the delegates from Turtle Mountain did have their say, they were relatively noncommittal about the IRA. John Azure was the first Turtle Mountain delegate to speak and he was most concerned with the difficulties facing the community:

Friends: At the present time our Reservation is twelve miles long and six miles wide and in that Reservation there are more than three thousand people. The better half of this Reservation is now owned by the white people. So we are having a hard time. Something must be done so that we can get along better than this.

We have been here for three days now trying to understand the explanation of Commissioner Collier. But we did not learn so very much because we do not have the education. When I was first elected to our council I could hardly spell my own name, but I am still trying to do the best I can for my people.

Now the way we understand Mr. Collier's explanation, it sounds rather good to us delegates, but we are not going to say that we are in favor of the new policy or against it. We would like to take the news back to our Indian people and explain everything we have learned to them. After that, if the majority wants to take up this new policy it is up to them.

The only thing now we wish from the Government is to give us help or relief to get a start. The first thing of all we need is education. We have no education on our Reservation. If the Government can work out a plan that helps us out, some way to get us on our feet – that is what we want. I thank you.¹⁸⁵

Perhaps because the community had just ratified a constitution, Azure was less interested in the promise of a new tribal government and more concerned with any aid that could immediately help the people of Turtle Mountain.

The other Turtle Mountain tribal delegate to speak at the Indian congress was Kanick, the Advisory Committee chairman. He was, although complementary, also noncommittal:

¹⁸⁵ Ibid., 77.

I am glad to meet the Commissioner of Indian Affairs. My greatest desire was to see him. I am a poor man. I am just glad to see the Commissioner, as I would be to see him in Washington. The reason why I am so glad to meet him is because of what I have heard which is all for the benefit of the people. Of course, when I get up they all look at me as a poor man.

Upon my return the people will be looking to me to find out what I have learned from this meeting. I will tell my people what this great man has told me.

By the way I understand these Bills, the Commissioner of Indian Affairs wants to help me. The reason I am glad to meet him is that I have seen the Bill which he has presented to me. I am going to report it to the people that have sent me and I am pretty sure they will be pleased with it.

Concerning this self-government I am not quite ready to accept it yet because my people are just starting. I desire to say I will recommend it in a few years. That is my desire. Thank you.¹⁸⁶

Kanick's comments hint at why both he and Azure did not fully embrace the IRA. The newly ratified constitution already held the promise of initiating a claim against the federal government. Additionally, the continuing existence and activity of the Turtle Mountain Co-Operative Association suggests that at least some, if not many, community members did not fully embrace the Advisory Committee and the constitution that created it; the objections that were raised at the ratification meeting make it clear that the community understood its deficiencies. Under those conditions, with a relatively unpopular yet seemingly necessary constitution already in place, there would have been little to no incentive to replace one document created by the federal government with another document created by the federal government. Additionally, Kanick's decision to "recommend it in a few years," allowed for time for the claim to play out. Deloria and

¹⁸⁶ Ibid., 87.

Lytle considered this first meeting a success for Collier.¹⁸⁷ Yet, what is clear from the comments of the Turtle Mountain delegates is that Collier's efforts were not a complete success. The folks who had made the journey from the reservation in north central North Dakota were not completely sold on the Indian Reorganization Act.

The rest of 1934 and well into 1935 was a roller coaster ride for the legal and political fortunes of Turtle Mountain. Several discussions were held concerning the proposed IRA (including with local non-Native communities) and the possibility of a jurisdictional bill waxed and waned.¹⁸⁸ During this time, Scott had to answer to his superiors about his role in promoting the IRA within the community. A tribal member had written to the Commissioner of Indian Affairs complaining about Scott's attitude concerning the legislation. The superintendent explained his behavior in a two-page letter, stating among other things, "After returning from the Rapid City conference, the Advisory Committee told me that they did not think it would be advisable to call a general meeting for the purpose of discussing and considering the proposed bill until we could get a printed copy of the minutes of the Rapid City meeting."¹⁸⁹

The Advisory Community's lack of enthusiasm was most likely more than mere prudence. Later in April of 1934 the superintendent at the Devils Lake Reservation wrote to the Commissioner of Indian Affairs to defend Scott and to detail his understanding of

¹⁸⁷ Deloria Jr. and Lytle, *Nations Within*, 107.

¹⁸⁸ Shortly after returning from the Rapid City Indian congress, superintendent Scott held a discussion with the Rolla Commercial club, a non-Native organization centered just outside of the reservation. During the meeting note was made of the large population of the tribal community and the small land base. The features of the proposed IRA that involved increasing tribal land holdings, coupled with the unique land/population ratio, was of the most concern to the club, who wished to have their say heard in the discussions of the proposed bill. "Discuss Features of New Indian Program," *Turtle Mountain Star*, Mar. 15, 1934. Additionally, although it ultimately failed, a jurisdictional bill was making its way through Congress while the Turtle Mountain delegation was attending the Indian congress. "Senate Passes Chippewa Claim Jurisdictional Act," *Turtle Mountain Star*, Feb. 1, 1934.

¹⁸⁹ F. J. Scott to Commissioner of Indian Affairs, Apr. 7, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

how tribal members felt about the impending legislation. “The sentiment, of both the Turtle Mountain and Devils Lake Reservation Indians, is one of indecision; and, I judge, predominates in favor of the bill. However, as elsewhere, there are strong influences being brought to bear upon the Indian people of both reservations.”¹⁹⁰ That same month Scott also wrote to the Commissioner of Indian Affairs concerning Turtle Mountain’s consideration of the IRA. He stated that the claim was still important to the community and that the younger tribal members seemed amenable to the IRA, but that the general consensus was against acting on the bill until the claim had been heard.¹⁹¹ Scott put pressure on the Advisory Committee to make a decision about the bill, but the Advisory Committee continued to delay and Scott eventually came to the conclusion that it would be unwise to continue to belabor the point prior to the bill becoming law.¹⁹² His observations and the Advisory Committee’s actions, or more accurately the lack thereof, strongly suggest that many within the community feared that the IRA could adversely affect the chances of procuring a claim against the federal government.

During the discussions concerning the IRA, frustration was assuredly again mounting in May of 1934 concerning a jurisdictional bill. A bill that had been introduced by Senator Frazier had made its way through both the Senate and the House, only to be vetoed President Franklin D. Roosevelt.¹⁹³ The rationale for the veto was that the compensation of one million dollars had already been paid under the McCumber Agreement. “If such relief and settlements,’ said the president, “are ignored or deprived

¹⁹⁰ C. C. Grey to Commissioner of Indian Affairs, Apr. 24, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁹¹ F. J. Scott to Commissioner of Indian Affairs, Apr. 25, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁹² F. J. Scott to Commissioner of Indian Affairs, May 9, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁹³ “Roosevelt Vetoes Indian Bill,” *New York Times*, May 12, 1934.

of their legal effect in this instance an undesirable precedent would be created where applications for similar relief are made for other Indian tribes.”¹⁹⁴

Additionally, Turtle Mountain was becoming increasingly politically fractured, although the claim was still the central to the goals of the community. In May of 1934 the chairman of the Co-operative Association wrote to the North Dakota Representative William Lemke; his letter revealed two important issues: first, there was a growing gap between tribal political units. Second, it reaffirmed the understanding that a tribal claim was foremost on the minds of tribal leadership. He wrote that, “We are all much in favor of the Self-Government, but much difficulties are being said by the older Indians as they don’t quite grasp the idea, to become self-Governing, as they most believe that this New proposition will effect their Claims now pending in Congress.”¹⁹⁵ He also complained of the constitution and stated that the Advisory Committee, “bars aur [sic] intentions of good will.”¹⁹⁶ The chairman also requested that the Co-operative Association, “take effect the same as the present Organization...we think that our Organization dose [sic] most of work of Self-Government Problem now ahead of us.”¹⁹⁷

Representative Lemke inquired about the situation and received a reply from Assistant Commissioner of Indian Affairs William Zimmerman. According to the Assistant Commissioner, “Our records show that the Turtle Mountain Advisory Committee operates under a constitution approved by this office...[the situation] is being looked into with the view of seeing what can be done to straighten out matters.”¹⁹⁸ In

¹⁹⁴ “Indian Jurisdictional Bill Vetoed on Friday,” *Turtle Mountain Star*, May 17, 1934.

¹⁹⁵ Alex Martin to Mr. Lemke, May 5, 1934; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ William Zimmerman, Jr. to William Lemke, May 28, 1934; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

June, Scott also weighed in on the matter. “The records in your Office will show the approval was given to the organization named the Advisory Committee, for the Turtle Mountain band of Chippewa Indians.”¹⁹⁹ Scott downplayed the existence and influence of the Co-operative Association.

There is another organization on this Reservation known as the Turtle Mountain Cooperative Association. This Association was organized some two or three years ago and is still in existence but does not have a very large membership and is not active except in one small section of the Reservation...

We already have the Turtle Mountain Advisory Committee which is fully authorized by your Office to act for this band of Indians, and I know of no good purpose that would be served by the recognition of a second group; in fact, such recognition of a second group would be detrimental to the best interests of the Indians, and would tend to throw discredit on the official group that have already been recognized.

I know of no reason why the Turtle Mountain Cooperative Association should not continue to function in the same manner as it has been functioning in the past; and this office will at all times work with the organization and all matters pertaining to the promotion of the best interests of the tribe.²⁰⁰

Scott undoubtedly had the incentive to downplay the activities of the Co-Operative Association. But for the people of Turtle Mountain the choice was significant: on one side was an unappealing federally-generated constitution and government and the promise of a claim that seemingly came with it, on the other side was a tribally-generated body seeking to assume governmental duties that did not carry the same promise of a

¹⁹⁹ F. J. Scott to Commissioner of Indian Affairs, June 11, 1934; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²⁰⁰ Ibid.

claim. Such a choice must have only become more difficult when the possibility of a jurisdictional bill again arose in June of 1934.²⁰¹

On June 18, 1934, a compromised, yet still very much radical, version of the IRA was signed into law by President Roosevelt; but passage of the bill was only the first step. As stipulated by the IRA, tribal communities had to vote to either adopt or reject the new law. This caused much debate at Turtle Mountain and throughout Indian Country.²⁰² Questions about the new law continued to arise as the summer months of 1934 turned to fall and winter. In August, another tribal meeting was held to discuss the IRA. Scott told the crowd that he approved of the new law and that it would not harm the community and might possibly benefit some members.²⁰³ Considering the prior dialogue at Turtle Mountain about the IRA, it is likely that Scott's comments were meant to reassure those who felt that a tribal claim under the federal government might be halted or prevented by the new law.

Scott did not see a vote on the IRA at Turtle Mountain come to fruition under his watch. Scott was transferred to Leupp, Arizona, and was replaced by J. E. Balmer, who

²⁰¹ Senator Frazier was again the sponsor of this new attempt at a jurisdictional bill. According to the *Turtle Mountain Star*, "This bill had been revamped and the parts which caused President Roosevelt to veto the original measure were said to have been eliminated." "Senate Approves Indian Jurisdictional Measure," *Turtle Mountain Star*, June 14, 1934.

²⁰² Another subject of debate was the size and ownership of the reservation. On June 21 Superintendent Scott wrote to his superiors, "to inquire whether or not some action can be taken under the authority and money provided in this Bill to acquire white-owned lands within the limits of the Turtle Mountain Indian Reservation." F. J. Scott to Commissioner of Indian Affairs, June 21, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. Scott considered the situation to be dire. "There are fully twice as many Indians living within the limits of the reduced Reservation as can find a decent living under the most favorable conditions in this area. This is a condition that will have to be overcome before it can be expected that these Indians will be in a position to maintain themselves without considerable relief and relief work from the Government." Ibid. The record does not indicate any response from Washington.

²⁰³ "Turtle Mountain Chippewas Consider Features of Self-Government Measure," *Turtle Mountain Star*, Aug. 23, 1934.

arrived from the Western Navajo Agency in Tuba City, Arizona. Originally an interim superintendent, Balmer accepted the position on a permanent basis in October of 1934.²⁰⁴

Discussions concerning the IRA continued during Balmer's tenure. L. C. Lippert, the tribal superintendent at the Standing Rock agency, aided Balmer during the early months of Balmer's time at Turtle Mountain. By late September the community still had several questions about the new law, most of which concerned land and the different possibilities concerning allotments.²⁰⁵ In early October Lippert arrived at the reservation for another meeting. By this time, the *Turtle Mountain Star* noted, "Several meetings have now been held in an effort to explain fully the rights and responsibilities in the Indians under the act."²⁰⁶

By late October a familiar issue arose that delayed a vote on the IRA. The weather was worsening and Lippert wrote to Balmer again stating his opinion that it would be prudent to wait on a vote for better weather and the hope of a better turnout, particularly considering the rule in the IRA that stated that any vote not cast by an eligible voter would be considered a "yes" vote.²⁰⁷

As the wait for a vote continued, so did the meetings. Balmer scheduled another meeting for January 17, 1935.²⁰⁸ An illness prevented Lippert from attending.²⁰⁹ Despite

²⁰⁴ "Balmer To Be Agent At Turtle Mountain Agency," *Turtle Mountain Star*, Oct. 4, 1934.

²⁰⁵ J. E. Balmer to Supt. Lippert, Sep. 23, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²⁰⁶ "Discuss Features of Self Government Bill," *Turtle Mountain Star*, Oct. 11, 1934.

²⁰⁷ L. C. Lippert to J. E. Balmer, Nov. 5, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²⁰⁸ J. E. Balmer to Supt. Lippert, Nov. 25, 1934; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²⁰⁹ Neumeau, Chief Clerk, Telegram to Balmer, Supt., Jan. 15, 1935; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

Lippert's absence, Balmer thought events were moving in a positive direction.²¹⁰ Balmer and Lippert continued to correspond about the details of a vote, and by April of 1935 it was recommended that the election be held in June.²¹¹ By early May the firm date of June 15 was chosen.²¹² Yet, another difficulty occurred in May. According to Collier, tribal members not living on the reservation would not be allowed to vote.²¹³ Just what the tribal reaction to this decision was is unknown, however the decision did eliminate several people living near the reservation and those living far away. Collier justified the decision by noting that not having the right to vote would not necessarily exclude those tribal members from participating in tribal life and government, assuming that an approved constitution would allow them to do so.²¹⁴

Ultimately, the tribal agency determined that 1181 persons were eligible to vote in the election. Of those voting, 550 cast "no" votes and only 257 cast "yes" votes. That meant that 374 eligible voters did not cast a ballot. Under the original rules of the IRA, they were considered "yes" votes and The *Turtle Mountain Star* reported that the tribal community was now governed by the IRA.²¹⁵ Yet, on the very day that Turtle Mountain voted on the IRA, the law was amended to apply to only those tribal communities where

²¹⁰ J. E. Balmer to Mr. L. C. Lippert, Jan. 22, 1935; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²¹¹ John Collier, Telegram to Supt. Balmer. Apr. 15, 1935; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²¹² William Zimmerman, Jr. to Mr. L. C. Lippert, May 5, 1935; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²¹³ John Collier to Mr. J. E. Balmer, May 10, 1935; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²¹⁴ Ibid.

²¹⁵ "Indians Vote Against Self-Government Plan," *Turtle Mountain Star*, June 20, 1935.

a majority of those who voted in a tribal referendum voted positively to enact the IRA. Thus, Turtle Mountain had actually excluded itself from the law.²¹⁶

There were a fair number of rumblings about the change in rules and the results of the referendum. The Co-Operative Association had thrown its support behind the IRA before the vote, calling it, “a great epoch in American history for the American Indian.”²¹⁷ Undoubtedly some, if not most, members of the Co-Operative Association were disappointed with the results, particularly since the group had positioned itself as a body that could step in and govern under the IRA.

One particular tribal member, Louis Marion, was especially vocal in decrying the results of the vote. Marion, who spent much of the 1940s as a member of the Advisory Committee, spent much of the rest of the 1930s looking to secure a new vote. In July of 1935 Marion wrote to a North Dakota Congressperson blaming the loss on, “misinterpretation, explanation and propaganda spread by the opposing local attorneys, non-enrolled Indians and other members of the tribe who knowingly have spread falsehood among our older Indians.”²¹⁸ He also requested another chance to vote on the IRA.²¹⁹ A second chance was not forthcoming, as it would have required Congress to amend the IRA to allow another vote.²²⁰ Nonetheless, Marion kept trying, writing his

²¹⁶ John Collier, “To the chairman of tribal business committee, to the members of tribal council, and to the Indians of the reservation through the superintendent”; Wheeler-Howard: 509159; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²¹⁷ Z. J. Dauphanais, President to Commissioner of Indian Affairs, Feb. 6, 1935; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

²¹⁸ Louis Marion to Hon. Congressman Lemke, July 7, 1935; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

²¹⁹ Ibid.

²²⁰ John Collier, Commissioner to Mr. J. E. Balmer, Nov, 14, 1935; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

Congressman again in 1936 and in 1938.²²¹ A number of other petitions also made their way to Washington D.C.²²²

These various protests reflected a growing distain for the constitution and the Advisory Committee. As the years wore on, that distain intensified. Nonetheless, at the time it was enacted, the people of Turtle Mountain chose a constitution generated by the federal government to begin a claim and to increase tribal autonomy. Shortly thereafter, they made what might be described as a “safe” decision to reject the alternatives of the Co-Operative Association and the IRA, so as not to disturb the potential claim and to maintain the one political body to which the federal government responded.

And yet, the 1932 constitution failed in many respects. The community’s trepidation concerning the document at its outset was justified in the years that followed. An ineffectual Advisory Committee was routinely criticized. Most egregiously, the constitution could not fulfill its promise of producing a claim against the United States. Nearly three decades after its ratified its first document, the people of Turtle Mountain

²²¹ Louis M. Marion to Hon. Congressman William Lemke, Jan. 18, 1936; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C. And Louis Marion, Tribal Council Treas. to Hon. Congressman Wm. Lemke, Mar. 26, 1938; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.

²²² See F. H. Daiker, Assistant to the Commissioner to Mr. Lewis Gourneau, Aug. 28, 1936; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.; Petition to the Commissioner of Indian Affairs, received on Nov. 1, 1937; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.; Petition to the Commissioner of Indian Affairs, Jan. 1938; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.; John A. Stormon to Hon. John Collier, Commissioner of Indian Affairs, Mar. 5, 1938; Records of the Indian Organization Division; General Records Concerning Indian Organization ca 1934-56; PT-163, Entry 1012; National Archives Building, Washington D.C.; and Undersigned members of the Turtle Mountain Chippewa Tribe of Indians to the Commissioner of Indian Affairs, Sep. 3, 1937. Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

once again sought out a constitution to reclaim control over their own lives and government.

Conclusion

The Turtle Mountain Band of Chippewa Indians, in the destructive wake of the McCumber Agreement, enacted their first constitution in order to initiate a claim against the federal government and to legitimize their political authority to the greatest extent possible. The McCumber Agreement had several disastrous effects for the community: it dismantled the existing tribal leadership structure, it solidified the boundaries of a reservation that was too small for the population, it forced an exodus of the tribal population, and it resulted in massive land losses for those who were forced to take allotments off of the reservation. Many of those who lost their off-reservation allotments moved back to the reservation, causing further overcrowding and even fewer economic opportunities within the community.

Almost as soon as the McCumber Agreement was ratified, the people of Turtle Mountain sought to begin a lawsuit against the federal government for the inequities that the community suffered under the agreement. The goal of initiating a claim was, and would continue to be, the main political focus of the community. Additionally, the community also sought to expand its autonomy in other ways as well, including continuing to consult with medicine men and holding dances, despite the efforts of the federal government to eradicate those practices.

By at least the early twentieth century, Turtle Mountain had a tribal council, which stood in place of the leadership structure that had been eliminated by the

McCumber Agreement negotiations. Tribal superintendents routinely stated that they believed that the council was, at worst, harmless and, at best, moderately helpful. However, reports from the superintendents make clear that the community felt invested in the council and that the council began the process of seeking out a claim. Additionally, the situation on the reservation was not nearly as benign as the superintendents often sought to make it out to be. The council and individual tribal members, looking not only to begin a claim, but to also gain a greater level of control over their own lives and political situation, clashed with the superintendents on several occasions. The frequency and intensity of the clashes were undoubtedly fueled by the fact that the tribal superintendents often questioned whether the people they were supervising were actually Native. By this time, the people of Turtle Mountain had suffered decades worth of challenges to their identity and rights as Native peoples, which most likely intensified the community's desire to legitimize their status and to pursue a claim.

Turtle Mountain began searching for a method to sue the federal government at a time of change in federal Indian policy. Many, both inside and outside of Indian Country, were acknowledging the failures of the Allotment Era. Soon, John Collier and the IRA would be credited with bringing constitutionalism to Indian Country. Yet, constitutionalism was already a growing phenomenon in Indian Country. There were dozens of tribal constitutions in force before the IRA was enacted in 1934, suggesting that several tribal communities were embracing constitutionalism prior to Collier and the IRA to accomplish tribal goals. The first Turtle Mountain constitution was one of these pre-IRA documents.

Turtle Mountain's first constitution, enacted in 1932, was a product of the tribal superintendent and a non-Native attorney. Although they had tried to create their own written constitution, the people of Turtle Mountain nonetheless adopted the federally-generated document, which gave tremendous deference to the superintendent and provided little authority for an aptly-named Advisory Committee. The community recognized the deficiencies in the new constitution, but decided to ratify it anyway because they believed, and were told by the superintendent, that it was best, if not only, way to begin a claim.

Shortly after Turtle Mountain adopted the constitution, the IRA asked the community to reconsider it. As such, the community was faced with another difficult choice: retain a flawed document that held the promise of initiating a lawsuit against the federal government or adopt a new constitution that might increase tribal autonomy but did not hold the same promise of beginning a claim. Some members of the community, most notably those involved in the Co-Operative Association, saw the IRA as an opportunity to engender a new and better direction for the tribal government. Yet, most members of the community were leery of the effects of a new constitution and a new federal policy on the claim. More than two-thirds of those who cast a ballot voted against the IRA.

Undoubtedly those who voted against the IRA and ostensibly for the 1932 constitution (and even those who did vote for the IRA) believed that their choice would go the furthest in maximizing tribal goals. The choice for the majority of voters was to accept a federally-created constitution and tribal governmental body which, the voters likely believed, the federal government would consider legitimate, that could begin a

claim against the United States and that maximized tribal autonomy within the conditions under which the community was living. Regardless of their initial beliefs, the constitution did not lead to a lawsuit and it quickly became unpopular. Additionally, two decades after the constitution was enacted, federal policy dramatically shifted once again. By the late 1950s the people of Turtle Mountain were dissatisfied with their tribal government and constitution, facing another major challenge to their rights, identity, and even their existence as a tribal entity, and still seeking a resolution to their claim against the United States. Once again, the community reconsidered constitutionalism to address these issues.

Chapter 3

The Second Turtle Mountain Constitution

Introduction

The people of Turtle Mountain chose their first constitution in 1932 (and consequently rejected alternatives such as the Indian Reorganization Act and the Co-Operative Association) because they believed that it provided the best chance for the community to begin a claim against the United States and to maximize tribal political authority at the end of the Allotment Era. The flaws in the new constitution were apparent to those who voted on it; yet the prospect of a lawsuit that the constitution provided trumped the problems created by the document.

Despite the promise that it held, the 1932 constitution was a failure. It did not produce the necessary jurisdictional act to begin a claim and tribal discontent with the constitution grew steadily. By the early 1950s, the circumstances surrounding the tribal community had changed significantly. A claim was pending through an alternative channel: the Indian Claims Commission (ICC). Also by this time, the efforts at a claim were decades old and had spanned different policy eras. The claim would live to see several more decades. Additionally, the very existence of Turtle Mountain as a political entity was threatened under termination legislation. Turtle Mountain was most likely chosen for termination because of its mixed-blood population; yet, the community was ill-suited for such a drastic change in its political circumstances. The egregiousness of the

termination efforts warranted mention in Vine Deloria Jr.'s seminal work, *Custer Died For Your Sins*.¹

By the late 1950s, with the claim still pending, the threat of termination still fresh, and during difficult economic times, the community was ready to reassert itself through a new constitution. This chapter argues that the people of Turtle Mountain adopted a new constitution in 1959 in order to display their displeasure with the 1932 constitution, the government it created, the activities of the Advisory Committee, and to again maximize tribal political authority. The people of Turtle Mountain sought to assume a greater authority over their own lives and political situation by adopting the constitution proffered by those who promised change to the increasingly dissatisfactory circumstances.

During the constitutional vote in 1959 the community had a choice between two remarkably similar documents, one supported by the members of the Advisory Committee and one supported by a collectivity of tribal members that came to be known in the local press and government documents as the “rebel” group. The nearly identical constitutional choices make clear that the tribal vote was more on a statement of the nature and direction of the tribal government than on any minute distinctions between the documents. The 1959 constitution was not foisted upon the people of Turtle Mountain, but rather chosen by the community to effectuate the community’s will during a particularly onerous period of time. This chapter will proceed as follows: a detailing of the failure of the 1932 constitution, the shift of American policy in the 1950s including the threat of termination, and the ratification of a new tribal constitution.

¹ Vine Deloria Jr., *Custer Died For Your Sins: An Indian Manifesto* (New York: Macmillan, 1969, Norman, OK: University of Oklahoma Press, 1988), 65. Citation is to the Oklahoma edition.

Turtle Mountain and the Termination Era

In order to understand the tribal decision to rewrite the constitution in the late 1950s, it is important to understand the political tumult and social conditions of the early and mid 1950s. In the first half of the decade the federal government threatened the political life of Turtle Mountain through termination legislation, at a time when the community was suffering; the claim against the United States had finally begun through the Indian Claims Commission, but was moving at a glacial pace; and the tribal constitution had proven to be ineffective, at best. By the end of the decade, this tinderbox of circumstances, fueled by an unpopular move by the Advisory Committee and ignited by the fiery leadership of a so-called “rebel” group, led to a constitutional revolution.

The aftermath of the 1932 Constitution

Although the people of Turtle Mountain sought out constitutionalism (and organization in general), the 1932 constitution was a failure on many fronts.² It did little, if anything, to alleviate the burdens created by the McCumber Agreement and the exodus of community members that it produced. The efforts of one tribal member provide a glimpse into the ongoing difficulties faced by a dispersed tribal membership with a

² By the mid-1930s several organizations besides the federally recognized Advisory Committee were established under a constitution or other written documents: the various Farm Chapters, The Turtle Mountain Co-Operative Association, and The Turtle Mountain Chippewa Indian Tribal Association (all discussed in the previous chapter) stand as prominent examples. The movement toward organization was not limited to strictly governmental endeavors, nor to men. In June of 1935 a representative of the “Sunshine Club” wrote to tribal superintendent J. E. Balmer to detail the purpose of the organization. “The club consists of Indian Women of Belcourt [the largest city on the Reservation]. It is a relief Club.” Sunshine Club to J. E. Balmer, June 28, 1935; Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. The letter to the superintendent was accompanied by the laws and by-laws of the organization. The membership of the Sunshine Club was limited to the women and girls of the community and was intended to better the lives of Turtle Mountain families. Ibid. Tribal women also participated in the political life of the community, voting on the 1932 constitution and the IRA in 1935. The 1932 constitution made no distinctions as to rights or privileges based on gender, and women were routinely members of the Advisory Committee. White Weasel, *Pembina and Turtle Mountain*, 338-42.

fractured land base. In May of 1935, Delia Paul wrote a letter to the tribal superintendent of the Rocky Boy's Agency in Montana. Identifying herself as Mrs. Louis Paul, Delia inquired as to the rental payments for her allotment.³ Earl Wooldridge, the superintendent at Rocky Boy's, wrote back asking Delia for her maiden name or a description of the land in order that he could give a more accurate depiction of the status of her land and the rent that was due.⁴ Delia wrote back with a precise description of the land and some scathing words for Wooldridge.

Dear Sir:

I'm writing this letter to tell you that we got your letter last week about the land. I don't see that how yours can't tell the twp. of the land. [Description of the land]...

I want the money as soon as possible... You told me that Mr. Ernest J. Peterson is using the land for grazing and now when we got your letter again you say there's another man using it. That's all damn lies. This got to come thru or else it trouble. Now is leased to A.E. Mcleish for grazing permit. You told me to get the money as soon as this lease is approved by the Washington Office.

This don't come thru there trouble for that money and that no damn lie about that. Tired waiting that money.

Mrs. Louie Paul
Boggy Creek, Manatoba [sic]

Don't wait. If I send a letter at the Department you get hell of them. This is no lie what I'm saying. This got to come thru at once.⁵

Delia Paul's correspondence reveals an important point about life for both Turtle Mountain members and for the bureaucrats assigned to watch over Native communities. Despite a new constitution and a new governing body, the difficulties left in the wake of

³ Mrs. Louis Paul, May 25, 1935; Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁴ Earl Wooldridge to Mrs. Louis Paul, June 7, 1935; Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁵ Mrs. Louis Paul, June 24, 1935; Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

the McCumber Agreement and the resulting allotment of lands did not and would not go away. Different tribal members had rights to lands spread across the upper Midwest. This forced both tribal members and tribal superintendents, including those who did not work at the Turtle Mountain agency, to address those land issues.

Nor did the McCumber Agreement legitimize the community's authenticity in the eyes of others. During the various correspondences concerning Delia Paul, Woolridge wrote, "Personally, I have felt all along [Turtle Mountain community members] should be allotted and allowed to sell their land because they are not really Indians."⁶ The attacks on the mixed-blood character of the community did not and would not relent.⁷

Most importantly, the 1932 constitution did not lead to a claim. In 1937 Senator Lynn Frazier introduced another jurisdictional bill. Like the others before it, the 1937 bill did not meet with success, nor did attempts in 1938 and 1939. Shortly thereafter, as the United States transitioned into World War II, the attempts at a jurisdictional bill in Congress by legislators from North Dakota ceased.⁸

⁶ Earl Woolridge to Commissioner of Indian Affairs, July 25 1935: Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

⁷ In the early IRA policy era there was little support for this proposition. Assistant Commissioner William Zimmerman Jr. responded to the superintendent. "It may be said that this Office is not contemplating a termination of federal guardianship over the Turtle Mountain Indians." William Zimmerman, Jr. to J. E. Balmer, Sep. 4, 1935; Jurisdiction; 509161; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO. Less than twenty years later, the federal position dramatically changed.

⁸ While the jurisdictional bills were unsuccessful, another piece of legislation affecting the community did make its way into law. In the late 1930s a small handful of bills were introduced authorizing the purchase of lands within and adjacent to the Turtle Mountain reservation. The Senate report that accompanied the first of these bills, introduced in 1937, provides a glimpse not only into the conditions under which Turtle Mountain citizens were toiling at the time, but also the rationale and necessity for the bill. The report includes a letter from the Acting Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs who stated, "The present economic condition on the Turtle Mountain Reservation is extremely serious and is a result of their shortage in land holdings." Senate Committee on Indian Affairs, *Purchase of Additional Lands for Turtle Mountain Reservation*, 75th Cong. 1st sess. 1937, S. Rep. 880, 2. A couple of early efforts failed, but a bill authorizing the purchase of lands within and adjacent to the Turtle Mountain Reservation became law in May of 1940. *An Act to authorize the purchase of certain lands adjacent to the Turtle Mountain Indian Agency in the State of North Dakota*. Public Law 75-520, U.S. Statutes at Large 54 (1940): 219. The new law came in two sections. The first section essentially placed

Nonetheless, a claim against the federal government was still central in the minds of many community members. In October of 1946 the Acting Superintendent of the Turtle Mountain agency, J. L. Diddock, wrote a letter to a supervisor complaining about off reservation tribal members who did not abide by the Advisory Committee and who were agitating for a lawsuit. Diddock stated, “These people feel that they have a claim against the Government in the amount of twenty-four million dollars since the original Little Shell did not sign the treaty and settlement in the amount of one million dollars of which they received their share.... It has now been stirred up by certain ones who have always been troublesome.”⁹ The community also sent at least one more delegation in 1948 to Washington D.C. to address the claim and other tribal issues.¹⁰

The Termination Era

As noted by legal historian Charles Wilkinson, “Inevitably, Indian policy has been cyclic.”¹¹ Whereas in the 1930s the federal government encouraged tribal communities to engage in a certain level of separatism from the American mainstream through the Indian Reorganization Act and other legislation, less than twenty years later federal policy radically reshifted back toward assimilationist policies that sought to end

Turtle Mountain under the land buying provisions of the IRA. None of the newly purchased land was to be allotted. The second section attempted to address the concerns about tribal membership by creating a new tribal roll. It included those people who had been left off of the roll established at the ratification of the McCumber Agreement and their descendants, provided they had a one-half degree of Native blood and were not Canadians. Ibid. Thus, the law attempted to not only provide relief in the form of additional lands for Turtle Mountain citizens, it also attempted to rectify the difficulties that had arisen concerning who belonged to the community. Nonetheless, the 1940 law was not able to solve all of the outstanding problems of membership and other difficulties on the reservation and elsewhere.

⁹ J. L. Diddock to Paul L. Fickinger, Oct. 18, 1946; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹⁰ Advisory Committee, minutes of the meeting of Mar. 29, 1948; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

¹¹ Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven and London: Yale University Press, 1987), 13.

the so-called special rights and status of tribal peoples. Turtle Mountain suffered a significant termination scare in the early 1950s and the still-present threat of termination and its companion legislation helped create the conditions under which the community sought to reassert its autonomy through a new constitution in the late 1950s.

The federal government in this new era, the Termination Era, once again looked to relieve itself of what it saw as the burden of administering to Native peoples through what it characterized as the emancipation of Native peoples to full American citizenship.¹² The process of termination sought to end the political relationship between the federal government and tribes as political entities, thereby purportedly “freeing” Native people from oppressive federal oversight. The process of termination also sought to relieve the federal government of its financial burden toward Native peoples. In the wake of World War II and the onset of the Cold War, many believed that Native peoples were not only seriously hindered by federal administration and efforts like the IRA, but that such federal administration reflected poorly on the United States within the international community.¹³ Cold War paranoia also led to attacks on tribalism. As noted by historian Thomas Clarkin, “The ideological dimensions of the growing tensions between the United States and the Soviet Union fostered a narrow nationalism that

¹² As one scholar has noted, “[Termination legislation was] directed toward a complete restructuring of U.S.-Indian relations. Ideally, reservations would be eliminated along with special federal services to Indians; Indian lands would be removed from trust status and made fully taxable and alienable; and the sovereignty of the tribes, now lacking both a land base and any special relationship to the federal government, would become abstract and practically meaningless... In an effort to relieve itself once and for all of the financial and moral burden of Indian affairs, the federal government reasserted full control of Indian lives and fortunes and fit them to its plan.” Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (New York: Oxford University Press, 1988), 123.

¹³ According to Deloria Jr. and Lytle, “A strange coalition of forces now called for the unilateral termination of federal assistance to Indians: conservatives wanted the federal budgets cut and deeply believed that Indians, once freed from government restrictions, would experience a much more profound reawakening; liberals, now ashamed to realize that some of America’s laws were reminiscent of the racial restrictions imposed on minorities by the Axis powers whom they had recently defeated, sought immediate release of America’s racial minorities from the onerous burden of discriminatory legislation.” Deloria Jr. and Lytle, *American Indians, American Justice*, 16-17.

rejected cultural pluralism and regarded diversity with suspicion, prompting some critics to go so far as to charge that tribal governments were communist in nature.”¹⁴

The most definitive effort during the Termination Era was the federal movement to end the political relationship between the federal government and tribes, known simply as “termination.” Through termination legislation, Congress severed its political ties with a tribe by ending its trust relationship with the tribe and its members. Programs and opportunities available through the BIA were no longer available to tribes and tribal members. Land was also taken out of trust and subject to state taxes; tribal members also became subject to state taxes, among other consequences. Termination was a cumbersome process. First, Congress had to pass termination legislation that was tribally specific. Then, a detailed termination plan that addressed issues of tribal land and resources and other complicated matters had to be created. Only after these events could a tribe finally be terminated. The process, Father Francis Paul Prucha has noted, meant that, “Actual termination did not take effect until long after the passage of the act and at a time when the impulse for termination had been greatly weakened.”¹⁵

Nonetheless, federal enthusiasm for termination was high in the early 1950s. In March of 1950 Dillon S. Myer was appointed as the new Commissioner of Indian Affairs and became a strong advocate for termination. Myer is best known for heading the Internal War Relocation Program, which interned Japanese and Japanese-American persons during World War II. Wilkinson detailed the new direction in which Myer pushed the Bureau of Indian Affairs (BIA). “The commissioner embraced... ‘complete assimilation’ and put it forth in speeches, congressional testimony, and private meetings.

¹⁴ Thomas Clarkin, *Federal Indian Policy in the Kennedy and Johnson Administrations 1961-1969* (Albuquerque, NM: University of New Mexico Press, 2001), 6.

¹⁵ Prucha, *Great Father*, 1048.

In discussions with tribes, he emphasized that withdrawal (the phrase ‘termination’ had not yet come into use) was both inevitable and imminent.”¹⁶

Myer had a chance to explain his views to the people of Turtle Mountain on August 26, 1952, when he visited the reservation. According to the *Turtle Mountain Star* it was obvious that Myer was, “an advocate of the complete emancipation philosophy.”¹⁷ Nonetheless, he told the crowd that, “there was no possibility of the Bureau pulling out of an area like this for some time to come. He told the employees present not to start looking for new jobs yet.”¹⁸ Myer’s assurances to his audience proved to hold little weight.

On August 1, 1953, Congress passed House Concurrent Resolution 108. The new resolution dramatically marked a shift in federal policy and announced termination as the new answer to the so-called Indian Problem.

*Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: . . . those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota . . .*¹⁹ (emphasis added)

Less than a year after Myer promised the people of Turtle Mountain that the BIA would not remove itself from the reservation, “for some time to come,” the community was specifically enumerated in the Congressional pronouncement that adopted termination as

¹⁶ Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton & Company, 2006), 65.

¹⁷ “Commissioner Favors Public Administration Of Indian Services,” *Turtle Mountain Star*, Aug. 28, 1952.

¹⁸ *Ibid.*

¹⁹ HR Con. Res. 108 (1953).

the new national policy. Shortly thereafter, the people of Turtle Mountain began their fight against termination. That fight will be taken up in the next section.

The process of termination was most readily and dramatically characterized by congressional legislation that “terminated” a particular tribe by ending the federal government’s political relationship with that tribe;²⁰ yet, the Termination Era was a multi-pronged event that included various efforts to “free” tribal peoples. Two of the more important efforts during the Termination Era were relocation programs and the Indian Claims Commission (ICC).²¹ The federal government established relocation programs in various cities with the intention of moving Native people off of reservations and into urban areas in an effort to acculturate them to life outside of their home community. Between 1952 and 1957 over 12,000 Native people from across Indian Country were given assistance from the federal government and were moved to cities.²² Many of the participants in the programs suffered under poor living conditions, unsteady jobs, and culture shock.²³

A program to encourage relocation was established at Turtle Mountain. In one sense, the idea of relocation was hardly a new proposition as the community had suffered

²⁰ Despite its efforts, Congressional termination legislation could not always completely sever the political relationship between the federal government and a tribe. In 1968 the Supreme Court held that the Menominee, a Wisconsin tribe that was terminated in 1954 and is often cited as an example of the failure of termination legislation, maintained hunting and fishing treaty rights despite their termination. *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968).

²¹ Another important effort was Public Law 280. *Criminal Offenses and Civil Causes, State Jurisdiction Act*, Public Law 83-280, *U.S. Statutes at Large* 67 (1953): 588. This law transferred criminal and civil jurisdiction from the federal government to certain state governments. This law has undergone a series of changes since it was first enacted. For a helpful overview of Public Law 280 see Carole Goldberg-Ambrose with the assistance of Timothy Carr Seward, *Planting Tail Feathers: Tribal Survival and Public Law 280* (Los Angeles: McNaughton & Ginn, Inc., 1997). Turtle Mountain was not directly effected by Public Law 280.

²² Donald L. Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960*, (Albuquerque, NM: University of New Mexico Press, 1986), 148.

²³ For an overview of relocation programs, their purposes, and their effects on Native people and communities, see Fixico, “The Relocation Program and Urbanization,” in *Termination and Relocation*, 134-57.

a de facto relocation program when the too-small reservation was divvied up at the turn of the century and many community members had to take their allotments far from the reservation and across different states. Yet, this new brand of relocation signaled the assimilationist direction that the BIA was now heading. The September 2, 1948, meeting of the Advisory Committee had two extra participants: Assistant Commissioner of Indian Affairs John H. Provinse and Regional Director Paul L. Fickinger. Those two men, along with Tribal Superintendent H. E. Bruce, were present to discuss relocation.²⁴ In October of 1951 it was announced that a relocation program was to be established at Turtle Mountain.²⁵ In April of 1952 the local newspaper, the *Turtle Mountain Star*, contained an article about the relocation efforts. The article was written by Howard Welch, a BIA employee who had been assigned to the Turtle Mountain Agency to facilitate the process. Five placement officers, including Welch, were to service North and South Dakota tribal communities. “These men have been assigned the job of encouraging the Indian family to accept something which may represent an entirely new and different way of life – to give up what has represented security to them and to face the mysterious world of the large city, for most of these job openings will be found in urban areas.”²⁶ Welch’s article was clear to state that the efforts at relocation were not meant to expand the BIA, but to shrink it.²⁷ The establishment of a relocation office would be a harbinger of the future efforts to eradicate Turtle Mountain’s legal and political existence.

²⁴ Advisory Committee, minutes of the meeting of Sep. 2, 1948; Acts of Tribal Council; 509160; Turtle Mountain Subgroup; Record Group 75; National Archives Central Plains Region, Kansas City, MO.

²⁵ Fixico, *Termination and Relocation*, 139.

²⁶ Howard Welch, “Placement Branch Helps Indians Get Permanent Jobs,” *Turtle Mountain Star*, Apr. 24, 1952.

²⁷ *Ibid.*

The federal government also sought to leave old debts behind in the Termination Era. Turtle Mountain was one of many tribal communities to seek a claim, and the requests for special jurisdictional acts were demanding an inordinate amount of time in the Indian Affairs Committees in both houses of Congress.²⁸ By the mid-1940s Congress no longer wished to concern itself with specific jurisdictional acts for individual tribal communities and looked to alleviate the situation with one gesture: the Indian Claims Commission Act.²⁹ The new law, enacted in 1946, established the Indian Claims Commission, which was to answer and render a final judgment on the myriad of tribal claims against the United States. Turtle Mountain's participation in the ICC, which began in 1951 and lasted thirty years, will be chronicled in the next chapter.

The fight against termination

House Concurrent Resolution 108 was only a resolution. It had no binding legal authority and required additional Congressional legislation before any tribe was to actually be terminated. When a bill that targeted Turtle Mountain was eventually introduced into Congress, the reaction was strongly against it from many sides.

The community held a meeting about the proposed legislation on October 19, 1953. During the meeting a federal governmental official detailed a rough draft of the bill.³⁰ Although John A. Stormon, the attorney who wrote the 1932 constitution, was present at the meeting to explain that the bill would not affect the pending claim, the

²⁸ “Both new and backlogged special jurisdictional bills – forty-nine in 1930, a phenomenal number considering that there were fewer than two hundred recognized tribes in the United States – always swamped the Indian affairs committees, which lacked the time and resources to consider the merits of each bill.” Michael Lieder and Jake Page, *Wild Justice: The People of Geronimo vs. the United States*, (Norman, OK: University of Oklahoma Press, 1997), 55.

²⁹ *Indian Claims Commission Act*, Public Law 79-959, U.S. Statutes at Large 60 (1946): 1049, codified at U.S. Code 25 (2006), § 70.

³⁰ “Turtle Mountain Indians Opposed To Emancipation,” *Turtle Mountain Star*, Oct. 22, 1953.

tribal reaction was not favorable. During the discussion one tribal member found an interesting parallel to the previous shift in federal policy that also reflected a serious distrust of the solutions to the so-called Indian Problem that came from Washington D.C. “The bill they are introducing now is just like the [IRA] and you recall how far this very thing got with the people, and if the Washington office think [sic] that they are going to make any progress with this tribe of Indians with a deal like this, I think they have got another guess coming.”³¹ Another tribal member threatened political consequences for the people in Washington D.C. “The Turtle Mountains hold a large number of votes. We will use a little politics before we go into this.”³² Yet another tribal member echoed a refrain often heard in Indian Country, before and since. “Ever since the white man came to America they have taken our riches. They have taken everything from us and what have they given in return? Now they want to take this from us.”³³ Another tribal member perhaps most succinctly described not only his own feelings about the proposed legislation but the general attitude of the community as well.

I feel this way and my people feel just the same, that this program is just simply out of the question and we want it that way. We don't want to have anything to do with this bill. We are going to fight it down. That is how it stands. We want things just as they are at the present and to go on as they are until something new comes out that is better than it is.³⁴

Several other tribal members spoke out against the proposed bill, stating things like, “We are poor. We can't afford to pay taxes. We have a little place we can call home and we

³¹ House Committee on Interior and Insular Affairs, *Termination of Federal Supervision over Certain Tribes of Indians: Joint Hearings before the Subcommittees of the Committees on Interior and Insular Affairs on S.2670 and H.R. 7674*, 83d Cong., 2d sess., 1954, pt. 12.

³² *Ibid.*, 1436.

³³ *Ibid.*

³⁴ *Ibid.*

want to keep it,” and “The restrictions we have don’t hurt us. We want to stay as we are for the present. Maybe in another generation, but not now,” and “You all know the only solution to the Indian problem. It is for the government not to try to duck out from its obligations as promised to us long, long ago, but to appropriate enough money so we can live better. We don’t want to lose what benefits we have – we want more.”³⁵ A vote was taken on the proposed legislation and the forty-seven votes cast unanimously opposed the bill.³⁶

One community member who became especially active in opposing termination was David P. Delorme. In the summer of 1953 Delorme returned to the reservation from Austin, Texas, with the intent to do field research for his Ph.D.³⁷ During that time, Delorme found several conditions on the reservation that convinced him that termination was not right for Turtle Mountain and would only lead to further suffering: poverty, a high illiteracy rate, inadequate health services, housing, and police protection, a lack of economic opportunities, a lack of post-high school educational opportunities, an inadequate tax base within the county in which the reservation was located (which would be consequently overburdened if forced to assume the demands placed upon it by termination), and a state which felt neither compelled nor morally obligated to assume the financial burdens of the tribal community.³⁸ Other tribal communities faced with termination similarly argued that they were unprepared for such a dramatic change after several decades of stringent federal oversight and control.³⁹

³⁵ “Don’t Like It!,” *Turtle Mountain Star*, Oct. 22, 1953.

³⁶ Joint Committee, *Termination*, 1436.

³⁷ “David Delorme Plans Work Toward Doctor’s Degree in Economics,” *Turtle Mountain Star*, June 18, 1953.

³⁸ Delorme, “Socio-Economic Study,” 152-160.

³⁹ Fixico provides an example of a Menominee man, Gordon Keshena, who made just such an argument on behalf of his community during a tribal general council meeting that was attended by Arthur V. Watkins,

In late 1953 the community requested that Delorme write to the Commissioner of Indian Affairs to urge caution and deliberateness with any plans for termination. Delorme complied, and in his letter he decried the lack of tribal involvement or consultation before the termination bill was announced. In his various writings Delorme did not reject the possibilities of termination and assimilation sometime in the future. Yet, he argued that Turtle Mountain was ill-prepared for termination immediately or in the near future.⁴⁰ Delorme was also active within the state of North Dakota. In September of 1953 the North Dakota Indian Affairs Commission visited Turtle Mountain and were given a presentation by Delorme on the difficult conditions on the reservation.⁴¹ Less than a month later the *Turtle Mountain Star* published a lengthy essay by Delorme decrying the North Dakota Indian Affairs Commission's annual report. Delorme's criticisms were a lack of Native involvement on the commission and the commission's apparent preferential concern for the non-Native citizens of the state over tribal members.⁴²

Patrick Gourneau, the chairman of the Advisory Committee, also wrote a lengthy letter to the Commissioner of Indian Affairs that echoed many of the same issues raised by Delorme, including the lack of tribal involvement in any discussions about termination and the lack of preparedness of the tribal community for such a radical change.⁴³

Gourneau noted, "We are looking forward to the day when the Turtle Mountain Indian

the main proponent of termination in Congress. "[Keshena] pointed out that the Bureau of Indian Affairs had been in business for 125 years and had controlled all Menominee tribal activities. 'Everything we wanted to do, we had to go to the Bureau and ask them,' said an implacable Keshena. 'Can we do this? Can we do that? You cannot ask the people to go on their own and govern themselves now when for all those years the have not been permitted to do anything for themselves.'" Fixico, *Termination and Relocation*, 95-96. The Menominee are often cited as the clearest example of the disastrous effects of termination.

⁴⁰ "Urges Indian Bureau To Go Slow With Emancipation Plan," *Turtle Mountain Star*, Dec. 31, 1953.

⁴¹ "Indian Affairs Commission Is Impressed By Plant Progress," *Turtle Mountain Star*, Sep. 17, 1953.

⁴² "Delorme Blasts Report: Says Indian Affairs Commission Statements Biased, Misleading," *Turtle Mountain Star*, Oct. 1, 1953.

⁴³ Joint Committee, *Termination*, 1437.

will be progressive and self-sufficient, but this will never be accomplished by the passage of this proposed bill, which viewed in its true light gives us nothing, but takes what we now have.”⁴⁴ Additionally, a petition was circulated within the community protesting any attempt at termination.⁴⁵ Over 600 people signed it.

Local non-Natives, particularly those from Rolette County, the county in which the reservation is located, were also opposed to termination. Their opposition stemmed from the cost that termination would mean to the state, county, and local governments. According to the *Turtle Mountain Star*, “County Auditor C. A. Berg...said the governing body of Rolette County...[was] strongly opposed to the bill, essentially from a financial standpoint.”⁴⁶ Rolette County Commissioners passed a resolution that was sent to North Dakota’s congressional delegation that opposed termination and detailed the financial burden it would have on the county.⁴⁷

Regardless of their efforts, January of 1954 proved to be a particularly miserable month for the community. The weather was terrible, with the temperature on the North Dakota prairie reaching below -30 degrees.⁴⁸ More importantly, a bill for the termination of Turtle Mountain was introduced in Congress. The bill would not only have terminated Turtle Mountain, but also would have sped up the efforts at relocating tribal members off of the reservation.⁴⁹

⁴⁴ Ibid.

⁴⁵ Ibid., 1439.

⁴⁶ “County, City Make Resolutions Opposing Termination Measure: Rolla Commercial Club Approves Action By The City Council,” *Turtle Mountain Star*, Feb. 11, 1954.

⁴⁷ “County, City Make Resolutions Opposing Termination Measure: County Commissioners To Send Delegation to Washington,” *Turtle Mountain Star*, Feb. 11, 1954.

⁴⁸ “Br-r-r-r: Mercury Hits -33 As Frigid Weather Continues To Reign,” *Turtle Mountain Star*, Jan. 21, 1954.

⁴⁹ “Introduce Bill To ‘Free’ Turtle Mountain Indians,” *Turtle Mountain Star*. Jan. 28, 1954. The tribal claim in the ICC was not to be affected, however.

Hearings on the Turtle Mountain termination bill were held on March 2 and 3, 1954. The head of the joint hearing was Senator Arthur V. Watkins of Utah. The most famous moment of Watkins' political career also occurred in 1954 when he chaired the Senate Select Committee that censured Joseph McCarthy of Wisconsin. Ironically, his stance against McCarthy may have also cost him his political career.⁵⁰ Yet, in 1954 in the field of Indian affairs Watkins was never stronger. As chairman of the Indian subcommittee Watkins was able to easily quash the little resistance he faced.⁵¹

During the joint hearing, Watkins was often forced to leave to attend to other business; when present he dominated the hearings. As the meeting progressed Watkins became more and more agitated with the mixed-blood character of Turtle Mountain. An exchange between Watkins, North Dakota Senator Milton R. Young, and Rolette County Auditor C. A. Berg reveals Watkins' growing frustration.

Senator Watkins: Of course, that is taking for granted that the Federal Government has complete responsibility for the people there, that you think are Indians.

Mr. Berg: Yes.

Senator Watkins: Even though [sic] the majority of them may be more white than Indian?

Mr. Berg: Well, that is a moot question.⁵²

Despite Berg's efforts, Watkins kept steering the testimony back to issues of blood quantum and the racial background of Turtle Mountain.

Senator Watkins: Well, it is a very practical question now. It is not moot at all, I assure you.

⁵⁰ Lieder and Page, *Wild Justice*, 159.

⁵¹ Wilkinson, *Blood Struggle*, 67-68.

⁵² Joint Committee, *Termination*, 1504.

Mr. Berg: It is argumentative, then, Senator. But the situation has been taken, not due to the county or the State. It is all arrived at through the bureaucratic assistance that has been given the Indians. They have grown accustomed to it. And I don't feel that the county is responsible in any way for the situation.

Senator Watkins: Would you feel that the county would be responsible for that portion of those on the rolls that are actually white?

Mr. Berg: There aren't many that are actually white that are on the rolls, in my opinion.⁵³

Watkins continued to press the issue, insisting that blood quantum should be a dispositive factor. Young tried to gently acknowledge that the heavily mixed-blood community still held rights as Natives, but Watkins did not relent.

Senator Watkins: If you take a reasonable definition of who are white and who are Indians, suppose you put it at the halfway mark, and anyone who had Indian of the halfblood could be classed as an Indian, and all those that didn't have that amount of Indian blood could be classed as white. As we get into this Indian problem, I am very frank to say that we find that a lot of white people are masquerading under the word "Indian."⁵⁴

At this point, Senator Young also sought to move the testimony beyond the issue of blood quantum. However, Watkins would not be dissuaded.

Senator Young: Mr. Chairman, if I may interrupt there just a minute, I think what Mr. Berg is trying to say, and all of us feel out there, is that the Indian Bureau and the Government of the United States and the Congress have had a part in really creating a mess on these reservations. The Indians have been held under supervision all these years as wards of the Government.... Now all of the sudden, even where Indians are only partly Indians, we don't think it would be right for the Federal Government to dump that problem over on to the laps of the county or the

⁵³ Ibid.

⁵⁴ Ibid.

State without assuming a financial obligation at least during the transitional period.

Senator Watkins: I would say there is some financial responsibility on the part of the United States Government for Indians, but I don't think there is any financial obligation for people who are more white than they are Indian.

Senator Young: Even though the mess was created by the Government of the United States?

Senator Watkins: I don't know how the Government created the mess of having more whites than Indians out there.⁵⁵

Watkins never did fully seem comfortable with the racial character of the community, even though he seemed perfectly comfortable stating that those with a preponderance of white blood were not Natives and should fend for themselves. The persistence and tone of his questions suggest two things: first, Watkins believed in the superiority of the white race and that the degree to which an individual had white ancestry was the degree to which that individual was inherently capable of fending for her or himself. Second, the reason that Turtle Mountain was chosen for termination had little to do with the community's preparedness for life beyond its wardship status and everything to do with the mixed-blood character of its members. While his stance on blood quantum never softened, Watkins did eventually recognize that the economic and social situation was dire at Turtle Mountain and that termination was not the best solution. Shortly after the testimony of David Delorme, Watkins noted, "After I heard that young Indian graduate of the University of Texas, when he went out and made a checkup, apparently our figures are way off, apparently we don't have as many high

⁵⁵ Ibid., 1504-05.

school and college students and even those that had an ordinary education as we thought we had from the statistics previously presented. If he is correct in his statement we are not getting anywhere and we are accused of creating a mess.”⁵⁶

Advisory Committee chairman Patrick Gourneau was only one of a small handful of Native people who testified before the joint subcommittee on behalf of Turtle Mountain. During his testimony, Gourneau made clear the feelings of the community. “The Turtle Mountain Band of Chippewa Indians is strongly opposed to the termination measures in their present form now under your consideration.”⁵⁷ Watkins attempted to lead Gourneau through a cat-and-mouse game, questioning Gourneau about the willingness of tribal members to attend off-reservation “white” schools and the possibility of further relocation for tribal members. Gourneau did answer the Senator’s questions, however, near the end of his testimony, Gourneau flatly made a statement in favor of tribal sovereignty. “We are firmly of the belief that the Turtle Mountain Band of Chippewa Indians should be given a bargaining voice in the framing of any termination legislation, since it determines our future destiny. It should only be with the full consent of a majority of the tribe’s members.”⁵⁸

As the mixed-blood character of the community was a major concern during the course of the hearings, Watkins felt it necessary to ask the Advisory Committee chairman about his heritage. The answers to Watkins’ questions reflect not only the difficulties in measuring blood quantum, but also perhaps the frustration that Gourneau felt about the questions he was asked by Watkins.

⁵⁶ Ibid., 1543.

⁵⁷ Ibid., 1485.

⁵⁸ Ibid., 1489.

Senator Watkins: What degree of Indian blood do you have?

Mr. Gourneau: Well, one time during the depression years, when it was common for white-collar workers to work side by side with pick-and-shovel men, I worked with a guy who told me he was a genealogist. So I had him climb my family tree. And he figured out that it was seven-sixteenths.

Senator Watkins: Well, less than half. And I think, if I got you right here, you had an Irish name. Am I mistaken?

Mr. Gourneau: The first one is.

Senator Watkins: Senator Malone is an Irishman, and he says, "Irishmen are people, and so are Indians."

Mr. Gourneau: What I didn't know, when he was figuring this out, was that my great grandmother on my mother's side was also a full-blood.

Senator Watkins: In other words, he didn't have all the facts.

Mr. Gourneau: No; I didn't know them either at the time.⁵⁹

As had routinely happened for decades, the community was again facing a challenge to its political integrity because of its mixed-blood character. In defending his community and his heritage, Gourneau's testimony was perhaps a clever maneuver to show Watkins the fallacy of blood quantum as a definitive analytical tool.

The vast majority of the meeting was taken up by non-Native state and county officials. While none of these officials testified in favor of termination, their reasons for doing so did not concern Turtle Mountain itself, but rather the financial burden that would be put upon the state and the county. Arthur Lindbo, the chairman of the Board of County Commissioners of Rolette County, was very direct in his testimony on this point. "Our county is not financially able to assume the additional great responsibilities that will

⁵⁹ Ibid., 1489-90.

be ours if this bill should become law.”⁶⁰ The overwhelming amount of time that was spent considering the effects termination would have on people outside of Turtle Mountain suggest that the ultimate failure of the bill had less to do with the tribal community itself and more to do with the negative consequences it would have had for the non-Natives involved.

When the joint hearings ended Watkins made note of the fact that changes to the bill could be made.⁶¹ This statement is the first indication that the proposed legislation would not make it out of committee. The people of Turtle Mountain were not forced to watch a bill legislating their termination make its way through the full Congress.⁶² The fact that Turtle Mountain had ever been chosen for consideration left Oliver La Farge, an anthropologist and prominent champion of Native rights, astounded. “The Turtle Mountain Chippewa are strong contenders for the title of the most destitute Indians in the United States... It is difficult to conceive on what basis [Turtle Mountain was] ever marked for termination.”⁶³ There does not appear to be conclusive evidence which to base irrefutable statements of fact, but the record that is available strongly suggests that Turtle Mountain was chosen for termination because of its mixed-blood character and spared because of the negative possibilities termination might have had on the non-Native population.

⁶⁰ Ibid., 1490.

⁶¹ Ibid., 1603.

⁶² In 1957 Watkins wrote an article that detailed both the argument for continuing termination legislation and a general discussion as to the progress made during the policy movement. Watkins misidentified Turtle Mountain as located in South Dakota. Arthur V. Watkins, “Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Person,” *Annals of the American Academy of Political and Social Science*, 311 (May 1957): 47-55.

⁶³ Oliver La Farge, “Termination of Federal Supervision: Disintegration and the American Indian,” *Annals of the American Academy of Political and Social Science*, 311 (May 1957): 44.

Conditions at Turtle Mountain

By the time David Delorme finished his dissertation in March of 1955, termination was still the federal policy of the day and the memories of the 1954 Turtle Mountain termination bill were still fresh. In the summer of 1953 Delorme interviewed a random sample of eighty-seven Turtle Mountain families in order to gain a better understanding of life on the reservation.⁶⁴ Although somewhat given to hyperbole, Delorme painted a bleak portrait of reservation life and of a community not prepared for termination yet ready for change.⁶⁵

Delorme analyzed the answers to his survey to categorize several aspects of life on the Turtle Mountain reservation. Each category essentially testified to the same point: the people of Turtle Mountain were not presently prepared to be terminated. In the “Education” category Delorme wrote:

Despite the fact that school accommodations are adequate, and a compulsory school attendance law is in force, absenteeism and non-attendance continue to present serious problems to interested persons.⁶⁶

As such, the youth of Turtle Mountain were not receiving the necessary education for live in the outside world. On “Health” Delorme wrote:

⁶⁴ According to Delorme, “The agency undertook a household census during the month of June, 1953, in order to establish the number of actual and potential reservation school children. Individual cards for each household were compiled. The census revealed that there were 692 enrolled families at the time it was conducted. The writer determined that one-seventh of the total family population, randomly selected, would be sufficient from the point of view of validity and reliability. To assure randomness, ten slips of paper, numbered from one to ten, were placed in a container and shuffled. A by-stander was asked to draw a number from the container. Using the number drawn as the starting point, the name of every seventh household was selected on the foregoing basis. Of the 99 selected, 87 were visited and interviewed. Of the remaining 12, one refused to be interviewed for fear of undesirable repercussions, and 11 were unavailable, having left the reservation either permanently or temporarily for employment purposes.” Delorme, “Socio-Economic Study,” 202.

⁶⁵ For example, when describing the mixed blood character of the citizenry, he wrote, “Because of intermarriages and close associations with the whites, the Turtle Mountain Indians have lost all of the typical Indian characteristics.” *Ibid.*, 32

⁶⁶ *Ibid.*, 39

[The tribal hospital] staff included one doctor, six nurses, and 15 other employees, five of whom were practical nurses. Only one of the practical nurses had had formal training... Obviously, these facilities are grossly inadequate. One doctor serving approximately 5000 people precludes all house calls regardless of the nature of the illness. In addition, there is a definite disinclination toward admittance to the hospital of what would normally be hospital cases, presumably because of personnel and financial shortages.⁶⁷

The lack of adequate health care testified to the fact that the reservation could be an unsafe and under prepared place to live, as did many of the homes within the community.

On “Living Conditions”:

Of the 86 homes a majority had no foundation; only 34 had shingled roofs, the remainder were of tarpaper, composition, or sod.... Only 22 homes had the windows screened. The outside walls of more than two-thirds of the homes were either mudded or unfinished.”⁶⁸

Additionally, the economic environment showed significant deficiencies and no signs of hope. On “Family Income”:

The median cash income per household from all sources was \$1358 as compared with a Rolette County median of \$1702, a North Dakota state median of \$2,446, and a national median of \$3100.... How a family is expected to maintain even a minimum standard of health and decency under income conditions described above is beyond the realms of conjecture.⁶⁹

Delorme used his findings to argue not just against termination, but also for increased aid for the people of Turtle Mountain. “The findings summarized and conclusions

⁶⁷ Ibid., 45

⁶⁸ Ibid., 63

⁶⁹ Ibid., 80-81

drawn...indicate the need for more and better services rather than fewer prior to [termination].”⁷⁰

Throughout his text, and perhaps especially so in his conclusion, Delorme argued for tribal autonomy. Delorme stated that any decision to terminate the community should involve the community.⁷¹ However, mere consultation was inadequate. “The Indians must help determine the policy.”⁷² Concerning the mixed blood character of the community and its consequences, Delorme wrote, “If a white man has been adopted into the band and has lived as an Indian, he should be included. Simply saying he is a white man isn’t going to take him off the relief rolls or make him an educated and trained worker.”⁷³ Additionally Delorme also recognized the importance of the Turtle Mountain claim against the federal government. As the claim had been the driving force behind the majority of the political movement within the community for decades, Delorme noted that tribal members would not seriously consider termination before the claim was settled.⁷⁴

Perhaps the most intriguing aspect of Delorme’s dissertation is not what he wrote but what he recorded. Among Delorme’s thirteen appendices were the responses to some of the questions that he asked during his survey. Delorme did not reveal the identities any of the respondents, other than to signify whether a particular respondent was current or former Advisory Committee member. Yet, the responses themselves are revealing in that they reflect that the people of Turtle Mountain generally believed that the federal government was still responsible to the community and that the claim was a big part of

⁷⁰ Ibid., 159.

⁷¹ Ibid., 171.

⁷² Ibid.

⁷³ Ibid., 178.

⁷⁴ Ibid., 175-76.

that responsibility. In a few short years after Delorme's survey, the so-called rebel group sought to both express and capitalize on the general discontent revealed by the responses of the community through constitutional reform.

One of the questions that Delorme asked concerned the relocation program at Turtle Mountain. Of the fifty whose responses Delorme recorded, twenty-one were placed in the "favorable reaction" category. These included observations such as, "It isn't bad because there's no work here," and, "It's a good deal because it gives the fellows a start to get out of here," and, "It's a good thing to find these guys work away from here among the whites."⁷⁵ Many of the "favorable" answers are conditioned in some way, stating that relocated tribal members needed more adequate jobs and housing in the city. Such responses included, "It would be all right if the people were provided with the right kind of homes when they arrived over there," and "It's okay for the young with small families, but those with large families can't make it," and "It's okay because it gives them a chance to get off the reservation where they can't make a living. Of course, they should give them suitable quarters. [Ex-Advisory Committee member]."⁷⁶

The majority of the respondents, twenty-nine out of fifty, gave answers recorded as "unfavorable reactions." The various comments tell a story of relocated individuals who often returned from the cities where they faced low wages at difficult jobs, poor living conditions, and racism. Some examples include, "I don't like it. I went myself and returned. When they send Indians out they get the worst jobs, and frequently Indians must live in slum areas," and, "It's poor business. They want the young fellows to get out and forget about their Indian rights," and "I don't believe in it. I've heard too many who've

⁷⁵ Ibid., 270.

⁷⁶ Ibid., 270-71.

had actual experience tell of it. One, for example, was sent out and not accepted because of his color. [Advisory Committee member].”⁷⁷

Delorme also asked whether or not the Indian Service should be abolished as soon as possible. This time, eighty-three Turtle Mountain community members’ opinions were recorded. Twenty-eight stated that they were in favor of abolition the Indian Service. Of those twenty-eight, the major sentiment running through the comments was that the services provided by the federal government were of little, if any, benefit and that those services were outweighed by the restrictions put upon Native peoples.⁷⁸ Perhaps one community member most adequately summed up the general consensus of those who favored abolishment when she or he stated, “The Indian Service has never done me a darn bit of good. Instead it’s been harmful.”⁷⁹

However, fifty-five, or two-thirds, of those who responded were not in favor of the abolishment of the Indian Service. Many respondents cited the difficult living conditions that Turtle Mountain people faced and the necessity for the services that the federal government did provide.

It would be very hard on the poor and I’m one of the poor.

We can’t go on our own the way it is. We couldn’t get along on what we have.

The Indians would be losing all schools, hospitals, and other services which they need badly.

We have our rights that we should keep.⁸⁰

⁷⁷ Ibid., 268-69

⁷⁸ Ibid., 252-53.

⁷⁹ Ibid., 252.

⁸⁰ Ibid., 254-57

Others referenced a decades old source of frustration, the tribal claim against the federal government.

The government has got to pay us before it can do that.

Maybe if they settle with us first.

Not until we are paid for our rights.

They should make a settlement with us first.

Because our claim has not been settled.⁸¹

The majority of the respondents felt that the federal government had a continuing obligation to the community and that the claim was central to that obligation. One particularly forthright tribal member reduced his answer to a simple question of the right to choose a way of life. "I don't want to be white."⁸²

The Early Efforts at a New Constitution

By the late 1950s, the circumstances were ripe for a radical restructuring of the tribal government. Assimilationist policies were still the avowed goals of the federal government. Turtle Mountain had survived one termination scare, but there was no guarantee that more were not on the way. The living conditions on the reservation continued to be difficult, with little economic opportunity and substandard housing as the norm. And the glacial pace of the ICC was a frustration not just at Turtle Mountain, but throughout Indian Country.

Additionally, the 1932 constitution was acknowledged by several parties to be ineffective, at best. It completely failed in its main purpose from the tribal perspective:

⁸¹ Ibid.

⁸² Ibid., 254.

securing a claim against the federal government.⁸³ The Advisory Committee, led by Gourneau, sought to completely rewrite the constitution. However, much of the discontent with the constitution and the state of affairs within the community was directed at the Advisory Committee. This discontent only increased when the Advisory Committee attempted to unilaterally adopt a new constitution without a tribal vote. Despite its efforts at reform, the Advisory Committee was challenged by a “rebel” group who created their own constitution.

The Advisory Committee’s first “revised” constitution

There is some evidence to suggest that constitutional reform had been a reoccurring topic of discussion among the community for at least ten years prior to the mid-1950s. Gourneau was the most vocal member of the Advisory Committee during this period and came to represent the tribal government’s efforts at constitutional reform. In the late 1950s, during the most heated days of the battle over the tribal constitution, Gourneau wrote an editorial that included, among many other things, a brief statement about efforts at reform since the enactment of the 1932 document. Gourneau noted, “An attempt was made to completely revise [the constitution] as far back as the period 1944 to 1946.”⁸⁴

⁸³ It is also worthy of note that the 1932 constitution seems to have failed from the federal government’s perspective as well. It did not ease the administrative burden, nor, as the rest of this chapter will show, centralize tribal political activity.

⁸⁴ Patrick Gourneau, “An Editorial”; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C. Gourneau was unaware if any documents produced in the 1940s survived. Ibid.

One of Gourneau's purposes for writing the editorial was to defend the constitution that the Advisory Committee had drafted in 1956 or 1957.⁸⁵ (See Appendix D) This new, "revised constitution," as it came to be known, sought to break away from the then-present constitution, labeling it as, "outmoded, inadequate, and a detriment to fit our actions to present day needs."⁸⁶ To that end, the document contained a more substantial article outlining the powers of the would-be renamed governing body, the Turtle Mountain Tribal Council.⁸⁷

Yet, in many ways the new document resembled the 1932 constitution. Like its would-be predecessor, the new document reads more like a series of by-laws than a constitution. The revised document also retained the tone of the 1932 constitution. The first sentence of article that established the Tribal Council stated, "The duties of the tribal council *shall be to cooperate* with the Commissioner of Indian Affairs or his representatives, or any branch of the Federal, State, or local governments in promoting the best interests of the Turtle Mountain Band of Chippewa Indians."⁸⁸ (emphasis added) The similarities between the 1932 constitution and its would-be replacement may have

⁸⁵ It is difficult to ascertain exactly when this document was written. The copy of this document that is found in the National Archives in Washington D. C. states on its face that it was adopted in 1957. (Revised) Constitution and By-Laws of the Turtle Mountain Band of Chippewa Indians (first draft); Central Classified Files, 1958; Turtle Mountain, 66A-641, 010 through 289; Record Group 75; National Archives Building, Washington D.C. Additionally, a Department of the Interior field memo from February of 1959 also states that the document was adopted by the Advisory Committee in 1957 and Submitted to the Area Office in Aberdeen, South Dakota in 1957. Julian Smith, "Field Trip Report," Feb. 26, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D.C. However, other evidence (including Gourneau's editorial referenced in the previous note) suggest that it was written in 1956. This includes the letters that accompany the constitution in its file at the National Archives. See Harold J. Schunk to Area Director, Aberdeen Area Office, June 7, 1957; Central Classified Files, 1958; Turtle Mountain, 66A-641, 010 through 289; Record Group 75; National Archives Building, Washington D.C. And Brice L. Lay, Acting Area Director to Commissioner, Bureau of Indian Affairs, Jun. 21, 1957; Central Classified Files, 1958; Turtle Mountain, 66A-641, 010 through 289; Record Group 75; National Archives Building, Washington D.C. See also H. P. Middleholtz to Area Director, Aberdeen Area Office in DeCoteau, *Constitution Convention*, 246.

⁸⁶ (Revised) Constitution and By-Laws (first draft); National Archives Building, Washington D.C.

⁸⁷ Ibid. art. 2.

⁸⁸ Ibid.

been a consequence of a variety of factors. It is possible that the Advisory Committee used the 1932 constitution as a model. It is also possible that the Advisory Committee, still in the midst of the Termination era and in the early stages of its ICC claim, did not want to stray very far from familiar territory.

A critical early mistake haunted the Advisory Committee throughout the revision process. The Advisory Committee sent their revised constitution to the federal government for approval before seeking a vote on the document within the community. The rebel group often pointed to this decision as an example of both the Advisory Committee's hubris and its lack of independence. The revised constitution began its trip up the federal bureaucratic ladder with the tribal superintendent, who, in turn, passed it along to the Area Office for approval. The Area Office did eventually send three copies to Washington D.C., yet it recommended several changes. Some of the changes were minor; other changes were much more substantial, including recommending that it only be approved by the Commissioner of Indian Affairs after it was voted upon by the whole of the tribal membership. Of most importance to the Area Office was the major trait that the revised document shared with the 1932 constitution: the deference that it gave to the tribal superintendent. The Area Office objected to the authority the revised document gave to the tribal superintendent in elections and in calling tribal meetings.⁸⁹ The Area Office even objected to the oath the revised document required of newly elected Tribal Council members on the same grounds. "Under the Oath of Office, it is believed the words 'and will cooperate with the Superintendent in charge of the reservation' should be eliminated from the Oath of Office. This could prove embarrassing to the members of the

⁸⁹ Lay, Acting Area Director to Commissioner, National Archives Building, Washington D.C.

Tribal Council and the Bureau if cooperation is solicited on a matter which the members of the council might feel is not in the best political interests of the tribal membership.”⁹⁰

The revised document did not get approval from Washington D.C.⁹¹ Despite the lack of federal approval and again without the consent of the community as a whole, the Advisory Committee adopted their revised constitution in December of 1957 and considered it operative from thereon forward.⁹² It is unclear why the Advisory Committee took this action; what is clear is that doing so further fueled the burgeoning discontent with the tribal government. Gourneau, perhaps disingenuously considering the evidence, later stated that the revised document was only an early draft. “The council never intended that the revised version...should emerge as the final Constitution and bylaws of the tribe. It was more or less a trial balloon or something to fill a gap.”⁹³

The rebel group’s first “proposed” constitution

Around the time that Gourneau and the Advisory Committee were seeking to establish their revised document as the new tribal constitution, a group of other community members were beginning to rise up to challenge the tribal leadership. This new group came to be known in the local press and certain government documents as the “rebel” group and they were mostly led by two brothers, Al and Louis LaFountain (or LaFontaine).⁹⁴ Al was living in Minneapolis and Louis was living on the reservation during this period.

⁹⁰ Ibid.

⁹¹ Smith, “Field Trip Report,” National Archives Building, Washington D.C.

⁹² Ibid.

⁹³ Gourneau, “An Editorial,” National Archives Building, Washington D.C.

⁹⁴ Although they were brothers, the record suggests that Louis regularly spelled his last name “LaFountain” and Al regularly spelled his last name “LaFontaine.” However, at various times and in various documents, both spellings are used to identify both men. For the purpose of consistency, this dissertation will use the

There does not appear to be any definitive division that separated those who supported the Advisory Committee and those who supported the rebel group. Although the rebel group's leadership accused Gourneau of questioning the intelligence of Native peoples and denying his own Native heritage on at least one occasion (thus implying he did not serve the interests of real Natives), the record indicates that the rebel group consistently claimed to represent, "the people," as opposed to mixed-bloods or full-bloods exclusively.⁹⁵ Nor do the attacks between the two groups readily reveal any other discernible divisions within the community. The original drafts of both the revised and proposed constitutions possibly hint that the Advisory Committee and its supporters were generally more educated. However, since it is impossible to trace exactly who wrote each draft, it is impossible to make credible statements about the constituency of each group based on the documents.

The rebel group began an aggressive movement to overhaul the Turtle Mountain tribal government in the summer of 1958 when the group hired a local attorney, Q. R. Schulte, to draw up a new constitution, also known as the "proposed constitution." An early version of the proposed constitution was produced in July and delivered to various federal officials.⁹⁶ (See Appendix E)

spelling "LaFountain" to identify Louis and Al when referring to the men outside of the record. When quoting a specific document the spelling used by the document will be used in this dissertation.

⁹⁵ Official Report of Proceedings before the United States Department of the Interior, Bureau of Indian Affairs, In the Matter of: Conference Concerning Turtle Mountain Tribal Constitution, La Fountain Group; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.; 28-30.

⁹⁶ Proposed Constitution and By Laws of the Turtle Mountain Band of Chippewa Indians (first draft); Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

This early draft suffers from a number of grammatical and consistency errors.⁹⁷ Yet, it also reflects a strong desire to reclaim tribal autonomy. The most distinguishing feature of the proposed constitution was a more robust section that considered the powers of the would-be named governing body, the Tribal Business Council. The powers enumerated under the proposed constitution sought to address various subject matter, including granting the Tribal Business Council the authority to conduct tribal business, to establish civil and criminal codes, to protect tribal lands and resources, and, perhaps most importantly considering the history and goals of the community, to have a greater level of authority over the claim and claims attorneys. This stood in contrast to the then-operational 1932 constitution, which barely enumerated any powers of the Advisory Committee beyond “promot[ing] co-operation.”

The mounting constitutional crisis

By the fall of 1958 two different constitutions were circulating among the community. As fall gave way to winter and then to spring the parties supporting both documents forced a showdown. The people of Turtle Mountain were given a constitutional choice, not one originating from the federal government, but rather one borne from and seeking to address the frustrations of the community as a whole.

⁹⁷ In addition to a plethora of misspellings, this early draft of the proposed constitution is both discordant and repetitive. One prominent example involves the officers of what was to be the renamed tribal governing body: the Tribal Business Council. Article III, also titled “Governing Body,” briefly describes the officers of the Tribal Business Council in Section 4. “Within 10 days after [sic] the election, the duly elected members of the Tribal Council shall meet and organize by electing a chairman, vice chairman, secretary and treasurer from its own members.” Ibid. art. III. However, in Article IV, also titled “Officers,” Section 2 outlines the duties of a “clerk.” Ibid. art. IV. There is no mention in Article IV of a secretary. It is possible, and perhaps even probable, that the jobs of “secretary” and “clerk” were to be one and the same. Yet, such an assertion cannot be definitively made as there is no indication in the document itself that there were two titles for the same position. Adding to the confusion, if the roles of “secretary” and “clerk” were intended to be discrete positions then the early draft of the proposed constitution, as noted above, completely neglects to outline the duties of one of the officers of the Tribal Business Council: the secretary.

In December of 1958 the Advisory Committee suffered a setback when Patrick Gourneau suffered a stroke on his way home from a trip to Washington D.C. Gourneau was in Minneapolis at the time and was forced to remain in Minnesota for a few weeks to recover.⁹⁸ In mid-December the Advisory Committee appointed an Acting Chairman.⁹⁹ Despite his illness, Gourneau still very much remained the face of the Advisory Committee and the movement to adopt the revised constitution.

Possibly believing that Gourneau's illness provided an opportunity to act, the rebel group increased their activism in late December.¹⁰⁰ In mid-December they held various meetings around the reservation to organize a larger protest on the 22nd concerning the severe economic hardship within the community, an increase in subsistence payments, and the behavior of some agency employees.¹⁰¹ At approximately 10:00 A.M. the protestors arrived at the tribal agency headquarters. Although one second-hand source suggested that there were only around 120 people who organized, other sources put the number of protesters at closer to 250.¹⁰² Tribal superintendent H.P.

⁹⁸ "Patrick Gourneau Suffers Stroke," *Turtle Mountain Star*, Dec. 18, 1958.

⁹⁹ Minutes of the Informal Meeting of the Turtle Mountain Advisory Committee of the Turtle Mountain Band of Chippewa Indians, Dec. 15, 1958; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D.C.

¹⁰⁰ One tribal member wrote to the agency concerning the increased activity of the rebel group. Sam Standing Chief to Mr. Price, Dec. 22, 1958; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C.

¹⁰¹ H.P. Mittelholtz to Area Director, Aberdeen Area Office, Dec. 30, 1958; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C. This report by the tribal superintendent is the most thorough detailing of the events at Turtle Mountain during this critical time. While the report does carry the tone of a somewhat annoyed bureaucrat, it also provides a large level of detail about the events of the day and is an extremely useful tool in uncovering an especially active period in Turtle Mountain history.

¹⁰² For the conservative estimate, see Leslie M. Keller, Acting Area Director to Commissioner, Bureau of Indian Affairs, Dec. 24, 1958; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C. For the more liberal estimate, see "Indians Demonstrate; Demand Larger Grants," *Turtle Mountain Star*, Dec. 25, 1958; and Mittelholtz, Dec. 30, 1958, National Archives Building, Washington D.C.

Mittelholtz, writing about the incident, was clearly annoyed with the situation and with the rebel leaders.

A rabid, vociferous, diatribe of half-true statements about the lack of food, and criticism of the “insulting behavior” of the staff toward the Indian people followed. This was a presentation loaded with threats of violence which included the threat of occupation of the office. We were told that all buildings, equipment and properties at the Agency belonged to the Indian people and that if necessary they would “throw out” the staff and close the office and take over operations if their demands were not met.¹⁰³

The agency staff organized individual interviews for the protesters to address their specific concerns. This eased tensions to a certain extent and even led one news report to declare that the protestors had succeeded in arguing for increased subsistence payments.¹⁰⁴ Members of the leadership of the rebel group insisted on sitting in on the meetings in order to make sure that they were fairly handled, but were eventually dissuaded by the agency staff from doing so out of a right of privacy for each individual.¹⁰⁵

Despite these efforts, the anger of the protestors was still present and palpable. This anger was directed not only at the tribal agency, but toward the tribal government as well. According to Mittelholtz:

There were a number of people in the pressure group who were not applying for subsistence, because of ineligibility, but were “egging” on the dissatisfied ones to more dissatisfaction. A group of women were continuously passing around from group to group shouting and chattering, name-calling and insinuating that food sent from Minneapolis via food lift was not all distributed but taken

¹⁰³ Mittelholtz, Dec. 30, 1958, National Archives Building, Washington D.C.

¹⁰⁴ “Indians Win Subsistence Increase,” December 23, 1958, “Threaten to ‘Take Over’”; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C.

¹⁰⁵ Mittelholtz, Dec. 30, 1958, National Archives Building, Washington D.C.

by the Agency staff *and regular Council Members* for their personal use... Such remarks as these were continued all day by men and women in the group.¹⁰⁶ (emphasis added)

Middelholtz's comments strongly suggest that the leaders of the rebel group recognized the protest as an opportunity to realize multiple goals. The most immediate goal of the protest was to increase subsistence payments for tribal members. It was also an opportunity to brand the Advisory Committee as greedy, corrupt, and akin to federal government bureaucrats. Additionally, the protest was meant to win converts to the rebels' side by offering a show of strength and defiance and, most likely, to generate publicity as well. Louis LaFountain was accused by federal bureaucrats (probably accurately) of calling several newspapers to report on the demonstration.¹⁰⁷ The protestors engaged in other behavior intended to disrupt the workday at the tribal agency, including preventing agency workers from leaving for lunch, eavesdropping on official phone calls, and eating agency cookies and drinking agency coffee.¹⁰⁸ In the course of events the sheriff was called and appeared on the scene. Despite the presence of several combustible elements the day ended without violence.¹⁰⁹

The demonstration at the tribal agency was only the first of a series of events orchestrated by the rebel leadership in an effort to take control of the tribal government. The very next day, on December 23, a meeting was held at the local Legion Hall to discuss constitutional reform.¹¹⁰ Schulte, the rebel group's attorney, was present at the meeting, as was Mittelholtz. The superintendent later stated that he sought to remain

¹⁰⁶ Ibid.

¹⁰⁷ Leslie M. Keller, Assistant Area Director to Commissioner, Bureau of Indian Affairs, Dec. 22, 1958; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C.

¹⁰⁸ Ibid.

¹⁰⁹ "Indians Demonstrate," *Turtle Mountain Star*, Dec. 25, 1958.

¹¹⁰ Ibid., 12.

outside of what he considered to be an exclusively tribal issue. “I was in attendance at this meeting for approximately 40 minutes and was asked to say a few words, which I did. I stressed the fact that I felt the meeting was strictly Tribal politics and did not wish to enter into the discussion pro or con.”¹¹¹ Nonetheless, a local newspaper account stated that Mittelholtz did at least take a stand on the still-operative 1932 constitution. “He told the people present that it was his belief that changes are needed in the present constitution.”¹¹² Still recovering in Minneapolis and unable to be present, Gourneau also came under heavy criticism at the meeting.¹¹³

The momentum that the rebel group generated with these events did not subside. On December 29th Mittelholtz’s direct supervisor, the Area Director, arrived from South Dakota to meet with the rebel group. The first meeting of the day was held in the home of a tribal member and involved approximately twenty-five community members. According to Mittelholtz, “For approximately one hour and thirty minutes the purported leaders...expressed their dissatisfaction with the present Advisory Committee, the Welfare Program and [a specific agency worker].”¹¹⁴ The rebel group also outlined other grievances, including the lack of economic opportunities, inadequate health facilities, and various individual injustices.

The meeting moved to a public hall where the federal officials gathered with somewhere between seventy-five and one hundred tribal members for another round of discussion. The leadership of the rebel group continued to speak and again the Advisory Committee was a target. This time, federal bureaucrats, who did not want to invite

¹¹¹ Mittelholtz, Dec. 30, 1958, National Archives Building, Washington D.C.

¹¹² “Indians Demonstrate,” *Turtle Mountain Star*, Dec. 25, 1958.

¹¹³ Ibid.

¹¹⁴ Mittelholtz, Dec. 30, 1958, National Archives Building, Washington D.C.

publicity to the situation, accused Al LaFountain of calling newspapers to report the incident.¹¹⁵ The next day, on the 30th, the federal officials spent the day visiting homes and observing conditions on the reservation.

Also in late December some members of the rebel group organized their own tribal council that they claimed was now the official governing body for Turtle Mountain.¹¹⁶ In early January Schulte wrote to the Commissioner of Indian Affairs on behalf of his clients. The letter was vaguely ominous and reflected a tone that was becoming ever more typical of the rebel group. “We have failed to receive any cooperation from the Bureau officials and, of course, our patience is waning. We desire very much to work with you people, but if this cannot be done it will be necessary to take other means.”¹¹⁷ The letter is unclear as to what other means Schulte and his clients intended to take, but it is indicative of the growing frustration of the rebel group and their desire for rapid change.

Undoubtedly the rebel group regarded it as a positive sign when, in mid-January, Gourneau resigned his post as chairman of the Advisory Committee.¹¹⁸ While his health issues and the increasing public discontent with the Advisory Committee had to weigh tremendously on his decision, Gourneau did not offer an official reason for his action. Rather, he wrote, “Offering regrets would be akin to crying over spilt milk. I offer none. I look with happy anticipation at picking up my tracks where I left them five and a half years ago before entering into tribal politics.”¹¹⁹ Despite his resignation, Gourneau

¹¹⁵ Ibid.

¹¹⁶ Chairman: Fred Dauphinais to Dear Sir, Dec. 30, 1959; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C.

¹¹⁷ Q.R. Schulte to Glenn L. Emmons, Jan. 6, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹¹⁸ “Chairman Of Tribal Committee Resigns,” *Turtle Mountain Star*, Jan. 15, 1959.

¹¹⁹ Ibid.

continued to be active and a lead proponent of the Advisory Committee and the revised constitution.

One Gourneau's last official acts as Advisory Committee chairman called together a general council to discuss constitutional reform.¹²⁰ The meeting was held in late January and while tensions still ran high, there was a major point of agreement by all present: the constitution needed to be changed.¹²¹ Approximately 450 community members attended the three-hour meeting.¹²² Louis LaFountain was the first speaker of the day.

My good people, in the past we have lived under a Constitution and By-laws that should never have been, but we have been living under it since 1924. [The constitution was actually enacted in 1932] My good people, I know that I could never get anything under those terms so we are here today to propose these By-laws that I have in my hand which will give us the right to live as human beings... Of course these two By-laws we will have to vote for, one or the other. I know which one I want.¹²³

The mood of the meeting continued to be generally against the Advisory Committee and completely against the still-operative 1932 constitution. The rebel group presented a list of six specific complaints:

1. Welfare interests of the people are inadequately handled
2. Closed meetings should not be permitted
3. Proposals have been forwarded to Washington without consultation with the entire tribal group
4. Election notices for Advisory Committee membership elections have not been properly handled

¹²⁰ Ibid.

¹²¹ "Start Work On Change In Tribal Constitution," *Turtle Mountain Star*, Jan. 29, 1959.

¹²² Minutes of the General Meeting of the Turtle Mountain Band of Chippewa Indians, Jan. 24, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹²³ Ibid.

5. Deplorable conditions exist on the reservation due to the negligence of the committee
6. Present tribal leadership gives the people nothing to look forward to concerning bettered conditions and the people are tired of dictatorship by the Advisory Committee¹²⁴

One community member saw the embodiment of the problems of the Advisory Committee and additionally the promise of the rebel group in the preamble to their respective constitutions. According to the minutes, “[The community member] got up and said...in [the revised constitution] it states ‘We the people of the Turtle Mountain Advisory Committee’ and in the [proposed constitution] it states ‘We the members of the Turtle Mountain Band of Chippewa Indians.’”¹²⁵ Louis LaFountain found another opportunity to take a swipe at the Advisory Committee, and consequently support the rebel group-produced proposed constitution.

The committee has meeting [sic] behind closed doors and we are not allowed to attend them. The Committee plans trips to Washington and does not consult the people. Most of the time the people do not know what they are voting for. We must have a new form of government. With leaders like these, what has [sic] the people to look forward to. [sic] We are tired of living under these dictators. We must have a change to make at least a decent living.¹²⁶

In the wake of the Advisory Committee’s decision to unilaterally adopt its revised constitution, under the backdrop of the threat of termination and the difficult living

¹²⁴ “Start Work,” *Turtle Mountain Star*, Jan. 29, 1959.

¹²⁵ Minutes, Jan. 24, 1959. National Archives. Although not exactly precise, the spirit of the comment is nonetheless reasonably founded. The preamble to the first revised constitution actually states, “We, the members of the Turtle Mountain Advisory Committee, the governing body of the Turtle Mountain Band of Chippewa Indians, operating under a constitution and by-laws which is outmoded, inadequate, and a detriment to fit our actions to present day needs, do hereby adopt a revision of our constitution and by-laws in the interests of increased effectiveness of tribal government, and a change of name for the governing tribal organization as a matter of convenience.” (Revised) Constitution (first draft), National Archives.

¹²⁶ Ibid.

conditions on the reservation, such appeals to a new government and a new way of life were growing in appeal within the community.

The discussion in the meeting eventually turned to forming a constitutional committee to write a new document. A small handful of federal officials also attended the general council, including Robert Bennett from the Area Office in South Dakota. In offering the aid of the federal government, Bennett implicitly reminded all involved which entity still held the ultimate authority in the situation. “If you want to set up a Constitutional Committee to work with you and the Advisory Committee, then the Bureau can come out with a document satisfactory to all people so that they can all understand it.”¹²⁷ There was still a fair amount of grumbling about the fairness of the process and the makeup of the proposed body, but in the end it was unanimously decided to create a constitutional committee.¹²⁸ One tribal member summed up what appeared to be the overall tribal analysis of the situation. “The thing is we want to give both sides a fair chance to constitute a good law.”¹²⁹ The *Turtle Mountain Star* stated that a constitutional committee of ten, two of whom were Advisory Committee members, was formed to draw up a new document.¹³⁰ The newspaper also stated that at the meeting it was noted that the 1932 constitution was, “rather hastily,” written and adopted in order to initiate a claim against the federal government.¹³¹

Despite the relatively hospitable nature in which the meeting seemingly ended, Mittelholtz was still wary of the rebel group. He noted that they had arrived at the

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ “Start Work,” *Turtle Mountain Star*, Jan. 29, 1959.

¹³¹ Ibid.

meeting, “expect[ing] a decision [on the constitutions] to be made that day.”¹³² Although there was unanimous agreement to form a constitutional committee, the rebel group, according to the superintendent, continued their pattern of vaguely threatening words.

In the nicest way I knew how, I tried to tell [the community members] that if the situation got out of control and they could not compromise, the Secretary of the Interior may have to deal with the situation. Mr. Louis LaFontaine says the Secretary will never do it unless he brings troops in here to back him up. I perhaps should never have mentioned the above, but still want to report what I have said, and the reply I received.¹³³

Middelholtz had good reason to worry. The promise of a constitutional committee did nothing to quell the rebel group’s effort at reform. Nor did it prevent them from continuing to use vaguely threatening language during those efforts. Additionally, the community was increasingly supporting the so-called rebel group.

The rebel group’s local, national, and international efforts

February of 1959 was an incredibly active month for Turtle Mountain, with the rebel group seeking to create change with efforts on the local, national, and international levels. The record suggests that the rebel group did not have an organized, cohesive plan of action, but rather that they engaged in a haphazard, unsystematic series of activities that were often intended to generate excitement and publicity as much if not more so than they were to create solutions for the community. Nonetheless, their varied attack operated amongst the different spheres of government and likely inspired several tribal members who sought change on the reservation.

¹³² H.P. Mittelholtz to Area Director, Aberdeen Area Office, Jan. 27, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹³³ Ibid.

The leadership of the rebel group focused their efforts at local reform by circulating a petition in the community stating that the Advisory Committee operated improperly and illegally and refused to consider their proposed constitution.

The Advisory Committee...not only acts without the scope of their authority as set out in the present constitution and by laws, and also refuse to take any action on the new constitution and by laws, at the same time the members of the Advisory Committee pay them selves [sic] wages, enriching themselves without benifit [sic] to the said tribe; thatsaid [sic] Advisory Committee members intend to continue this said [sic] state [sic] affairs and enrich themselves Illigeally [sic] and without taking any action until their present terms expire.¹³⁴

The petition asked the Secretary of the Interior, the Commissioner of Indian Affairs, and the Area Director to freeze the wages of the Advisory Committee members and seemingly also requested that the proposed constitution be put up for a tribal vote.¹³⁵ The rebel group was able to gather between 800 and 900 signatures.¹³⁶

The rebel group sent a delegation consisting of six men to Washington D.C. in their effort to effect change through the federal level. It is unclear what plans, if any, they made prior to arriving in Washington. The record suggests that the singular purpose of the delegation was to speak to the highest ranking federal official possible and to make that official recognize their proposed constitution as the new governing document for Turtle Mountain. To that end, they began at the White House, where they were referred to

¹³⁴ Petition; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹³⁵ The language of the document is confusing, although when read in light of the aggressiveness of the rebel group, it does seem to ask for a vote on the proposed constitution. "That the petitioners, herein therefore, respectfully urge the Commissioner of Indian Affairs, Secretary of the Interior and the Area Director to immediately freeze the wages of the said Advisory Committee members in order that the assets of the said tribe be protected and that the members of the Advisory Committee do only such actions as authorized by the present constitution and by law be put up for approval." Ibid.

¹³⁶ "Meet with TM Tribal Group," *Turtle Mountain Star*, Feb. 19, 1959; and J. Smith to Mr. Ware; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

the Secretary of the Interior, who consequently referred them to the Bureau of Indian Affairs, where they were able to finally secure a couple of meetings with members of the Tribal Government Section of the BIA.¹³⁷ Two of the men in the delegation used their tribal names and wore traditional clothing for the meetings.¹³⁸

One early exchange between Louis LaFontaine (referred to in the transcript as La Fontaine) and George Abbott, one of the solicitors for the Tribal Government Section of the BIA, outlined the vastly differing points of view between the rebel group and the federal government on how to reform the tribal government. It also reflects the rebel group leadership's belief in the validity of their cause.

MR. ABBOTT: You do not like the Constitution as it is in its present form.

MR. LOUIS LA FONTAINE: That is correct.

MR. ABBOTT: And apparently the tribe has recognized, the Bureau of Indian Affairs has recognized, itself, that changes are needed in the Turtle Mountain Constitution.

MR. LOUIS LA FONTAINE: Very badly; very badly.

MR. ABBOTT: And in fact if I am correctly advised...if you do not know what steps have been taken, to provide a means of changing that Constitution, and the basis for a final change would be that a majority of the people of the Turtle Mountain Tribe approved those changes.

¹³⁷ One federal governmental memo states that the rebel group met with government officials on Feb. 11. J. Smith to Mr. Ware, National Archives Building, Washington D.C. However, a transcript of one of the meetings between federal officials and the rebel group is recorded as happening on Feb. 12. This transcript also references the meeting from the previous day. Official Report, National Archives Building, Washington D.C., 14.

¹³⁸ "Meet With," *Turtle Mountain Star*, Feb. 19, 1959. During their time in Washington D.C. members of the rebel group also contacted North Dakota's member in the House of Representatives, Quentin N. Burdick. Burdick passed their proposed constitution to the Secretary of the Interior. Quentin N. Burdick to Honorable Fred A. Seaton, Feb. 13, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

MR. LOUIS LA FONTAINE: They have been approved by my people. My people are the ones that sent us over here with the documents that we have now.

MR. ABBOTT: The people you represent are a majority of the people of the Turtle Mountain Tribe?

MR. LOUIS LA FONTAINE: They are the people.

MR. ABBOTT: Is it a majority of the Turtle Mountain Tribe?

MR. LOUIS LA FONTAINE: If I had been representing a group, I would have said members; but I say the people. The people is the tree; a member is the limb.

MR. ABBOTT: Well, I am afraid you lost me there. Do you represent a majority of the adults, the eligible voting members –

MR. LOUIS LA FONTAINE: Yes, the majority.

MR. ABBOTT: – of the Turtle Mountain Tribe?

MR. LOUIS LA FONTAINE: The majority of the adults, the voting adults.¹³⁹

Abbott continued to question about the possibility of a vote on the document that the rebel group wished to have put in place as a consequence of the meeting. Another member of the delegation responded by speaking about the Advisory Committee and the rebel group's frustration with the formal stages of constitutional revision. "We simply don't want to work with a bunch that doesn't want to cooperate. They will not cooperate with us in any way that we want to cooperate. We have tried it many times, to cooperate with those people, and they will not cooperate with us."¹⁴⁰

The meeting continued with federal officials attempting to explain that certain protocols needed to be followed and the rebel group attempting to explain that they had

¹³⁹ Official Report, National Archives Building, Washington D. C. 4-5.

¹⁴⁰ Ibid., 6-7.

the legitimate authority of the community. At one point, the tribal contingent argued that the petition they had circulated prior to coming to Washington, and the between 800 and 900 names on it, constituted the necessary proof that they had the backing of a majority of the tribal members. The federal officials were not ready to accept that argument. After stating that he did not wish to call their honesty into question, Assistant Secretary to the Under Secretary Roger C. Ernst stated, “In any governmental procedure there has to be something more than a list of names. I, today, could start up the street and pick up a list of 5,000 names over a period of time.”¹⁴¹ Al LaFountain responded with a slightly less veiled accusation. “We appreciate your position. However, your position is that you don’t know the Indians well enough that you can trust their word.”¹⁴²

While the federal officials continued to stand their ground the tone that emanated from the rebel group grew more heated. Al LaFountain made several accusations, including that Gourneau had said that Native people were too dumb to handle their own affairs, that Gourneau actually claimed to be French, and that BIA officials were telling Native women to prostitute themselves in order to support their families.¹⁴³ Al LaFountain even took credit for ending allotment.

Do you know who supplied the Bureau of Indian Affairs with the idea of disregarding this theory of making farmers out of all the Indian people? I did. I told them very specifically in letters to the effect that would be a better way to find jobs and employment for the Indian people. I have got proof; I have got a lot of documents. I let these people lip off so that I could chop them down later.¹⁴⁴

¹⁴¹ Ibid., 12.

¹⁴² Ibid., 13.

¹⁴³ Ibid., 28-30.

¹⁴⁴ Ibid., 35.

The outrageousness of Al LaFountain's comments might make them easy to dismiss as folly. In the moment, one of the federal officials treated Al LaFountain's statement with thinly veiled condescension. "Well, I would say this, if they were your suggestions and they were followed, we ought to be grateful."¹⁴⁵ During this period (and in more recent times) Al LaFountain said and did many things which, at a minimum, strained his credibility.¹⁴⁶

Despite this, Al LaFountain's comments should not be easily dismissed. He almost immediately followed his claim about changing federal policy with an insightful discussion about both the mindset of Non-Natives concerning Native people and the underlying purpose of the federal Indian policy.

I maintain, I have got proof to this effect that the Bureau of Indian Affairs officials are so brainwashed with regard to the Indian people that they are going to push a program of the Indian people whether or not they like it, without consent of the people, without consulting the Indian people....

¹⁴⁵ Ibid.

¹⁴⁶ After his efforts to overhaul the tribal constitution at Turtle Mountain, Al LaFountain engaged in several other activities that were noteworthy. On several occasions he claimed that his Native heritage exempted him from various taxes, he claimed that he owned all of Ramsey County in Minnesota, he ran (unsuccessfully) for various offices, including mayor of Minneapolis, the Minnesota House, and President of the United States, and he tried to open tribal casinos in St. Paul, MN and Medina, MN. Al LaFountain's most recent newsworthy escapade involved his efforts to open a strip club and another casino. In 2002, the then-82-year-old bought a former pizza parlor in Elko, MN for \$1 and proceeded to claim the property as sovereign tribal territory. He began operating a strip club and serving liquor, all without a license, and he had plans to add slot machines to the establishment. The business was quickly shut down by local authorities and has remained closed despite Al LaFountain's proclamation that, "There ain't no way on God's Earth that they're going to stop me." He also stated, almost assuredly without a hint of irony, "They have a lot of money, but I have knowledge. And I'm not a giver-upper." Tammy J. Oseid and Bob Shaw, "His Land, His Right, His Strip Club – 82-year-old Ojibwe Says Laws Entitle Him to Make His Elko Land His Own Reservation," *St. Paul Pioneer Press*, Nov. 16, 2002, City edition, Local section; "Regional Briefing," *St. Paul Pioneer Press*, Nov. 19, 2002, City edition, Local section; Deborah Locke, "Ojibwe Man Has Interesting Concept of Tribal Sovereignty," *St. Paul Pioneer Press*, Nov. 21, 2002, City edition, Editorial section; Karl J. Karlson, "Permit Snag Not Stopping Casino Plan – Man Claims Power From Indian Treaties," *St. Paul Pioneer Press*, June 28, 2003, City edition, Local section; and "Elko, Minn. Court Upholds Nude Dancing Restrictions," *St. Paul Pioneer Press*, Apr. 14, 2004, City edition, Local Section.

You see, they have their little bit, there is a case there of a little bit, degree of insanity with regard to the Indian people....

However, after brainwashing the people to the effect that the white people, to the effect that the Indian people should not be trusted...like you are doing about the Russians now, after the Indian people said, "All right, we won't fight you any more, we will get along peaceably," you did not un-brainwash your people. Let's remember that. This is one thing that you people always forget, something that you, in your subconscious minds, you hate the Indian people and you don't know why.

You are not bad people. I know white people, you are not that bad. It is just that you are insane to a degree in regard to the Indian people, that is it.¹⁴⁷

Lacking the slick varnish of academic jargon, Al LaFountain nonetheless cogently argued a point made by prominent cultural critics both before, during, and since he made this statement. The continuing dominant perception of Natives (or any "other") is an important, if not *the* most important, contributing factor to continuing racial inequality. More importantly, the growing popularity of his "rebel" group and the proposed constitution make clear that Al LaFountain's message was resonating within the community. His various comments about reasserting tribal authority, through any available means, was inspiring many community members then currently living under difficult conditions, with the still-present possibility of termination threatening to make things even worse.

Abbott, the federal official with whom the LaFountain brothers did most of their verbal sparring, took offense to the comments, suggesting that they should check with various Natives with whom Abbott associated in the past about his lack of prejudice.¹⁴⁸ Shortly thereafter Abbott confronted Louis LaFountain about a statement Louis had made

¹⁴⁷ Official Report, National Archives Building, Washington D. C., 35-37.

¹⁴⁸ Ibid., 37-38.

in a meeting the previous day concerning the possible threat of violence on the reservation.

MR. ABBOTT: Did you, in your conversations with officials yesterday, suggest that if the delegation cannot take hom [sic] a new constitution signed by the Secretary, the people of the reservation will revolt, burn down the Advisory Board's meeting place and butcher the Federal employees on the reservation?

MR. LOUIS LA FONTAINE: We may as well.

MR. ABBOTT: But you were using that figuratively, were you not?

MR. LOUIS LA FONTAINE: We may as well. My people are ready to fight for their rights, and if we have to, pick [sic] up our bows and arrows, clubs, whatever we may be able to get a hold of –

MR. ABBOTT: I am glad you say if you have to.

MR. LOUIS LA FONTAINE: – in order to better ourselves, we will. As I was a veteran in World War II, this government taught me how to fight, and so did my grandfathers, and I think we will stand for at least a minute until a big atomic bomb drops on us.

MR. ABBOTT: So maybe you used this statement the same way some people do at a baseball game, say “Kill the umpire.”

MR. LOUIS LA FONTAINE: No.

MR. ABBOTT: You did not use it that way?

MR. LOUIS LA FONTAINE: No, I used it through my heart, through my heart.

MR. ABBOTT: You don't mean if the Secretary doesn't sign this constitution that is going to happen?

MR. LOUIS LA FONTAINE: It is just liable to, my friend; it is just liable to. You suffer and you go hungry for 27 years. Every time you walk by a child they ask you for

something to eat, you finally get mad enough, you are going to do drastic things. We are to the point of breaking.

MR ABBOTT: But you will –

MR. LOUIS LA FONTAINE: We know that this great Government, the United States Government, is too much for us little reservation, two little townships, to handle, but we will try them on anyway, if that is the only way we can get any way to better ourselves.

MR. ABBOTT: Well, again I am happy that you said that, because it is clearly not the only way.¹⁴⁹

The transcript of the meeting strongly suggests that the federal officials did not always believe or take seriously the LaFountain brothers or the rest of the rebel group's statements. Toward the end of the meeting Abbott stated, "I would not close without adding that I think the case may have been overstated in some respects."¹⁵⁰ Yet, Abbott's continuing probing also suggests that the federal officials did not readily dismiss the possibility of violence. With a contingent of six in Washington, a petition with the signatures of somewhere between 800 and 900 people, and continued statements that they had the support of "the people," the rebel group must have appeared not as a formidable foe, but at least as enough of a collective threat to be able to cause relatively significant trouble.

The tension did not ease during the rest of the meeting. Although it is unclear who the "they" are in his statement, Al LaFountain would later say, "They have forced me to do things to your country, they have forced me to do things I don't enjoy doing. But I could see no other way out; I could see no other solution but to use force, and I am not through yet, absolutely not. I have not said what I am going to do next. No one will know

¹⁴⁹ Ibid., 40-42.

¹⁵⁰ Ibid., 71.

that, if I see that you are going to give these people the run-around, God bless America.”¹⁵¹ Nonetheless, the tone of the conversation shifted toward how to properly enact the proposed constitution. Despite his continued threats and the rebel group’s original insistence that their proposed constitution be acknowledged immediately, Al LaFountain eventually stated, “Just explain this is what has to be done. We don’t want opinions or suggestions. We just want to know what we have to do so that we get this thing through according to due process of law.”¹⁵²

Within this slightly muted tone, the specter of future violence still hung in the room. Toward the end of the meeting Abbott addressed the situation again and appealed for calm through common interests. “This possible violence, I am sure, will never have to come about, if we follow the procedures that are set up. And it is not the case of the United States Government, which is all of us, after all, having a different objective than its citizens have, because the citizens are the Government, and you people are citizens of that Government, so that you have a right and a duty to yourselves to act within the rules that govern all of us.”¹⁵³ Al LaFountain, responding shortly thereafter, not only rejected Abbott’s understanding of some common ground, he even distanced himself from his own group to protect them and perhaps also to maintain the attention of the federal officials who had seemed ready to dismiss his proclamations earlier in the meeting. “Let’s face it. These people need money, and I know of this situation. As an American citizen I will not stand by and let these people go hungry. However, anything I do here, from here on in, no one is to be blamed. It is not to reflect on these people at all, anything

¹⁵¹ Ibid., 53.

¹⁵² Ibid., 44.

¹⁵³ Ibid., 71.

that I do, that I consider necessary, to reflect on no one in this country but Al LaFontaine. It is the entire action of Al LaFontaine.”¹⁵⁴

Upon their return to North Dakota, whatever potential compromise was reached between the rebel group and federal officials quickly dissipated. In late February some leaders of the rebel group demanded that tribal superintendent Mittelholtz immediately call a vote on their proposed constitution. According to Mittelholtz, the rebel group leaders claimed that they had proven to the federal officials in Washington that the still-operative 1932 constitution was a fraud. The leaders of the rebel group were not able to persuade the tribal superintendent into holding an immediate election.¹⁵⁵

Part of the federal officials’ seeming readiness to dismiss statements from the LaFountain brothers and their subsequent willingness to pay increased attention when the threat of violence arose may have been influenced in part by the rebel group’s international effort to effectuate change. During late January or early February of 1959, during the height of the Cold War, Al LaFountain offered to sell one-third of the state of North Dakota to the Soviet Union.¹⁵⁶ This outrageous stunt undoubtedly influenced federal officials to think of the rebel group as both lacking seriousness yet potentially dangerous.

Despite its implausibility, Al LaFountain’s offer to the Soviet Union elicited several reactions from around the country, all universally denouncing the action. The destructive nature of the Termination Era policy and the heightened fears surrounding the Cold War (including those fears that provoked Termination Era policy in the first place)

¹⁵⁴ Ibid., 75.

¹⁵⁵ H. P. Mittelholtz to Area Director, Aberdeen Area Office, Mar. 3, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁵⁶ Karlson, “Permit Snag,” *St. Paul Pioneer Press*, June 28, 2003; and Locke, “Ojibwe Man,” *St. Paul Pioneer Press*, Nov. 21, 2002

led many to find it reasonable to respond to the seemingly unreasonable offer. Roger Ernst, the Assistant Secretary of the Interior who later met with the rebel group on their trip to Washington D.C. noted, “[Al LaFountain]...has not lived on the reservation in 20 years. I am firmly convinced he does not speak for the population of that reservation.”¹⁵⁷ Ernst also stated he found it “preposterous” that someone would choose to attempt to raise capital in this manner and labeled it a “publicity stunt.”¹⁵⁸

The National Congress of American Indians (NCAI), the largest and most prominent pan-tribal organization in the country, also felt compelled to issue a statement. Executive Director of NCAI, Helen L. Peterson, stated, “Responsible American Indian leaders from many tribes and virtually every section of Indian country in the U. S. are affronted over the irresponsible request...they are demanding that the amazing action be repudiated and that the record be set straight that they consider the whole matter an insult to the intelligence and patriotism of the Indian people.”¹⁵⁹ Peterson also joined Ernst in calling the action a “publicity stunt” and “cheap and embarrassing.”¹⁶⁰ Others wrote to various government officials to express their dismay as well.¹⁶¹

¹⁵⁷ Statement by Assistant Secretary of the Interior Roger Ernst Concerning the Press Account of an American Indian’s Appeal to the Russian Government for One Million Dollars in Financial Assistance, Feb. 3, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁵⁸ Ibid.

¹⁵⁹ National Congress of American Indians, 530 Dupont Circle Building; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁶⁰ Ibid. The harsh tone of the statement undoubtedly has much to do with the times. According to its website, NCAI was founded in 1944, “in response to termination and assimilation policies,” of the federal government. <http://www.ncai.org/About.8.0.html> (Accessed July 18, 2008). 1959 was still very much in the heart of the Termination Era of federal policy. NCAI, founded in part to prevent tribal communities from being terminated, must have viewed Al LaFountain’s appeal to the Soviet Union at the height of the Cold War as a public relations nightmare and completely antithetical to fostering the federal support necessary to stave off termination.

¹⁶¹ A handful of letters from individuals populate the files at the National Archives in Washington D.C. See Thomas M. Brown to Rep. Michael Kerwin; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D.C.; C.T. Ray to Bureau of Indian Affairs, Feb. 4, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D.C.; and Margaret Tobias to Commissioner of

These and other actions took their toll on the unity of the rebel group.¹⁶² In late March some leaders of the rebel group denounced the actions of the LaFontaine brothers.

As a result of recent publicity which has been unfavorable and embarrassing to the Turtle Mountain Indians due mostly to the irresponsible and uncontrollable actions of Al and Louis LaFontaine, we are hereby severing our relations with them in the best interests of the tribe and urge every conscientious member of the Tribe to do likewise.¹⁶³

These leaders also made a call for tribal unity in the depths of the tribal constitutional morass. “Let us forget our personal differences and strive to achieve our goal with truth and understanding. Wild unfounded rumors have done nothing but confuse and disunite us.”¹⁶⁴

Gourneau used the rebel group’s various activities as a springboard to argue in favor of the revised constitution he helped create. Like his counterparts, Gourneau also sought to operate on the national level, writing to the Secretary of the Interior to pointedly ask if there was a new federal policy of, “dealing directly with rebel or rump councils.”¹⁶⁵ As noted above, he also wrote an editorial in response to the rebel group’s constitution and the promises that they was making to the community. Gourneau began by stating that he was retired, but was compelled by various events to jump back into the fray.¹⁶⁶ He criticized the rebel group’s aggressive approach in seeking to have their constitution recognized, even after they had seemingly come to an understanding about

Indian Affairs; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D.C.

¹⁶² “Statement Issued On Tribal Plans,” *Turtle Mountain Star*, Mar. 26, 1959. The newspaper article also makes reference to, “some trouble,” that occurred concerning tribal members on their visits to Grand Forks, ND and Fargo, ND. The vague statement does not indicate what constituted the “trouble,” but it clearly had some effect in causing a rift in the rebel group.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Roger Ernst, Assistant Secretary to Dear Mr. Gourneau, Mar. 4, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁶⁶ Gourneau, “Editorial,” National Archives Building, Washington D.C.

the necessary procedures in Washington D.C. “[The rebel group] returned home with almost complete disregard of what they were told and still insist on doing things their way.”¹⁶⁷ Gourneau also claimed that the rebel group’s proposed constitution was riddled with flaws and would not be recognized. “[The proposed constitution] is undesirable in its language and in its purpose. It lacks many things a suitable and acceptable governing document should have. It doesn’t have a chance of meeting Government approval.”¹⁶⁸

Gourneau also used the editorial as a means for addressing various other statements that had circulated within the community, including questions of his own integrity. “It is an easy matter for me to prove that I never used as much as one cent of tribal money for purposes other than tribally connected business.”¹⁶⁹ He questioned the motivations of those he called, “scandal mongers.” He also questioned the judgment of the rebel group in approaching the Soviet Union. “It would be highly unfair for the public to believe that there are no longer any loyal and good American citizens of Indian ancestry on the reservation... Such publicity, whatever the intentions behind it, leaves a bad taste in the mouth.”¹⁷⁰ Gourneau also addressed a political situation that continued to be of the utmost concern within the community: the claim against the government. Turtle Mountain’s claim in the ICC was still in its early stages as of 1959, and Gourneau cautioned against the rebel group’s promises of a quick resolution. He cemented this point by noting the centrality and motivation of lawyers in the ICC process. “Claims attorneys are paid only when they win a case for a tribe. They are not going to present

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

their case before it is ready just because somebody tells them to do it.”¹⁷¹ Additionally, Gourneau cautioned against the idea that a constitution by itself could solve the community’s problems. “The mere drafting and adoption of a new Constitution and set of by-laws is not going to diagnose the malady and prescribe the cure.”¹⁷²

As winter turned to spring on the North Dakota prairie, any hope for cooperation between the rival factions was lost. A showdown was imminent and the people of Turtle Mountain were left with a choice that was ultimately less about the documents themselves, and more about the community’s past constitutional history and its future.

The New Constitution and its Aftermath

In the spring of 1959 the people of Turtle Mountain voted to adopt a new tribal constitution. Much like the first tribal vote on a constitution in 1932, the 1959 vote was initiated by tribal members for the purpose of addressing tribal interests. While the federal government played an important role in both instances, it was the community that ultimately sought out constitutionalism. Yet, also like in 1932, the 1959 constitution proved to be unable to accomplish the present goals of the community.

The final proposed and revised constitutions

The constitutional committee that was ostensibly established at the late January general council never came to fruition.¹⁷³ Both the group led by Gourneau and the rebel group revised their original constitutional drafts. The details as to exactly when each

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Robert L. Bennett, Assistant Area Director, Aberdeen to R. W. Quinn, Supervisory Program Officer, Mar. 31, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

constitution was revised and who did the revising are unclear. Both constitutions received at least some review from the Solicitor's Office of the Department of the Interior.

Additionally, the Advisory Committee's revised constitution received additional federal governmental attention, although how much additional attention is also unclear.¹⁷⁴

What is clear is that after the revision process the two constitutions were virtually identical.¹⁷⁵ (See appendices F and G) An example illustrates the striking similarities and minor differences. Neither document originally contained an article on future and reserved powers, yet each had one in its final version. The rebel group's proposed constitution's future and reserved powers article reads as such:

ARTICLE X – FUTURE AND RESERVED POWERS

Section 1. The Tribal Council may exercise such powers as may in the future be granted to the Council by members of the Turtle Mountain Band or the Secretary of the Interior or by any other duly authorized official or agency of the Federal Government, provided such power is accepted by the Tribe by appropriate amendment of this Constitution.

Section 2. Any right or power heretofore vested in the Turtle Mountain Band of Chippewa Indians, but not expressly referred to in this Constitution, shall remain in the Band, and may be exercised by the Turtle Mountain Band of Chippewa Indians or by the Tribal Council through the adoption of appropriate constitutional amendment if that be the wishes of the people.¹⁷⁶

Whereas the revised constitution's future and reserved powers reads as such:

ARTICLE 7: FUTURE AND RESERVED POWERS

Section 1. The Tribal Council of the Turtle Mountain Band of Chippewa Indians may exercise such future powers as may in the future be granted to the Tribal Council by amendments to this Constitution and Bylaws or the Secretary of the Interior or by any other duly authorized official or agency of the Federal Government.

¹⁷⁴ R. W. Quinn, Supervisory Program Director to Homer B. Jenkins, Chief, Branch of Tribal Programs, Apr. 8, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁷⁵ Proposed Constitution of the Turtle Mountain Band of Chippewa Indians (final draft); Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C. And Revised Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians (final draft); Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁷⁶ Proposed Constitution (final draft), National Archives Building, Washington D.C.

Section 2. any right or power heretofore vested in the Turtle Mountain Band of Chippewa Indians, but not expressly referred to in this Constitution and Bylaws, shall remain in the Band, and may be exercised through appropriate constitutional amendment.¹⁷⁷

Perhaps some tribal voters were swayed their minor differences, but the relative symmetry between the two documents makes clear that for many within the community the impending tribal vote to decide which constitution would govern Turtle Mountain was no longer about the documents themselves. Rather, the vote would be a referendum on the past, present, and future of the Turtle Mountain tribal government.

On one side stood Gourneau, the Advisory Committee, and the revised constitution. Gourneau had been a strong advocate for the community during the fight against termination. Yet, he and the Advisory Committee became plagued with suggestions of impropriety. The Advisory Committee's decision to begin operating under their constitution without a tribal vote and without approval from the federal government fueled the flames fanned by those who argued that the Advisory Committee was an oligarchy. Additionally, Gourneau and the Advisory Committee's seeming willingness to cooperate with federal officials must have felt like a whole lot of more of the same to many community members who were seeking change and struggling to make ends meet during tough times.

On the other side stood the LaFountain brothers, the rest of the rebel group, and the proposed constitution. Possessing intelligence and feisty resolve, Al and Louis LaFountain fought for their proposed constitution with passionate and perhaps even reckless abandon. The fiery rhetoric and actions of the rebel group assuredly inspired many of those who had recently experienced the threat of termination and were still

¹⁷⁷ Revised Constitution (final draft), National Archives Building, Washington D.C.

experiencing the severe economic times. Still others undoubtedly recognized that the behavior of the rebel group was erratic, if not downright dangerous. Yet, they represented change, a new direction for the future, and willingness to stand up to those who were larger than them, which must have appealed to many community members, regardless of the trouble it might cause.

The impending vote was also clouded by various rumors circulating within the community; the rumors being attributed to both the Advisory Committee and the rebel group. Some claimed that if the Advisory Committee's document was not chosen then schools on the reservation would be closed and that federal assistance would dry up. Others claimed that if the Advisory Committee's document did win then the Advisory Committee would spend the judgment from the ICC claim and that individuals would not see any of the claim monies for themselves.¹⁷⁸

Exactly why the different documents with very different origins from two adversarial groups came to so closely resemble one another is unclear. It is likely that the rebel group's final draft of their proposed constitution emerged before the final draft of the revised constitution, given its relative similarity to its source material (and the relative disparity between the first and final drafts of the revised constitution). As such, it is possible that Gourneau and his followers decided to rebuild their own document off of their rivals' finished product.¹⁷⁹ It is also possible that federal officials, once they

¹⁷⁸ Quinn to Jenkins, Apr. 8, 1959, National Archives Building, Washington D.C.

¹⁷⁹ While no definite conclusions can be made, it is at least possible to speculate why Gourneau and his followers might built their final draft off of their rivals' document, if, indeed, the final draft of the proposed constitution emerged first. Perhaps Gourneau and his contingent believed that the rebel group's document was, in fact, better than their own, but that it still needed improvement or, at the very least, changes to distinguish the new revised constitution from the new proposed constitution. Or perhaps Gourneau and his group believed that they were losing support and votes to the rebel group and sought to steal their momentum by appropriating their document. Regardless, it is doubtful that the commonalities in the documents are coincidental.

became involved, suggested or requested or maybe even demanded a certain amount of standardization.

The revised constitution was, ultimately, the more polished of the two. For example, the proposed constitution did not establish a length of term for councilmembers or a structure for future elections. Under the final version of the proposed constitution it would have been constitutionally possible for a person who won a seat on the Tribal Council to hold that seat for life. Gourneau had a letter prepared and sent to the BIA in Washington D.C. that compared the documents and highlighted the differences to demonstrate the superiority of the revised constitution and to cultivate support for it.¹⁸⁰ Yet, Gourneau's efforts were misplaced, as it was to be people of Turtle Mountain who were to determine the fates of the two documents.

The constitutional vote

A new meeting was held on April 4, 1959, to determine the constitutional fate of the community. The *Turtle Mountain Star* perhaps best summed up the feeling headed into the assembly. "The revision of the present constitution has caused a great deal of debate and friction in the past months, although all segments of the tribe apparently feel that the constitution definitely needs changing."¹⁸¹ The local school gymnasium where the meeting was held was filled within ten minutes of the doors opening. Federal officials estimated that 600 to 700 people were in the gymnasium and that another 100 to 200 were standing in the hallway or outside. They also estimated that although Gourneau and

¹⁸⁰ Theresa M. Davis, tribal clerk to Mr. R.W. Quinn; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁸¹ "Tribe to Meet At Belcourt," *Turtle Mountain Star*, Apr. 2, 1959.

the Advisory Committee had their supporters, eighty percent of the crowd backed the rebel group.¹⁸²

Federal officials were the first to speak at the meeting. As had occurred at the last general assembly, they once again stated their neutrality while reminding the crowd who held the ultimate authority.¹⁸³ Gourneau then spoke. He noted the friction that constitutional reform had caused on the reservation, stating, “We have been in a state of civil war.”¹⁸⁴ Gourneau also spoke at length about the various federal bureaucratic mechanisms that both protected the interests of tribal peoples and prevented them from exercising much in the way of their own interests.¹⁸⁵

From that point forward the meeting teetered on the edge of disorder. Members of the rebel group also spoke and would occasionally whip the crowd into an excitement. A collection of four or five rebel group members attempted to take over the floor when they feared that the Advisory Committee’s revised constitution would be put to a vote while their proposed constitution would be left off of the ballot. Eventually, a ten-minute recess was called and a group of leaders from each camp met to hammer out a resolution on the constitutional vote. The agreed-upon resolution, which was unanimously accepted after the recess, established a tribal referendum that put both documents on the ballot.¹⁸⁶ It was also decided that the vote would be held one week later.¹⁸⁷

¹⁸² Quinn to Jenkins, Apr. 8, 1959, National Archives Building, Washington D.C.

¹⁸³ According to the Quinn, “I explained the [BIA] did not want to participate in purely internal tribal matters, but as trustee the Congress had given the Department responsibilities which had to be recognized.” Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ “TM Tribe To Vote On Constitution Saturday,” *Turtle Mountain Star*, Apr. 9, 1959.

On April 11, 1959, the people of Turtle Mountain chose the rebel group's proposed constitution by a margin of 746 to 444.¹⁸⁸ Four days after it was chosen, the proposed constitution was headed for Washington D.C. for secretarial approval.¹⁸⁹ There was some question as to how the Advisory Committee was going to respond to their defeat and it looked as if there was trouble looming when, in their certification of election results, the Advisory Committee noted, "Be it known that the Proposed Constitution was not adopted by the Advisory Committee nor did it meet the [Advisory] Committee's approval."¹⁹⁰ Additionally, while the winning document was working its way through the federal bureaucratic machinery, lame duck Advisory Committee members were elected in May of 1959.¹⁹¹ However, by mid-May any rumblings of additional trouble by the Advisory Committee had lost their steam.¹⁹²

The new tribal government

With their proposed constitution's victory in the election, the so-called rebel group was now poised to take over the tribal government. Yet, the transition from rebels to leaders proved to be difficult. In the end, the rebel group's victory in April of 1959 was compromised at best and could perhaps be more aptly described as pyrrhic.

The newly elected constitution ran into problems immediately. The BIA had indicated before the election that the proposed constitution's provisions for a judge and

¹⁸⁸ "Approve 'Rebel' Document At Election On Reservation," *Turtle Mountain Star*, April 16, 1959.

¹⁸⁹ "New Constitution Is Rushed To Washington," *Turtle Mountain Star*, Apr. 23, 1959.

¹⁹⁰ Certification of Adoption of Proposed Constitution by the Turtle Mountain Band of Chippewa Indians, Apr. 14, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁹¹ "Four Chosen In Tribal Vote," *Turtle Mountain Star*, May 21, 1959.

¹⁹² Leslie M. Keller, Acting Area Director to Homer B. Jenkins, Chief, Branch of Tribal Programs, May 15, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

chief of police were within the rights of the community but probably unwise, particularly if the federal government was expected to fund those positions.¹⁹³ After the document's ratification the subject of a tribal court and tribal police force came up again. The BIA's branch of Law and Order stated that the provision in the constitution that allowed the Tribal Council to establish a court and police force, "may prove to be the basis for some difficulty."¹⁹⁴ Again, the objection was not whether Turtle Mountain could include such provisions (they could), but who would pay for them. The Law and Order branch noted that the community was not able to fund such programs and that the BIA's funding, already subject to change through Congressional appropriation, would not be able to pay for those tribal officials who did not qualify for employment through the BIA.¹⁹⁵ The Commissioner echoed this stance in a letter to an Assistant Secretary of the Interior.¹⁹⁶ Superintendent Mittelholtz was also alerted of the issue and was told that the Secretary of the Interior requested that the constitution be amended.¹⁹⁷ Despite the objections, on June 16, 1959, the Secretary of the Interior approved the document.¹⁹⁸ In 1962 the still-new constitution was amended to remove the positions of judge and chief of police.

¹⁹³ Glenn L. Emmons to Edward Jollie, Apr. 9, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁹⁴ William B. Benge, Chief, Branch of Law and Order to Assistant Commissioner C.S., May 22, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁹⁵ Ibid.

¹⁹⁶ Glenn L. Emmons, Commissioner to Assistant Secretary, Public Land Management, June 2, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁹⁷ Fred G. Aandahl, Secretary of the interior to Dear Mr. Mittelholtz, June 16, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

¹⁹⁸ Roger Ernst, Assistant Secretary of the Interior to Dear Mr. Short, Jun 25, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.; and "New Indian Document For Tribe OKed," *Turtle Mountain Star*, July 2, 1959.

Although Al LaFountain remained a provocative figure, his brother Louis became the new political leader at Turtle Mountain.¹⁹⁹ A special election was set for August 8, 1959, to fill the newly established governmental positions, meaning the thirty-one candidates who filed for the various offices had a little over a month to campaign.²⁰⁰ Over 800 people did vote in the special election and Louis LaFountain was elected the new chairman at Turtle Mountain.²⁰¹

Louis LaFountain did try to create change on the reservation, yet his tactics were (perhaps overly) ambitious. Early in his tenure he directly contacted both the President of the United States and North Dakota's House Representative. In his telegram to President Dwight Eisenhower, Louis LaFountain declared the reservation a disaster area, stating "We urgently need food, clothing and building materials."²⁰² In his letter to Representative Quentin Burdick, Louis LaFountain decried the lack of response from the President, "It seems like the president don't like his job. So I guess I will have to do every thing in my power to elect a man in his place."²⁰³ He also asked Burdick for aid

¹⁹⁹ Even as the people of Turtle Mountain were headed to the polls to choose their new constitution, Al LaFountain was continuing what would be a lifelong pattern of advocacy and agitation. On the very day that the constitutional election was held, he wrote the Commissioner of Indian Affairs to challenge the appropriations of funds. His words were extremely pointed. "I am curious to know how men as unqualified as you are in the Indian field have been successful in hoodwinking the tax-payers for so many years!" A.L. LaFontaine to Commissioner Glen Emmons, Apr. 11, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C. He even challenged the Commissioner to a series of debates to be held in North Dakota and Minnesota. Ibid. The Commissioner declined. Glenn L. Emmons to Mr. A.L. LaFontaine, Apr. 22, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C. The Commissioner also stated in his reply, "The main point I want to emphasize is that we are working for and not against the best interests of Indian people and we are making progress." (emphasis in original) Ibid.

²⁰⁰ "Turtle Mountain Reservation Special Election Set August 8," *Turtle Mountain Star*, July 9, 1959; and "Total of 31 Candidates File For Tribal Offices," *Turtle Mountain Star*, July 23, 1959.

²⁰¹ "LaFountain Elected To Top Post By TM Tribe," *Turtle Mountain Star*, August 13, 1959.

²⁰² Telegram to the President, Sep. 21, 1959; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington D.C.

²⁰³ Louis F. LaFountain to Honorable Congressman Burdick, Sep. 29, 1959; Central Classified Files, 1958; Turtle Mountain, 66A-641, 500 through end; Record Group 75; National Archives Building, Washington

and offered the community's services in return. "Now Mr. Congressman we don't want this help for nothing if we could possibly work for such we would be happy for instant [sic] the bus routes are in need of graveling very badly."²⁰⁴ Louis LaFountain also proposed an economic rehabilitation program for Turtle Mountain.²⁰⁵ The program contained eight points to stimulate the tribal economic base, including opening a canning factory, a drive-in theater, a store catering to, "the fisherman, the hunter and the souvenir [sic] seekers," a, "colossal dance pavilion," and building a thirty-foot tall statue of Chief Little Shell.²⁰⁶

Perhaps unsurprisingly considering both the contentiousness of the constitutional election and his grandiose ambitions, Louis LaFountain ran into immediate opposition. His economic plan was reviewed by the BIA and deemed both overly general and unfeasible.²⁰⁷ Supporters of the old Advisory Committee were also quick to criticize his leadership skills and motivations.²⁰⁸ By the summer of 1960, the Louis LaFountain-led government was falling apart. In August of 1960 four members of the Tribal Council resigned, likely to distance themselves from LaFountain and his increasingly unpopular government..²⁰⁹

D.C. It is possible that Louis LaFountain was trying to play partisan politics since Burdick was a Democrat and Eisenhower was a Republican.

²⁰⁴ Ibid.

²⁰⁵ The Turtle Mountain Chippewa Band Rehabilitation Program; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²⁰⁶ Ibid.

²⁰⁷ Glenn L. Emmons, Commissioner to Sen. Milton R. Young, Jan. 19, 1960; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²⁰⁸ Norman J. Parisian and Charles E. Blue to Mr. George Abbott, Aug. 19, 1959; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²⁰⁹ H.P. Mittelholtz, Superintendent to Mr. Martin N.B. Holm, Aug. 16, 1960; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

Less than a month after the resignations, the chairman was forced to seek sanctuary from his constituency. On the morning of August 24, Louis LaFountain went first to the tribal agency and then to the tribal jail seeking protection.²¹⁰ He also inquired about relocation to the Southwest.²¹¹ About two hours later a group of forty to fifty community members arrived at the tribal agency looking for Louis LaFountain. According to superintendent Mittelholtz, “[The group] insisted on my securing him, but I told them I had no grounds for looking for Mr. LaFountain. *They then proceeded to bombard me with numerous questions regarding their Constitution and By-Laws*, stating that the last several meetings held were illegal because there was no quorum.”²¹² (emphasis added)

It is difficult to discern from the record if the tribal members were seeking out LaFountain for additional reasons beyond holding council meetings without a quorum. Presumably community members were angry at the business that was conducted at the allegedly procedurally-deficient meetings and not just that LaFountain was allegedly conducting procedurally-deficient meetings. Nonetheless, it is telling that those community members questioned the superintendent about the constitution. The document that held the promise of change and increased tribal autonomy was now a new source of contention, an object of increasing derision, and an impediment to effective tribal governance.

Louis LaFountain managed to survive that day, but his new constitution and government were clearly in trouble. LaFountain sought to reform the document in

²¹⁰ H.P. Mittelholtz, Superintendent to Mr. Martin N.B. Holm, Aug. 26, 1960; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²¹¹ Ibid.

²¹² Ibid.

October of 1960. Nine amendments were put to the voters, each seeking to expand the authority of the tribal government.²¹³ (See Appendix H) They dealt with seemingly disparate subject matter ranging from membership to the regulation of fires on the reservation. Some of the amendments lacked precision, which obscured their purpose.²¹⁴ Nonetheless, the general tone of the amendments, which also included initiatives to allow the tribal council to establish a Law and Order code, to regulate hunting, and to “remove all trouble makers” from the reservation, strongly suggests that LaFountain and others in the tribal government felt that the newly established constitution was incapable of adequately addressing the issues of the day.²¹⁵

Whether due to their unintended complexity, the unpopularity of Louis LaFountain, a legitimate tribal feeling in opposition to them, or some combination thereof, none of the amendments passed. After the defeat, Louis LaFountain essentially declared the constitution he helped craft and ratify inoperable and ineffective. “Now, by their vote, the members of the Turtle Mountain Band have rendered the Council and myself completely powerless to provide any help or protection to any members or to the band as a whole in the future.”²¹⁶ Louis LaFountain’s own career did not last much longer. He resigned from the Tribal Council in May of 1962.²¹⁷ He then attempted to

²¹³ Sample Ballot, Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²¹⁴ One particular potential amendment most clearly illustrates this. “We, the people of the Turtle Mountain Tribe of Indians, do hereby vote and decide by vote by a majority of the people of the Turtle Mountain Band of Chippewa, to give the powers to the Tribal Council the right to sign for the people of the Turtle Mountains any leases or contracts of which there are five (5) or more persons involved such as; leases on trust land to where there are more than five (5) persons as hiers [sic] to the benefit of the people.” Ibid.

²¹⁵ Ibid.

²¹⁶ “Tribal Members Reject Proposed Amendments,” *Turtle Mountain Star*, Nov. 3, 1960; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

²¹⁷ Tribal Council, May 18, 1962; “Tribal Members Reject Proposed Amendments,” *Turtle Mountain Star*, Nov. 3, 1960; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

rescind his resignation three months later; however, by the summer of 1962 Louis LaFountain's career in tribal politics was over.²¹⁸

Conclusion

In 1959 the people of Turtle Mountain adopted a new constitution in an effort to maximize tribal autonomy at a time when termination was still a possibility, the economic conditions on the reservation were dire, the tribal government sought to impose constitutional change unilaterally, and the then-operative constitution was regarded as a failure. Members of the community initiated the constitutional revolution of their own accord to alleviate the myriad of difficulties during these trying times.

The 1932 constitution did little to rectify the trying conditions left in the wake of the McCumber Agreement. Perhaps most importantly for the community, it did not succeed in securing a lawsuit against the federal government. Turtle Mountain was eventually able to bring a claim against the United States in the Indian Claims Commission. Yet, by that time, federal policy had dramatically shifted. In the new policy era announced by House Concurrent Resolution 108 in 1953, the Termination Era, the federal government looked to "emancipate" tribes and tribal peoples by severing its political and trust relationships with its "wards." The ICC was one component of the new policy direction. Another component was relocation programs, which moved tribal individuals and families from their reservation to a city. One such program was established at Turtle Mountain.

²¹⁸ Louis F. LaFountain to Mr. Francis Cree, Acting Tribal Chairman, Aug. 20, 1962; Central Classified Files, 1959; Turtle Mountain, 67A-721, R584, S585; Record Group 75; National Archives Building, Washington D. C.

The most dramatic legislation to affect tribal peoples in the new policy era was termination legislation. Turtle Mountain was specifically enumerated in House Concurrent Resolution 108 as one of the tribes to be terminated. The hearings on the proposed bill to terminate Turtle Mountain and other evidence strongly suggest that the community was chosen because of its mixed-blood heritage and was spared because of the cost the bill would have likely imposed on the local non-Native population.

One of the consequences of the threat of termination was a comprehensive study on the economic and social conditions of the community by David Delorme, a tribal member and eventual Ph.D. Delorme's research indicated, among several maladies, a high level of poverty and a lack of necessary resources such as medical assistance and economic opportunities on the reservation. Delorme's research also indicated that the majority of tribal members were opposed to termination and relocation, and that the claim was still paramount in the minds of many.

It was under these conditions, an unpopular constitution, the still-lingering threat of termination (and its companion legislation), a slowly-developing claim in the ICC, and difficult economic and social conditions, that the people of Turtle Mountain sought relief through constitutional reform. The Advisory Committee drafted an alternative constitution. Yet, it made a critical error by trying to implement the document without a tribal vote. Patrick Gourneau, the Advisory Committee chairman who helped steer the community past the termination bill, became the face of the Advisory Committee's "revised" constitution.

During this time, a so-called "rebel" group formed and sought constitutional reform through its own document, the "proposed" constitution. Led by the LaFountain

brothers, the rebel group was brash and active, leading protests at the tribal agency, meeting (and threatening) BIA officials in Washington D.C., and even offering to sell a significant portion of the state of North Dakota to the Soviet Union. Their actions earned them many detractors, yet their behavior and willingness to take on all comers clearly appealed to many tribal members during those onerous times.

Both the revised and proposed constitution underwent revisions, to the point that they were nearly identical when the people of Turtle Mountain voted on which one would govern the community. The relatively inconsequential differences between the two documents suggest that the tribal vote was not actually about the texts of the would-be constitutions, but rather a referendum on the direction of the tribal government. In April of 1959, the people of Turtle Mountain chose the document that most represented a change for the community and a break from the past: the rebel group's proposed constitution.

There was little change to be had. In many ways, the people of Turtle Mountain were in no different of a situation after the constitutional shift in 1959 than they had been in 1932, when the community adopted its first constitution. They were operating under a document that many quickly came not to like or support. Nor did the 1959 constitution, like its 1932 predecessor, fulfill its promise. Even Louis LaFountain, one of the heads of the rebel group who helped bring the constitution to fruition, sought almost immediately to amend it.

Regardless, from its ratification by the community and approval by the Secretary of the Interior, the so-called rebel constitution became the defining source of tribal governmental authority and has served as such for decades. This has not completely

precluded change. Since its inception, the constitution has undergone several amendments to address various issues. And nearly forty-five years after its adoption, a new group of community members once again considered wholesale constitutional reform to achieve tribal goals.

Chapter 4

Constitutionalism After the Claim

Introduction

After the reform of 1959, the constitution at Turtle Mountain underwent some additional change, but remained relatively intact for nearly thirty years. In the interim, the tribal claim against the federal government continued to play a major role in the political life of the community. Approximately a decade after the resolution of the claim, attention turned again toward the greatest consequence of the pursuit of a claim: the tribal constitution. The constitution underwent a series of amendments in the 1990s, which eventually led a group of community members to seek the adoption of an entirely new document. These efforts did not meet with success. This chapter argues that the people of Turtle Mountain rejected complete constitutional reform in the new millennium in an effort to express the community's displeasure with the tribal government in general and with a polarizing tribal chairman in particular. During a time when constitutional reform became a growing area of concern in Native America, the people of Turtle Mountain once again made their own choices to effectuate the will of the community.

The decisions to reject further change ran contrary to the growing general trend in Indian Country towards constitutional reform and also contrary to the specific trend toward reform at Turtle Mountain itself. Yet, the votes were also very much in line with the community's active participation in its own governing document. The first proposed constitution was narrowly defeated in 2002. A slightly revised document was thoroughly defeated in 2003. The votes were a statement on many conditions within the community:

the unease many felt with the tribal governmental in general, the distain toward different tribal governmental officials who were charged with misconduct of varying severity (including those who pled guilty in federal court to stealing from the tribe), and the growing discontent with the reform movement and Richard Monette, the tribal chairman who came to represent that movement. This chapter details Turtle Mountain's case before the ICC, the judgments of the ICC, and the tribal referendums on a proposed constitution in 2002 and 2003.

Turtle Mountain and the ICC

In order to understand the constitutional reform efforts in the 1990s and 2000s, it is important to understand Turtle Mountain's claim against the federal government and its resolution. The claim was the original force behind the community's adoption of constitutionalism in 1932 and played a significant role in the reformation of the constitution in 1959. In fact, the tribal desire for a claim had existed long before a constitutional government existed at Turtle Mountain. For nearly a century it was the most important political issue for the people of Turtle Mountain. Its pursuit shaped the face of the people, while its resolution opened a space for the community to once again seriously consider constitutional reform.

The beginning stages

As tumultuous as the time period came to be for the community, the 1950s began with some promise for the people of Turtle Mountain. After decades of advocating for a

claim against the federal government, the community filed their first petition in the Indian Claims Commission in 1951.

The jurisdiction that Congress granted to the ICC during its creation in 1946 included the rather wide berth to hear claims including those, “based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.”¹ This unique legislation seemingly opened the possibility for the ICC to recognize and hear claims based on a tribally-centered perspectives of property and fair dealings. Legal historian Edward Lazarus has noted, “In theory, no forum has ever provided a better opportunity to recover for government wrongs.”² The legislation also seemingly allowed the ICC to foster cooperation and healing between the federal government and tribal communities. As Vine Deloria Jr. and Clifford M. Lytle noted, “The act that established the commission intended it to become an independent, investigating, and flexible forum that could consider the equitable, humanistic nature of the claims and find a reasonable solution to them.”³ Despite its mandate, the ICC quickly came to resemble a court. The commission involved lawyers on all sides who heavily influenced its development. Most likely due to the court-like structure that developed, the attorneys working for tribal communities were unwilling or unable to pursue unique claims.⁴ This was but one of the criticisms that was levied against the ICC and its process. Additionally, only money damages were available to tribal communities, as opposed to a restoration of lands or

¹ *Indian Claims Commission Act*, § 2(5)

² Edward Lazarus, *Black Hills, White Justice: The Sioux Nation versus the United States, 1775 to the Present*, (1991; repr. London and Lincoln, NB: University of Nebraska Press, 1999), 186.

³ Deloria Jr. and Lytle, *American Indians, American Justice*, 142.

⁴ *Ibid.*; Vine Deloria Jr. *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (1974; repr., Austin, TX: University of Texas Press, 2000), 223; and Lieder and Page, *Wild Justice*, 91-92

other possibilities. This disturbed some tribal peoples who had hoped to win land back.⁵ Also, lawyers for the government were very reluctant to settle cases, making the process exceedingly slow.⁶ The ICC was supposed to have only lasted five years. Yet, it lived on for over thirty years and was still not finished with its caseload when it was finally decommissioned in 1978.⁷ These factors have led at least one commentator to remark that the ICC was meant to benefit the federal government above tribal peoples.⁸

Cases before the ICC fell into two basic categories. The first category, by far the largest, consisted of those cases that involved land. The land cases happened in three stages: determining a tribal community's right to a territory, determining the value of the territory, and determining any governmental offsets to an award.⁹ The second category of cases involved an allegation of a breach of the federal government's fiduciary duty to a tribal community.¹⁰

Turtle Mountain's claim fell within the first category. Filed in May of 1951, Turtle Mountain's lawyers alleged several things in their original claim: The McCumber agreement was not executed with the proper leadership of Turtle Mountain, the ten cents an acre price was an unconscionable amount as the land was worth \$2.00 an acre on average, the transactions with the tribal community were not fair and honorable, and that

⁵ Wilcomb E. Washburn, "Land Claims in the Mainstream of Indian/White Land History," in *Irredeemable America: The Indians' Estate and Land Claims*, ed. Imre Sutton, 35-70 (Albuquerque, NM: University of New Mexico Press, 1985), 24.

⁶ Lieder and Page, *Wild Justice*, 93.

⁷ *Ibid.*, 65.

⁸ Rosenthal, *Their Day in Court*, 49

⁹ Harvey D. Rosenthal, "Indian Claims and the American Conscience: A Brief History of the Indian Claims Commission," in *Irredeemable America: The Indians' Estate and Land Claims*, ed. Imre Sutton, 35-70 (Albuquerque, NM: University of New Mexico Press, 1985), 49-50.

¹⁰ *Ibid.* at 50.

it became an actionable taking when the federal government opened tribal land for settlement before any agreement with the people of Turtle Mountain.¹¹

In making the case that the federal government had taken advantage of the community, the lawyers for Turtle Mountain painted a bleak picture of tribal ignorance and stereotype.

At the time of the transactions with the United States...petitioners were uneducated and ignorant and unable to read or write, were without knowledge of market values of the lands of the meaning thereof, did not know how the value of their lands and rights should be determined in order to enter into an agreement with the United States, had no conception of the legal effect of a release of claims against the United States or how such a release could or should be made, and were thereby forced to and did rely on the fairness and integrity of defendant and its agents.¹²

Undoubtedly, such a statement was useful both legally and politically. However, it was not completely accurate. Little Shell and others certainly understood the value of the land, which is why they had been excluded from the negotiations of the McCumber Agreement. While not every tribal member could claim literacy in the English language, some most certainly could, including tribal member and tribal attorney John Botteneau. Nonetheless, the claim was filed and had officially started.

Due to the exceedingly slow nature of the ICC, no action on the Turtle Mountain claim occurred for a year.¹³ In May of 1952 the testimony of elderly Turtle Mountain community members was to be taken before two of the three ICC judges on the reservation. Although lawyers representing the federal government were to be present at

¹¹ "Petition before the Indian Claims Commission," May 23, 1951, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 5, Wichita State University Special Collections, 5-10.

¹² *Ibid.*, 6-7.

¹³ "Indian Claims Judge Will Hear Testimony in County," *Turtle Mountain Star*, May 8, 1952.

the giving of the testimony, they were not expected to take an active role in the questioning as they had not yet formally filed their answer in the claim.¹⁴ The hearings were expected to last about three days and lawyers representing the Red Lake and Pembina bands as well as Native peoples from Montana were also to be present.¹⁵

The hearing for the Turtle Mountain claim, case number 113, commenced on May 19, 1952. Only one ICC commissioner, William M. Holt, was able to attend. The other member scheduled to attend, Louis J. O'Marr, had to cancel his trip to the North Dakota prairie at the last minute.¹⁶ One of the lawyers appearing on behalf of Turtle Mountain was Kenneth A. Madsen, an attorney with the Washington D.C. law firm Wilkinson, Boyden & Cragun. It is unclear exactly why the community chose this particular law firm, but what is clear is Madsen worked for one of boutique firms that developed in Washington in the early to mid twentieth century for the purpose of handling tribal litigation. According to Deloria Jr. and Lytle, "Attorneys specializing in federal Indian law...eventually formed law firms specifically for that practice."¹⁷ The other lawyer appearing for Turtle Mountain was John A. Stormon. Stormon's association with the community, its claim, and its constitution had, by this point, spanned twenty years.

As noted by the local newspaper, the purpose of the testimony was, "to take principally the testimony of aged Indians who were present at the time of the making of the McCumber Treaty of 1892."¹⁸ Stormon also noted the meaning of the day's proceedings early in the meeting. "This hearing...is designed to perpetuate the testimony of several old Indians on all matters covered by [the claim]... We propose to examine

¹⁴ "Two Judges Will Hear Indians Give Claims Testimony," *Turtle Mountain Star*, May 15, 1952.

¹⁵ *Ibid.*

¹⁶ "Hearings On Indian Claims Begin; Chippewas Testify," *Turtle Mountain Star*, May 22, 1952.

¹⁷ Deloria Jr. and Lytle, *American Indians, American Justice*, 142.

¹⁸ "Indian Claims Judge," *Turtle Mountain Star*, May 8, 1952.

these witnesses as to matters of historical nature which are within their own knowledge, or are the traditions of their people.”¹⁹ The first person to testify was Napen. The lawyers for Turtle Mountain first questioned Napen, whose English name was John Summer, about his age and how long he lived in the area in order to establish his credibility and authority. Napen said that he was in his late sixties and that he had lived in the area for all of his life.²⁰ He was then questioned about the hunting boundaries of the community and finally about the negotiations for the McCumber Agreement. Napen, answering the questions through an interpreter, was clear that Little Shell III was the leader of the community.

Q. From this information that you learned from the older folks, can you tell me who was Chief at this time?

A. Still Little Shell

Q. Did Little Shell have a council at this time?

A. Yes.

Q: Did the tribe recognize Little Shell and his Council as their leaders?

A. Yes.²¹

Napen also stated that Little Shell III and McCumber clashed over the terms of the agreement. When an impasse was reached Little Shell III and his followers left and McCumber moved quickly to establish a new authority with whom to negotiate.

Q. When Commissioner McCumber came here was Little Shell and his Council here ready to meet with Commissioner McCumber?

¹⁹ Transcript of Testimony before the Indian Claims Commission, case no. 113, May 19, 1952, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 7, Wichita State University Special Collections, 3.

²⁰ Ibid., 5-6.

²¹ Ibid., 11.

A. He says they met.

Q. Will you tell me what happened?...

A. When McCumber come here, met council, the government, McCumber told him, he says, government sent me here to make you an offer of 10¢ an acre, and Chief completely refuse it, he says, I value my land at \$1.25 an acre, he said. I want a reservation thirty miles long, twenty-four miles wide.

Q. Then what happened?

A. He never would sign for 10¢ an acre. That's what I learn from the old folks what happened at that time....

Q. After Little Shell refused to take 10¢ an acre can you tell me what happened?

A. Tell him just what I hear. After he had said that he had refused, that he would not accept 10¢ an acres [sic], then Chief and his council walked right out away from McCumber, and that's where, he says, McCumber stated we will appoint a chairman today, he said, that will replace the Chief, that he will have the same power and the same respect as the Chief....

Q. Did Little Shell and council and part of the band that left with him ever return to meet with McCumber?

A. He says no.²²

When pressed about the Council of 32, Napen stated that he had no recollection of the group ever meeting again after the negotiations.²³ The questions quickly shifted to 1904, when Congress finally ratified the McCumber Agreement, and 1905 when the community met to discuss the congressional ratification of the McCumber Agreement.

Q. Were you notified there was going to be a meeting?

²² Ibid., 12-14.

²³ Ibid., 14.

A. Ya, he says that Charley Davis was going to come.

Q. Who is Charley Davis?

A. Says that was the Indian Agent from Fort Totten....

Q. Will you tell me what happened at that meeting?

A. Ya, Pete Marseille was interpreter. Charley Davis was there. Chief Clerk Jennus from Fort Totten was there. He is the one that took down notes. Pete Marseille, interpreter spoke, he said. He told Kakenewash today you will have to sign for that million dollars, he said. If you don't sign this documents I brought for million dollars you will never get anything. Uncle Sam will take everything away from you for nothing. For two days that's what they said. I heard it good with my own ears....

Q. In the agreement made with the Turtle Mountain Indians in 1892 they were promised homestead rights, was there any land available here in the Turtle Mountains at that time for homestead purposes?

A. Says there was a few vacant places here and there, some white men in country already.

Q. When the release was finally executed, the agreement became final in 1905, was there any land left available around the Turtle Mountains for homestead?

A. There was no land here to be taken, all taken up, so they was shoved down toward Montana where there was vacant land. I refer to my Indians he said that was sent down.²⁴

Napen's testimony revealed the hardship that had been imposed on the people of Turtle Mountain during the lengthy delay between the McCumber Agreement negotiations and its Congressional ratification. The tribally claimed lands, which had been opened for settlement by the federal government prior to an agreement with the Band, were no longer available to community members. Many community members were forced to take

²⁴ Ibid., 15-16.

allotments far away from the reservation. Additionally, the one million dollar payment from the McCumber Agreement appeared to be the only compensation that would ever be available for the tribal lands.

Even though the lawyers for the government had yet to file their brief against Turtle Mountain's claim, they made their presence known in the proceedings. The day began with Maurice H. Cooperman, one of three lawyers for the government present objecting to the testimony because, he argued, it was not based upon a compensable claim against the United States. The objection was overruled.²⁵ Additionally, when given the opportunity to cross-examine Napen, one of Cooperman's early questions seems fairly clearly intended to disrupt the proceedings and call into question the efficacy of the hearing as a whole. "Mr. Summer, are these interpreters correctly interpreting what you say?"²⁶ A Turtle Mountain attorney quickly objected and the ICC Commissioner lightly rebuked Cooperman. "Hardly think that is proper. You have a record of it."²⁷

The rest of the hearings proceeded in roughly the same manner as they had with Napen. The fellow community members who were asked to testify, Mathias LaFromboise, Phillip Allery, Louis Marion, and Joseph Gourneau, were first questioned by their lawyers about their age and how long each had lived in the area in order to establish their credibility and authority as elders. Then the Turtle Mountain attorneys, through their questions to each person, attempted to both establish the original territory claimed by the community and tried to construct the scene around both the McCumber Commission negotiations and the 1905 meeting for tribal ratification of the agreement. In cross-examination, attorneys for the federal government attempted to establish that the

²⁵ Ibid., 3-4.

²⁶ Ibid., 17.

²⁷ Ibid.

community members who testified either signed the McCumber Agreement or the tribal release in 1905, or that they received money or benefits under the McCumber Agreement.

The various trials

Patience was a necessity for tribal communities during the ICC process. The complexity of various claims, the various stages in a claim, the federal government's general policy of refusing to negotiate settlements, and the limited resources of the ICC meant that many tribal claims lasted for several decades.²⁸ The process for Turtle Mountain that began in the early 1950s would not pick up again in earnest until the 1960s. During that gap of time the community suffered through a termination scare and a contentious constitutional revision (which was fueled in part by the pending case in the ICC). Yet, even through the turmoil, the claim was always still a present concern on the reservation.²⁹

The lawyers for Turtle Mountain amended their original brief in October of 1962 and additional briefs, answers to briefs, and hearings followed. The arguments presented by the federal government were all too familiar to the people of Turtle Mountain: the community did not exclusively occupy the land base that it was claiming, the collectivity had not been large enough to be understood as its own band to begin with, it was not

²⁸ For a chronicle of perhaps the most complex, convoluted, lengthy, and cantankerous tribal claim of them all, see Lazarus, *Black Hills, White Justice*. For another detailing of the complexity of the ICC process, including the federal government's reluctance to settle claims, see Lieder and Page, *Wild Justice*.

²⁹ As noted in Chapter 3, Patrick Gourneau wrote an editorial to combat some of the statements made by the rebel group. Gourneau addressed many points, including the pending claim in the ICC. The rebel group apparently made some statement or promise to the effect that the claim would be resolved quickly, to which Gourneau replied, "Claims attorneys are paid only when they win a case for a tribe. They are not going to present their case before it is ready just because somebody tells them to do it." Gourneau, "Editorial," National Archives Building, Washington D.C. For further evidence of the continuing relevance of the claim to the people of Turtle Mountain, see Norman or Tom Parisien to Hon. Quentin Burdick, July, 10, 1962; Central Classified Files, 1958; Turtle Mountain, 66A-641, 010 through 289; Record Group 75; National Archives Building, Washington D. C.

separate or distinct from the Pembina Band and those who moved to White Earth, most of the pertinent operations of the tribal community occurred in Canada, and the mixed-blood character of the community meant that tribal members were not really Native.

An already difficult and complicated situation only became more so when the ICC consolidated Turtle Mountain's claim with those of other tribal peoples; the Little Shell Band of Chippewa Indians (Docket No. 191), the Chippewa Cree Tribe of the Rocky Boy's Reservation (Docket No. 221), the Red Lake Band and Pembina Band of Chippewa Indians (Docket No. 246), and the Three Affiliated Tribes of the Fort Berthold Reservation (Docket Nos. 350-B and 350-C). The cases were not consolidated due to a dispute over any of the lands claimed, as there was no overlap. Rather, the cases were consolidated due to the relationship the tribal entities had to one another. Specifically, Turtle Mountain disputed that either the Little Shell Band or the Chippewa Cree Tribe of the Rocky Boy's Reservation had a right to their own claim, as the people in those cases were covered in the Turtle Mountain claim. For their part, the Little Shell Band and Chippewa Cree Tribe asserted that while Turtle Mountain had a right to its own claim, they also had a right to their own as well. Conversely, Turtle Mountain and the Red Lake and Pembina Bands recognized a right of the others to participate in any award that was won. Additionally, the Red Lake and Pembina Bands asserted their right to their own claim.³⁰

In making its case, the federal government relied heavily on the ethnological report of its expert witness, David B. Stout. Stout earned his Ph.D. in anthropology from Columbia University in 1947 and he was a regular contributor to the ICC, having

³⁰ Brief before the Indian Claims Commission, Oct. 14, 1964, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 8, Wichita State University Special Collections, 3-4.

authored reports in at least four other claims.³¹ Submitted in January of 1962, Stout's report painted a fuzzy picture of the Turtle Mountain presence and influence over the area that the community claimed as their aboriginal territory. Stout concluded that Ojibwe peoples were not reported west of Pembina in the first third or so of the nineteenth century.³² He did concede the presence of Ojibwe peoples onto the prairies by the mid-1800s. Yet, he argued that their presence was on the Canadian side of the border.³³

The distinction that he made between full-bloods and "half-breeds" was especially meaningful for Stout, as it had consistently been for federal officials from the very beginning of American involvement with Turtle Mountain. According to the report, it was the "half-breeds" who were the most responsible for the activities on the prairies.³⁴ Those few true Ojibwe that were around were not worthy of being described as a "band" or a "tribe."³⁵ The sparse population of full-bloods and the lack of tribal organization allowed the "half-breeds" unfettered authority. According to Stout, "The half-breeds clearly occupied a dominant [sic] position vis-à-vis the Pembina band of Chippewa, both in numbers and degree of influence, and this is confirmed by the obverse information that the Pembina Chippewa were unorganized politically."³⁶ All of these factors added up to a single conclusion for Stout: no one group of people could rightfully claim the disputed territory at the time that the federal government took control of the area.

³¹ George L. Trager, "David Bond Stout, 1913-1968," *American Anthropologist*, 76, no. 1 (Mar. 1974): 73-75. Also, see Norman A. Ross, ed., "Index to the Expert Testimony Before the Indian Claims Commission: The written reports," 1973, http://academic.lexisnexis.com/pdf/marketing_guides/504.pdf (Accessed Feb. 21, 2009)

³² David B. Stout, *Ethnological Report for Docket 133, et al.*, Jan. 1962, Glenn A. Black Laboratory of Archaeology, Indiana University, 30-31.

³³ *Ibid.*, 52.

³⁴ *Ibid.*, 47.

³⁵ *Ibid.*, 64.

³⁶ *Ibid.*, 70-71.

The Turtle Mountain legal team came to opposite conclusions when analyzing the record. In their 1967 brief to the ICC, Glen A. Wilkinson (one the named partners in the Washington D.C. law firm hired by the community), Stormon, and others who worked on the brief addressed Stout's ethnological report. They identified six "consistent patterns" in Stout's report and sought to answer each of them.³⁷ The first was that there was "long standing enmity between the Chippewas and the Sioux."³⁸ The Turtle Mountain legal team agreed with this conclusion and stated that this was a reason why the two peoples agreed on a boundary line demarcating the territory between them.³⁹ Second, the Turtle Mountain legal team attacked Stout's insistence that the mixed-blood character of the community destroyed their rights as tribal peoples. "This is another example of [the United States'] repetitive and ineffective attempt to classify half-breeds as non-Indians."⁴⁰ They argued that those people who were accepted in the tribal community were tribal members.⁴¹ Third, Stout claimed that there was significant factionalism within the community. The Turtle Mountain legal team argued that there was no evidence to support that conclusion and that even if true, it was irrelevant.⁴² Fourth, Stout argued that the community had a weak political organization. The Turtle Mountain legal team dismissed this as, "immaterial and irrelevant."⁴³ Fifth, Stout stated that community members hunted buffalo and adapted to a plains way of life, presumably to establish that the people of Turtle Mountain were interlopers with no real rights to the land. The Turtle Mountain legal team agreed with the understanding that the community adapted to the

³⁷ Brief before the Indian Claims Commission, Oct. 1967, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 3, Wichita State University Special Collections, 76.

³⁸ *Ibid.*, 76.

³⁹ *Ibid.*, 76-77.

⁴⁰ *Ibid.*, 77.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

prairie, but also argued that this point was to their advantage. “This was normal Indian use and occupancy.”⁴⁴ Finally, the sixth “consistent pattern” in Stout’s report was that the people of Turtle Mountain never had control over the area that they claimed, or, at best they held the land concurrently with other tribal communities. The Turtle Mountain legal team noted that, “There are no citations to support this ‘pattern,’” and that they knew of, “no such support and [assert] that the preponderance of the testimony is to the contrary.”⁴⁵

In addition to challenging the federal government’s expert, Turtle Mountain’s legal team defended their own. They also privileged the knowledge passed onto them by tribal members. “[The United States] attempts to downgrade Dr. [James H.] Howard’s testimony because it was based in part on information from informants. This is the traditional method by which an anthropologist identifies and delineates the origins, customs and living habits of peoples. It was buttressed by a study of all available governmental, historical and anthropological works.”⁴⁶

The changing policy landscape

Turtle Mountain filed its original petition in the ICC in 1951. The ICC did not hand down its first decision concerning Turtle Mountain until 1970. In the interim federal policy concerning Native peoples once again dramatically shifted. The Termination Era and its avowed goal of destroying tribalism was replaced by the federal desire to once again reinvigorate tribal governments: this new policy direction has been labeled the Self-

⁴⁴ Ibid., 77-78.

⁴⁵ Ibid., 78.

⁴⁶ Ibid., 79.

Determination Era. This new policy era shaped both the claims process and the possibilities for constitutional reform at Turtle Mountain.

The Termination Era proved disastrous for Indian Country.⁴⁷ Yet, it was relatively short-lived. By the mid-1960s termination legislation had dramatically slowed. By the end of the 1960s, when civil rights were a topic of discussion throughout the United States, the Termination Era had been effectively replaced by Presidential statements and legislation that sought to expand tribal authority.⁴⁸ Tribal activism also contributed to the change in eras. According to anthropologist Peter Nabokov, “Everywhere across the country Indians mocked Thanksgiving and Columbus Day holidays, harassed museums that they accused of desecrating their ancestral bones and exhibiting sacred regalia, closed public beaches and international bridges, demanded Indian Studies programs in schools and alcoholism clinics in cities, and picketed for nonstereotypical portrayal in books and movies.”⁴⁹

Since the late 1960s, Congress has sought to expand tribal authority through various pieces of legislation. Some of the more prominent examples include the Indian Self-Determination and Education Assistance Act of 1975, which allowed for more tribal control over resources provided by the federal government; The Indian Child Welfare Act of 1978, which granted a broader range of powers to tribal courts to determine what was

⁴⁷ According to Fixico, “Between 1945 and 1960 the government processed 109 cases of termination affecting 1,369,000 acres of Indian land and an estimated 12,000 Indians.” Fixico, *Termination and Relocation*, 183.

⁴⁸ There is some disagreement as to when the Termination Era ended and the Self-Determination Era began. Fixico argues that a speech given by Lyndon Johnson in Kansas City in February of 1967 marked a significant turning point in the change from the Termination Era to the Self-Determination Era. “[After the speech], federal Indian policy moved in a different direction, dedicated to the development of human and natural resources on reservations with federal assistance.” Ibid. at 195. However, Wilkinson gives the credit to Johnson’s successor. “Richard Nixon’s 1970 special message to Congress has become accepted as the landmark enunciation of the self-determination policy.” Wilkinson, *Blood Struggle*, 196.

⁴⁹ Peter Nabokov, ed., *Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492-1992* (New York: Penguin Books, 1992), 359.

in the best interests of the youngest members or would-be members of a tribal community; and, the Indian Gaming Regulatory Act of 1988, which paved the way for increased tribal gaming.⁵⁰ Additionally, Congress has regularly contemplated the role of tribal communities in environmental legislation. According to Wilkinson, “Most federal environmental laws treat tribes as states, affording them the opportunity to petition the Environmental Protection Agency for authority and funding to regulate pollution on the reservation.”⁵¹ Some specific examples include the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act.⁵²

Conversely, Congress has occasionally sought to shrink the authority of tribal communities in the Self-Determination Era as well. The most prominent example is the Indian Civil Rights Act, which placed many of the limits of the Bill of Rights upon tribal governments.⁵³ Some have argued that other pieces of legislation that have defined the authority of tribal governments, such as the Indian Gaming Regulatory Act, have actually reduced tribal authority. Law professor Kathryn R.L. Rand and political scientist Steven Andrew Light provide a useful synopsis of this point of view as it concerns the Indian Gaming Regulatory Act. “In practice, then, tribal sovereignty, from an indigenous perspective of inherent self-determination, clearly is compromised in the context of Indian gaming: the decision to open a casino is an exercise of a tribe’s sovereign right;

⁵⁰ *Indian Self-Determination and Education Assistance Act*, U.S. Code 25 (2006), §§ 450 et seq. (enacted Jan. 4, 1975). *Indian Child Welfare Act*, U.S. Code 25 (2006), §§ 1901 et seq. (enacted Nov. 8, 1978). *Indian Gaming Regulatory Act*, U.S. Code 25 (2006), §§ 2701 et seq. (enacted Oct. 17, 1988).

⁵¹ Wilkinson, *Blood Struggle*, 321.

⁵² *Clean Air Act*, U.S. Code 42 (2006), §§ 7401 et seq. (enacted Dec. 31, 1970). *Clean Water Act*, U.S. Code 33 (2006), §§ 1251 et seq. (enacted Oct. 18, 1972). *Safe Drinking Water Act*, U.S. Code 42 (2006), §§ 300(f) et seq. (enacted Dec. 16, 1974).

⁵³ *Indian Civil Rights Act*, U.S. Code 25 (2006), §§ 1301 et seq. (enacted Apr. 11, 1968).

yet federal law requires a tribal casino to submit to federal and state regulation, circumscribing that tribe's sovereign right."⁵⁴

Additionally and perhaps most influentially, the Supreme Court has made several decisions during the Self-Determination Era that have limited the authority of tribal communities. Cases such as *Oliphant v. Suquamish Indian Tribe*, *Montana v. United States*, and *Nevada v. Hicks* have greatly reduced the scope of tribal authority, particularly as it concerns tribal jurisdiction.⁵⁵ While the Supreme Court has not been completely adverse to recognizing tribal authority, the trend, particularly during the tenure of Chief Justice William Rehnquist, has been away from that recognition.⁵⁶

Despite its drawbacks, the Self-Determination Era has provided tribal communities with a greater opportunity to reclaim authority over tribal governments, resources, and members. Additionally, it was in this newest era of federal policy that the decisions of the ICC and the Court of Claims were handed down. It was also the era in which constitutional reform once again became a major topic of discussion at Turtle Mountain.

The ICC Decisions

As noted above, ICC litigation concerning land happened in three stages: determining a tribal community's right to the land that it claimed, determining the value

⁵⁴ Steven Andrew Light and Kathryn R.L. Rand, *Indian Gaming and Tribal Sovereignty: The Casino Compromise* (Lawrence, KS: University Press of Kansas, 2005), 36.

⁵⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). *Montana v. United States*, 450 U.S. 544 (1981). *Nevada v. Hicks*, 533 U.S. 353 (2001).

⁵⁶ Rehnquist has suffered his share of criticism from tribal advocates. One of his harshest critics writes, "In fact, based on what Rehnquist says about Indians in his dissent to *Sioux Nation* and his majority opinion in *Oliphant*, he has to be ranked right up there with John Marshall and Roger Taney as one of the most racist, Indianophobic justices ever to sit on the Supreme Court, regardless of century." Robert A. Williams Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*, (Minneapolis, MN: University of Minnesota Press, 2005), 115-16.

of the land and the federal government's liability, and determining whatever offsets could be applied against the value of the land. The ICC handed down its first decision in the first stage of the Turtle Mountain litigation in 1970.

As there were several tribal entities that were somehow involved in the claim, the first order of business for the ICC was to make some sense of who was involved and why. Some were eliminated from the case.⁵⁷ Those tribal entities who remained, Turtle Mountain, the Pembina Band at White Earth, and the Little Shell Band of Montana, were grouped together. The ICC stated, "We shall refer to these plaintiffs collectively as the 'Chippewa plaintiffs.' We refer to the ancestral landowning entity as 'Plains-Ojibwa.'"⁵⁸

Turtle Mountain argued that the Pembina Band was entitled to its share of any award won, however, the Little Shell Band of Montana was not so entitled. The Little Shell Band of Montana, according to the ICC, claimed to, "represent a dissident group of Plains-Ojibwa who refused to sign the McCumber Agreement."⁵⁹ Turtle Mountain stated that they held the sole right to pursue the claim and that the Little Shell Band of Montana members had either had severed their tribal connection or would also share in the award if they had not severed their tribal connection. Undoubtedly, some of the resistance to including the Little Shell Band of Montana stemmed from the fact that they were not a federally recognized tribe, a point that the federal government sought to use to eliminate the group's participation in the ICC at an earlier stage.⁶⁰

The ICC decided to tread lightly. It justified its decision to include the Little Shell Band of Montana in the initial stage of litigation by stating that the Little Shell Band

⁵⁷ *Turtle Mountain Band of Chippewa Indians et al. v. United States*, 23 Ind. Cl. Comm. 315, 318 (1970).

⁵⁸ *Ibid.*, 316.

⁵⁹ *Ibid.*, 319.

⁶⁰ *Little Shell Band of Chippewa Indians et al. v. United States*, 3 Ind. Cl. Comm. 417, 419-20 (1954).

claimed to represent a dissident group and that, “it would defeat the purpose of Congress to deny separate representation to descendants of a group which constituted a portion of the original landowning entity.”⁶¹ The ICC finished its discussion of who might share in an award by noting that it was Congress, and not the Commission, who ultimately decided who benefited from an award. Thus, it was outside of jurisdiction of the ICC to exclude the Little Shell Band of Montana.⁶²

Having decided who would be involved in the claim, the ICC’s opinion moved to a discussion as to whether there was any claim to be made. The court implicitly noted that there were two methods for establishing a tribal group’s territory: through the federal government’s recognition of that territory or through establishing “aboriginal title” or “Indian title” to the disputed lands. The ICC began its discussion on title to the lands claimed by Turtle Mountain by stating that the federal government had not recognized it. According to the Commission, “Recognition can come only through Congressional action. Statements by executive officers, many of which are cited by plaintiffs, are insufficient to establish recognized title.”⁶³ According to the ICC, the McCumber Agreement did not, “contain any language which could conceivably be interpreted as Congressional intent to grant the right to occupy and use the land permanently.”⁶⁴ Despite this decision, not all was completely lost for Turtle Mountain. While the ICC did decide that there was no federal governmental recognition of tribal title, the Commission still needed to consider whether the community held aboriginal title to the lands that were claimed.

⁶¹ *Turtle Mountain*, 23 Ind. Cl. Comm. at 319.

⁶² *Ibid.*, 319-20.

⁶³ *Ibid.*, 320.

⁶⁴ *Ibid.*, 320-21.

First, another thorny question, which had been raised many times in many contexts before, needed to be answered before the rest of the analysis could commence. According to the ICC opinion, “[The United States] has raised a novel point... The government has claimed that the mixed blood Chippewas, or so-called half-breeds, were non-Indians, and that land use by the mixed bloods would not be use by the Chippewas.”⁶⁵ The ICC did not agree with the “novel point” made by the federal government.

Defendant in effect contends that descendants of Indians may become non-Indians by adopting the culture of non-Indians. We think that the Supreme Court has held just the contrary in *Elk v. Wilkins*...when it held that an Indian at that time did not become a citizen merely by voluntarily separating himself from his tribe and taking up residence among white citizens. Thus we conclude that in determining the extent of aboriginal ownership, it is proper to consider together the occupancy of both mixed bloods and full bloods.⁶⁶

From a strictly legal standpoint, *Elk v. Wilkins* appears to be questionable precedent, as the events of the case did not particularly resemble the Turtle Mountain situation.⁶⁷

Whereas John Elk, the person at the center of the Supreme Court decision cited by the ICC, had sought to gain rights as an American citizen by renouncing his tribal connections, the people of Turtle Mountain were trying to maintain their tribal rights by claiming their Native heritage.⁶⁸ Nonetheless, regardless of the value of *Elk v. Wilkins* as a legal precedent, the ICC used the case, during the nascent years of the Self-

⁶⁵ *Ibid.*, 321.

⁶⁶ *Ibid.*, 322.

⁶⁷ *Elk v. Wilkins*, 112 U.S. 94 (1884).

⁶⁸ David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin, TX: University of Texas Press, 1997), 119-120.

Determination Era, to make a strong statement that the racial attacks against the people of Turtle Mountain were not going to be effective.

After concluding that mixed bloods would be counted as part of the tribal community, the ICC moved onto its analysis of aboriginal title to the lands claimed. The fact that the “Plains-Ojibwa” had developed comparatively recently to other tribal communities was not detrimental to its argument.⁶⁹ According to the ICC decision, “The Plains-Ojibwa transformed the area...into their domestic territory through exclusive use and occupancy for a long time before 1905.”⁷⁰ The area described, while extremely substantial, did not completely cover all of the land that Turtle Mountain attempted to claim.

For Turtle Mountain, this first decision recognized a compensable right to most of the land that the tribal community had claimed and it included more people into a potential award than had been hoped. No party involved was perfectly happy with the outcome. As such, appeals came from all sides. For its part, Turtle Mountain made their appeal to the ICC on three points: That the boundary lines drawn by the ICC should be expanded, that Turtle Mountain and not the “Plains-Ojibwa” were the rightful landowners, and that the parties from Montana were not entitled to their own suit.⁷¹ Turtle Mountain prevailed in part in its first motion and lost in the other two. Additional lands were deemed to have belonged to the Plains-Ojibwe, although still not as much as was hoped for by the Turtle Mountain community and its lawyers.⁷²

⁶⁹ *Turtle Mountain*, 23 Ind. Cl. Comm. at 323.

⁷⁰ *Ibid.*, 324.

⁷¹ *Turtle Mountain Band of Chippewa Indians et al. v. United States*, 26 Ind. Cl. Comm. 336, 339 (1971).

⁷² *Ibid.*, 340-46.

Turtle Mountain was less successful on its second and third points of appeal, both of which essentially sought to narrow the scope of those entitled to participate in the case. The ICC decided to continue to use the “Plains-Ojibwa” terminology, which the Commission stated was necessary to effectuate the purpose of the process. “In formulating its judgments the Commission must be careful to avoid predetermining the persons who will benefit from it.”⁷³ The ICC also noted the difficulty in using the label that it chose, and attempted to create some clarity. “In adopting that name the Commission did not intend it to be synonymous [sic] with the term used by anthropologists to refer to all plains Chippewa. Rather we intend ‘Plains-Ojibwa’ to refer only to that group of Chippewa which was known in 1863 as the Pembina Band, and was later recognized by the United States as the Turtle Mountain Band.”⁷⁴ Coincidentally, the Little Shell group was also allowed to continue as part of the claim.⁷⁵

The next round of battles was fought in the Court of Claims, which was the appellate court to the ICC. The first stage of the litigation was finalized in the Court of Claims in 1974. For its part, Turtle Mountain essentially made the same three arguments in its brief to the Court of Claims that it had made to the ICC: That it was entitled to a greater recognition of aboriginal land holdings, that the present claim did not belong to the “Plains-Ojibwa,” and that the Little Shell groups were not identifiable groups under the Indian Claims Commission Act and should not be allowed to participate in the claim.⁷⁶

⁷³ Ibid., 348.

⁷⁴ Ibid., 349.

⁷⁵ Ibid., 351.

⁷⁶ Brief before the United States Court of Claims, June 12, 1972, Charles "Steve" William Merton Hart Papers, MS92-19, Box 1, FF 9, Wichita State University Special Collections.

In making its decision, the Court of Claims identified five issues to be addressed and answered in its opinion:

(1) [T]his court's jurisdiction to hear the case; (2) whether Chippewa Indians held aboriginal title to the awarded area at the date of the taking; (3) whether the Commission properly allocated the overlap segment between the Chippewa and Fort Berthold claimants; (4) what designation should be given to the ancestral Chippewa landholding entity; and (5) the right of the Little Shell plaintiffs to separate representation.⁷⁷

The Court of Claims disposed of the first issue rather perfunctorily.⁷⁸ The federal government had challenged the authority of the ICC, and consequently the Court of Claims, to hear the case. The Court rebuked the federal government for trying to raise this defense on appeal, as opposed to when the case was in the ICC. "We have held that the Government, by failing to raise an issue in proper manner before the [ICC], waives its rights to raise that point on appeal."⁷⁹

The second issue, the federal government's challenge to aboriginal title at the date of the taking, required more deliberation. As noted by the Court of Claims, "The Government has appealed from this conclusion, asserting essentially four grounds: (1) Indian title was not acquired prior to the assumption of United States sovereignty through the Louisiana Purchase; (2) there was no exclusive use and occupation by Chippewas because of the presence of large numbers of 'mixed-bloods'; (3) any Indian title that had existed was 'extinguished' prior to the 1905 taking; and (4) the findings on aboriginal title are inadequate."⁸⁰

⁷⁷ *Turtle Mountain Band of Chippewa Indians et al. v. United States*, 490 F.2d 935, 939 (1974).

⁷⁸ *Ibid.*, 939-40.

⁷⁹ *Ibid.*, 940.

⁸⁰ *Ibid.*

The Court of Claims found against the federal government on all four arguments. Of particular interest was the discussion concerning mixed bloods, which the Court of Claims, like the ICC, labeled a “novel contention.”⁸¹ In making its analysis the court had to determine the correct standard to use to decide who constituted a Native person.⁸² It examined several possibilities, including a biological standard (which the court labeled the “least helpful in determining Indian title”⁸³), Native ancestry plus community recognition, and following the policy set forth by the President.⁸⁴ Ultimately, the Court of Claims found nothing wrong with the ICC’s analysis.⁸⁵

As it concerned the third issue, the territorial boundaries established by the ICC, the Court of Claims dealt with the matter fairly briefly. “In our view...the evidence on which the Commission relied, taken as a whole, provides a substantial foundation for the conclusion reached.”⁸⁶ As to the fourth issue, whether “Plains-Ojibwa” was the entity who held aboriginal title to lands claimed, the Court of Claims recognized the difficulty that faced the ICC, yet it perhaps made the situation more complicated (and no more helpful for Turtle Mountain).⁸⁷ It rejected “Plains-Ojibwa” as the proper designation, stating that it was a term generally used for linguistic and ethnological purposes.⁸⁸ In its stead, a different term was chosen: the “American Pembina Chippewa group (full and mixed bloods), including the subgroups of the Turtle Mountain Band, the Pembina Band, and the Little Shell Bands.”⁸⁹ As noted by the court, “This title, although somewhat

⁸¹ Ibid., 942.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid., 942-44.

⁸⁵ Ibid., 944.

⁸⁶ Ibid., 949

⁸⁷ Ibid., 951.

⁸⁸ Ibid., 952.

⁸⁹ Ibid.

ungainly, accomplishes the purpose of excluding those not in interest, and including all with colorable claims.”⁹⁰ As it concerned the fifth issue, the Court of Claims allowed the Little Shell petitioners to remain as part of the claim.⁹¹

With this 1974 decision, the first stage of litigation was effectively finished. The case headed back down to the ICC for the second stage. The trial to determine the value of the land at the time of the taking was held in late August and early September of 1975. That decision would not be handed down for another three years. On September 20, 1978, the ICC ruled on the value of the land to which Turtle Mountain held aboriginal title. This proved to be one of the last decisions handed down by the ICC. Originally expected to only last ten years when it was created in 1946, the ICC received five different extensions from Congress during the course of its life. Unfinished ICC cases were transferred to the Court of Claims.⁹²

The Turtle Mountain claim was one of the cases that were eventually transferred to the Court of Claims. Nonetheless, the ICC did have one last say in the matter. Having lost its argument against tribal ownership of the lands involved in the case, the federal government launched a slightly different attack for this next stage. The original date to determination for the valuation of the land had been set as February 15, 1905, the date that the community voted to accept the Congressionally ratified McCumber Agreement. As settlement drove the price of land upward, any date of valuation that was earlier (when there would have been less settlement and less demand for the land) rather than later would have kept the cost down. Thus, the federal government argued for an earlier valuation date. However, the ICC was not impressed with the federal government’s

⁹⁰ Ibid.

⁹¹ Ibid., 954.

⁹² Lieder and Page, *Wild Justice*, 65.

argument and maintained the original valuation date.⁹³ This was a significant choice as the extensive homesteading that occurred after the McCumber Agreement's negotiations but before its ratification greatly increased the value of the land.⁹⁴

The ICC considered both the type of land at issue and the resources that it provided. It also considered the testimony from the expert witnesses provided by both sides. The ICC decided to value the 8,104,040 acres at stake in three different categories. The Commission decided that the 7,978,095 of commercial agricultural land would be valued at \$11.20 per acre.⁹⁵ The 2721 acres of residential area would be valued at \$980.00 per acre.⁹⁶ And the 205 acres of commercial property would be valued at \$3267 per acre.⁹⁷ After making adjustments for certain expenses, the ICC determined that the agricultural land in question was worth \$51,825,705 and the townsite land was worth \$1,701,520, for a total of \$53,527,225. After offsets the ICC awarded over \$52 million for the so-called Ten-Cent Treaty.⁹⁸

The federal government appealed the decision. This appeal was more limited; the federal government only argued that the fair market value determined by the Court of Claims was incorrect.⁹⁹ Despite the federal government's attempts to again introduce new evidence at the appellate level, the Court of Claims in 1979 affirmed the judgment of the recently-decommissioned ICC.¹⁰⁰

⁹³ *Turtle Mountain Band of Chippewa Indians et al. v. United States*, 43 Ind. Cl. Comm. 251, 253-54 (1978).

⁹⁴ *Ibid.*, 255.

⁹⁵ *Ibid.*, 269.

⁹⁶ *Ibid.*, 270.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, 273-74.

⁹⁹ *United States v. Turtle Mountain Band of Chippewa Indians et al.*, 612 F.2d 517, 519 (1979).

¹⁰⁰ *Ibid.*, 524.

The litigation was still not over. The third and final stage, determining the offsets to the judgment, was still before the parties. The case was finally settled when the federal government accepted \$250,000 in offsets, as opposed to the \$5,150,715.04 it originally asserted.¹⁰¹ In March of 1982 the attorneys for the tribal communities received their portion of the total award, which was in excess of five million dollars.¹⁰² The litigation portion of the claim was done.

And yet, the claim was not completely finished. The courts could only pass judgment on the validity of Turtle Mountain's claim. It was up to Congress to provide the award. On the last day of 1982 just such legislation was passed. Public Law 97-403 provided for the disbursement of the awarded funds to not only Turtle Mountain, but also to the Pembina Band and the Little Shell Bands.¹⁰³ Eighty percent of Turtle Mountain's share of the judgment was to be distributed as per capita payments. The remaining twenty percent was held in trust by the Secretary of the Interior for the benefit of the community.¹⁰⁴ Tribal members born before December 31, 1982, and enrolled before December 30, 1983, were eligible to share in the award. The first payments began in 1984. Although the award was substantial, the large tribal population meant that each community member only received a few thousand dollars.¹⁰⁵

Regardless, ninety years after the negotiation of the McCumber Agreement and one hundred years after tribal lands had been opened up for settlement, the Turtle Mountain Band of Chippewa Indians saw their claim against the federal government

¹⁰¹ *Turtle Mountain Band of Chippewa Indians et al. v. United States*, 230 Ct. Cl. 1062 (1982).

¹⁰² *Ibid.*

¹⁰³ *An Act to provide for the use and distribution of funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims*, Public Law 97-403, U.S. Statutes at Large 96 (1982): 2022.

¹⁰⁴ *Ibid.*

¹⁰⁵ North Dakota Department of Public Instruction, *History and Culture*, 22-23.

come to an end. Over \$51 million was the final price paid for the decades of frustration and suffering. Not much longer thereafter, tribal attention returned to the greatest consequence of the pursuit of a claim: the tribal constitution.

A New Era, A New Fight

In the Self-Determination Era, Turtle Mountain made several strides toward improving its governmental and communal infrastructure. When the claim finally came to an end it did not take long before the community returned its attention to its constitution and seriously contemplated change.

The current constitution

By the mid to late 1980s there was much to appreciate within the tribal community. In 1976, Turtle Mountain adopted a law and order code for the protection of the people. Perhaps the most significant accomplishment of the community during the course of the ICC litigation was the establishment and flourishing of the tribal college. Tribal member and educator Daniel Jerome explained. “After years of dreaming and planning... Turtle Mountain Community College [TMCC] became a reality in 1972.”¹⁰⁶ In its first year of existence, TMCC offered nine classes to the sixty-four enrolled students.¹⁰⁷ From that relatively humble beginning, the community college steadily grew. In the 2005-2006 academic year nearly 1500 students were able to choose from hundreds

¹⁰⁶ Jerome, *Trail of Misgivings*, 221.

¹⁰⁷ *Ibid.*, 223.

of classes offered.¹⁰⁸ As the twenty-first century began, TMCC moved into a beautiful new building.¹⁰⁹ The community also began a gaming operation on the reservation.

Grumblings about the tribal constitution were beginning to grow again as well. The 1959 document had already undergone some revision with the adoption of six amendments in 1962 and more change in 1975. After the claim was settled, the desire for further change mushroomed in the 1990s and into the new century with additional amendments in 1990, 1992, 1995, 1997, 2000, 2001, and 2005.¹¹⁰ (See Appendix I)

Most of the amendments of the 1990s and the new century were concerned with establishing a greater level of fairness, uniformity, and accountability in the tribal government. Some of the changes included establishing a code of ethics, tribal council voting by roll call, the codification of the procedures that the tribal council needed to follow in meetings, and the necessary qualifications for councilmembers.¹¹¹ Turtle Mountain even adopted a revised code in 1996. However, a new council elected later that same year threw out the new code, with the exception of three revised sections.¹¹² Perhaps the most significant amendment of this era, approved in 1992, established a judiciary as a separate and equal branch of the government. Prior to this amendment, the tribal court was subordinate to the council. As such, the court was not truly free from the influence of the council and potentially more susceptible to political machinations.

The amendments reflected a growing and persistent dissatisfaction with the document. Tribal member Kent LaRoque noted in his master's thesis, "The numerous

¹⁰⁸ Ibid., 226. Also, see <http://www.turtle-mountain.cc.nd.us/pdf/catalog0810.pdf> (accessed Apr. 6, 2009)

¹⁰⁹ Jerome, *Trail of Misgivings*, 225-26.

¹¹⁰ Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians, North Dakota (Including 1962, 1975, 1990, 1992, 1995, 1997, 2000, 2001, and 2005 Amendments). <http://www.tmbci.net/PDF/Constitution.pdf> (Accessed Aug, 5, 2008).

¹¹¹ For a brief discussion of the various constitutional changes in the early to mid 1990s see LaRoque, "1934 Indian Reorganization Act," 56-75.

¹¹² DeCoteau, *Constitution Convention*, 11.

changes indicated that the constitution has persistently been a work in progress.”¹¹³ The number of amendments during this time strongly suggests that the constitution was increasingly viewed within the community as a flawed document that was not fully capable of properly managing tribal affairs. However, they also suggest that the community was invested in constitutionalism and committed to making it work at Turtle Mountain.

The most recent iteration of the constitution is, in several ways, cleaner and more precise than its 1959 originator. Yet, the many amendments have also left the constitution more akin to a patchwork quilt than a single unified document. Having undergone nine different affirmative votes that amended various parts of the constitution since its ratification in 1959, it sometimes lacks the consistency normally considered vital for documents of such importance; for example the community itself is referred to at various places as the Band, the Band of Chippewa Indians, the Tribe, the tribe, the Turtle Mountain Band of Chippewa Indians, the Turtle Mountain Band, and the Turtle Mountain Band of Chippewa Tribe. Beyond semantic inconsistencies lie deeper issues. Perhaps the most significant amendment in this era also reflects potentially the most glaring weakness of the document. Article XIV, which creates a separate and equal judicial branch of government refers to the Tribal Code when defining its jurisdiction and the appointment of judges. The consequence of such is to make the constitution subordinate to the Tribal Code. This has the potential to defeat the purpose of creating a separate and equal branch of government by making the court subject to the whims of the tribal council through the code. Additionally, in Article IX, Section 5, the tribal council is still authorized to establish a tribal court and to define its powers, creating the potential for dueling court

¹¹³ LaRoque, “1934 Indian Reorganization Act,” 75.

systems. It may be argued that Article XIV seeks to address the potential conflict by noting that some sections of the constitution and tribal code are repealed under the amendment. However, Article XIV does not clearly identify what parts of the constitution or code are repealed under the amendment.¹¹⁴

The constitutional reform effort

In 2000 some tribal members were ready to seriously move forward on a new constitution.¹¹⁵ A small planning committee, which included the recently elected tribal chairman, Richard Monette, organized and funded a constitutional convention. The planning committee picked the dates of July 18-20, 2001 for their convention and set forth the procedure for the process.

Two major issues needed to be addressed before the constitutional convention commenced. The first issue was the number of delegates allowed to participate in the convention. The planning committee settled on thirty-seven, with representation from the tribal council, the tribal court, the BIA, and twenty-five at-large delegates selected from nominations from the general public.¹¹⁶ The second issue was figuring out how to make the process work. The planning committee decided to organize a working committee before the constitutional convention to choose the twenty-five at-large delegates and to make sure that all went smoothly. Of the fifty-four nominations, the working group

¹¹⁴ Article XIV, Section 8 is actually a reservation of authority of the Tribal Council. It states, "Only those sections and articles of the current Constitution and Tribal Code are repealed that are necessary to give effect to the above provisions. The Turtle Mountain Tribal Council retains any and all power not provided to the Judicial Branch of Government under this Article. Nothing within this amendment is or shall be construed as a waiver of the sovereignty currently enjoyed by the Turtle Mountain Tribe." <http://www.tmbci.net/PDF/Constitution.pdf> (Accessed Aug, 5, 2008).

¹¹⁵ DeCoteau, *Constitution Convention*, 13.

¹¹⁶ The number of thirty-seven was determined as such. "One each appointed by the Tribal Chairman, each of the eight Councilmen, the Tribal Council as a whole (this delegate was never named), the BIA and the Tribal Court, and 25 delegates selected from nominations by anyone who cared to make one." *Ibid.*, 23

narrowed the field to the twenty-five delegates and twelve alternates.¹¹⁷ Shortly thereafter, the delegates began the process of drafting a new tribal constitution at monthly meetings.¹¹⁸ The public was invited to attend.¹¹⁹ By February of 2002 the constitutional committee began increasing their public presence, holding even more public meetings within the community.¹²⁰ In early February the eleventh draft of the proposed constitution was shown to the public.¹²¹

The newly proposed document differed from the governing constitution in some significant ways.¹²² (See Appendix I) The draft document was to institute a government with three separate and equal branches in order to provide a system of checks and balances to diminish the possibility of abuses of power. The 1959 constitution still heavily tilted tribal authority to the tribal council.¹²³ The draft document also excluded language requiring approval from the Secretary of the Interior or the Bureau of Indian Affairs for tribal decisions.¹²⁴ Despite the many amendments since 1959, the governing constitution still required federal governmental approval for many of the activities of the tribal government.¹²⁵ Perhaps most significantly and controversially, the draft document would have replaced the eight-member tribal council with a sixteen-member legislative body.¹²⁶ Under the draft document, council members would not be paid a full-time salary. Those sixteen members would be paid per council meeting, as opposed to the full

¹¹⁷ *Ibid.*, 23-24.

¹¹⁸ *Ibid.*, 24-25.

¹¹⁹ "Tribal Constitution meetings set," *Turtle Mountain Star*, Jan. 7, 2002; and "Constitution Convention sets meetings, public forum," *Turtle Mountain Star*, Feb. 4, 2002.

¹²⁰ "Constitutional committee sets public forums," *Turtle Mountain Star*, Feb. 18, 2002.

¹²¹ Suzanne Nadeau, "Public gets sneak peak [sic] at proposed constitution," *Turtle Mountain Star*, Feb. 11, 2002.

¹²² DeCoteau, *Constitution Convention*, 56-67.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ <http://www.tmbci.net/PDF/Constitution.pdf> (Accessed Aug, 5, 2008).

¹²⁶ Nadeau, "Public gets sneak peak [sic]," *Turtle Mountain Star*, Feb. 11, 2002.

salary that current council members earned. Other notable changes included four-year terms for councilmembers and the tribal chairperson and an article that was to prevent sales of land within the tribal jurisdiction to anyone other than a community member. One local newspaper account, most likely written by someone involved in the revision process, described the goals of the constitutional committee. “The Committee delegates hoped to emulate the best of the US Constitution, and take the best of tribes from around the nation who have rewritten their own constitutions.”¹²⁷

While having many supporters within the community, the proposed constitution was met with skepticism as well.¹²⁸ One tribal member stated at one of the public forums that, “We’ve already changed this constitution too much.”¹²⁹ Monette tried to deflect some of the criticism by noting that even though he only agreed with about ninety percent of the document he was still prepared to vote for it, particularly considering the alternative. “It’s a hundred percent better than what we have now.”¹³⁰ Despite his statements to the effect that he wanted to distance himself from the document so that it could be considered on its own merits, Monette increasingly became identified as the face of the constitution.¹³¹ He also quickly became controversial, battling with the council throughout his tenure.¹³² Regardless, by March the constitutional committee was ready to ask the tribal council for a special election to vote on the draft document.¹³³

¹²⁷ “Tribal Constitution Revision Committee ready to take new document to the public,” *Turtle Mountain Times*, Jan. 14, 2002.

¹²⁸ “Constitutional Revision Update,” *Turtle Mountain Times*, Feb. 5, 2002.

¹²⁹ Suzanne Nadeau, “Public turns out for forums on proposed Tribal Constitution,” *Turtle Mountain Star*, Feb. 25, 2002.

¹³⁰ Logan J. Davis, “A Time of Decision,” *Turtle Mountain Times*, Feb. 25, 2002.

¹³¹ O. Richard, “Council to consider special election for Revised Constitution,” *Turtle Mountain Times*, Mar. 11, 2002.

¹³² Logan J. Davis, “Preliminary Hearing Over Tribal Authority Held,” *Turtle Mountain Times*, Mar. 4, 2002.

¹³³ Richard, “Council to consider,” *Turtle Mountain Times*, Mar. 11, 2002.

A divided tribal council denied the request for a special election. With one member of the eight-member council absent from the meeting, the nay votes outweighed the yea votes by a count of four to three.¹³⁴ Ronald Peltier, a council member who came to voice the opposition to the proposed constitution, stated, “Why should a handful of individuals decide what would be best for the whole tribe?”¹³⁵ The constitutional committee was prepared for just such an outcome and immediately produced a petition calling for a vote on the constitution.¹³⁶

Within two weeks of the tribal council’s decision, the constitutional committee had 1200 signatures on its petition.¹³⁷ Within a month the constitutional committee had nearly 1800 signatures.¹³⁸ The campaign to educate the public about the new document was also in full swing, including addressing rumors that the new constitution would make the tribal chairman a “dictator.”¹³⁹ The constitutional committee also tried to express that the new document, despite the increase in legislators, would save the tribal government money.¹⁴⁰ The petition was presented to the tribal council in April and garnered a strong reaction. According to one account, “Councilman Ron Peltier called the proposed constitution an ill-conceived document which promotes a ‘pure dictatorship.’”¹⁴¹ The council also raised the possibility that the petition did not meet the constitutional

¹³⁴ Suzanne Nadeau, “Tribal Council votes down special election for revised constitution,” *Turtle Mountain Star*, Mar. 25, 2002; and Logan J. Davis, “Constitution Controversy,” *Turtle Mountain Times*, Mar. 25, 2002.

¹³⁵ Nadeau, “Tribal Council votes,” *Turtle Mountain Star*, Mar. 25, 2002.

¹³⁶ *Ibid.*; and Orié Richard, “Crossfire Over Constitution,” *Turtle Mountain Times*, Mar. 25, 2002.

¹³⁷ Suzanne Nadeau, “Constitution committee tallies 1,200 signatures,” *Turtle Mountain Star*, Apr. 8, 2002.

¹³⁸ Suzanne Nadeau, “Tribal Constitution campaign begins despite lack of election,” *Turtle Mountain Star*, Apr. 29, 2002.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ “Trial By Fire,” *Turtle Mountain Times*, Apr. 15, 2002.

requirements necessary to force a vote on the new document.¹⁴² In the past, petitions had only been required to garner twenty percent of the population who voted in the last election to earn a tribal-wide vote. Yet, one reading of a new law, enacted in 2000, suggested that petitions required the signatures of twenty percent of the eligible voting population. Under the old interpretation, the nearly 1800 signatures easily fulfilled the requirements. Under the new interpretation, with approximately 22,000 eligible voters, the constitutional committee would have been well short of the necessary 4400 signatures.¹⁴³

In April, in spite of the opposition voiced by the council, Monette ordered a special election on the proposed constitution for June 4, 2002.¹⁴⁴ The council objected to the election almost immediately and in mid May voted to remove Monette, the tribal secretary/treasurer, and the members of the election board.¹⁴⁵ The reasons given for Monette's ouster were that he, "has neglected the duties required of him as chairman, has acted as appellate court judge outside of the Tribe, has been malfeasant, or has performed a wrongful act, has neglected or failed in the duties and responsibilities required, has made expenditures of tribal funds without tribal council approval, and has exceeded delegated constitutional authority by conducting tribal business outside of the framework

¹⁴² Ibid.

¹⁴³ Orie Richard, "Chairman, Council At Odds Over Special Election," *Turtle Mountain Times*, May 6, 2002.

¹⁴⁴ Orie Richard, "Constitution Revision Petition Signatures Validated By BIA," *Turtle Mountain Times*, Apr. 29, 2002.

¹⁴⁵ Richard, "Chairman, Council At Odds," *Turtle Mountain Times*, May 6, 2002; Logan J. Davis, "Political Conflicts Nearing Fever Pitch," *Turtle Mountain Times*, May 13, 2002; Suzanne Nadeau, "Council ousts chairman; struggle for power ensues," *Turtle Mountain Star*, May 20, 2002; and Susan Boucher, "Council Business As Usual; Going Forward," *Turtle Mountain Times*, May 28, 2002. The Boucher article, published in the tribally-owned *Turtle Mountain Times*, also contains a statement from a councilmember to the effect that the council did not prevent or suppress the *Times* from reporting on Monette's ouster. This is most likely in response to the relatively sparse coverage in the immediate wake of the council's decision to remove Monette.

of the constitution.”¹⁴⁶ Monette responded to the allegations concerning his personal activities. “For the most part, I have no idea what the council is accusing me of. I did act as a judge, but that was done while I was on annual leave and I didn’t know that I could not do it, and in any case, I did it on my own time.”¹⁴⁷

The tribal council moved the date for a vote on the proposed constitution from June 4 to the primary election in October.¹⁴⁸ The decision, coupled with Monette and the election board’s removal, meant that the rapidly approaching June 4th election would not happen. The constitutional committee went to the tribal court for redress, and then to the Turtle Mountain Appellate Court after their requests for a temporary restraining order and permanent injunction were denied by the trial court. Some constitutional committee members accused the trial court of making its ruling without holding a hearing.¹⁴⁹

As the saga continued the public debate heated up. The public officials involved in the dispute often spoke publicly and the letters to the editor of the *Turtle Mountain Star* and *Turtle Mountain Times* (a tribally-owned newspaper that was founded in 1993) from tribal members were numerous. Peltier addressed the reasoning for Monette’s ouster. “He never cooperated with the council. He never consulted the council with decisions he made. He refused to sign resolutions, and also refused to veto those resolutions. This is one of the reasons I supported the resolution to remove him.”¹⁵⁰ Peltier also suggested that discussion and debate on the proposed document was lacking. “Personally, I am not against letting people vote for a new constitution. But I think that

¹⁴⁶ Nadeau, “Council ousts chairman,” *Turtle Mountain Star*, May 20, 2002.

¹⁴⁷ Ibid.

¹⁴⁸ Suzanne Nadeau, “Standing firm: Tribal Council reaffirms removal of chairman,” *Turtle Mountain Star*, June 17, 2002.

¹⁴⁹ Suzanne Nadeau, “Constitution, government saga enters second week,” *Turtle Mountain Star*, May 28, 2002.

¹⁵⁰ Suzanne Nadeau, “Tribal councilman addresses turmoil,” *Turtle Mountain Star*, June 3, 2002.

we need the opportunity to discuss and debate the new constitution before we vote for it. Is the committee afraid to let people know the whole truth about the constitution?”¹⁵¹ For his part, Monette claimed in early June that he, “did not want to have [his] case tried in the newspaper.”¹⁵² Yet, he continued to speak publicly and send several letters to the editor of the *Turtle Mountain Star* and *Turtle Mountain Times*.

The constitutional committee also continued to mobilize. The committee formed a “Walk for Justice” held on June 4, the day that Turtle Mountain was to have voted on the proposed constitution.¹⁵³ On that day, nearly fifty people and twenty vehicles traversed the length of the reservation to protest the postponed election. The group also went to the BIA office on the reservation to lodge its complaints. The journey, which began at 9:30 in the morning, ended peacefully at 4:15.¹⁵⁴

During this time Monette continued to answer his critics through letters to the editor. As it concerned the allegation that Monette, a licensed attorney and law professor at the University of Wisconsin, continued to practice and operate as a judge for other tribal communities, Monette wrote:

During the campaign I explained that I would finish my previous work on my own time and devote myself the being Chairman. That’s what I did. I reduced all the work down to four days. Four measly days! Here’s the important part: I used my annual leave for those four days. I used my own vacation time. Does anyone tell the Council how to use their vacation time? Or better yet, do they even use their annual leave when they miss a day?¹⁵⁵

¹⁵¹ Ibid.

¹⁵² Richard Monette, “Former chairman updates his situation,” *Turtle Mountain Star*, June 3, 2002.

¹⁵³ Suzanne Nadeau, “Committee sets ‘Walk for Justice,’” *Turtle Mountain Star*, June 3, 2002.

¹⁵⁴ Suzanne Nadeau, “Tribal members walk to protest lack of election,” *Turtle Mountain Star*, June 10, 2002; and Doug LaFromboise, “Democracy In Action,” *Turtle Mountain Times*, June 10, 2002.

¹⁵⁵ Richard Monette, “Former chairman responds to story,” *Turtle Mountain Star*, June 10, 2002; and Richard Monette, “Monette Responds,” *Turtle Mountain Times*, June 10, 2002.

Monette also wrote to the editor to explain work done by his firm for Turtle Mountain.¹⁵⁶

The fight over Monette's ouster moved to tribal court.¹⁵⁷ On June 17 Monette argued before the tribal court that his rights under both the tribal constitution and Indian Civil Rights Act had been violated.¹⁵⁸ In late June the tribal court reinstated Monette to his position stating that the tribal chairman was not given his due process.¹⁵⁹ A day after the tribal court handed down its ruling, some tribal council members met to, "formulate the procedure for Monette's removal, scheduled to take place on Friday, June 5, as well as to establish causes for removal."¹⁶⁰ During its June open meeting, the tribal council reaffirmed Monette's removal. Additionally, the council reaffirmed their decision that the petition for a new vote would require twenty percent of the eligible voting population during the five hour meeting.¹⁶¹

Monette did not expect a positive outcome. "This was a foregone conclusion. A done deal. I went to the hearing anyway to show my appreciation to the people for all their support."¹⁶² The again ousted chairman stated he believed that he was removed for political reasons.¹⁶³ Public reaction to the council meeting was unfavorable and many members of the community wrote letters to the editor. One writer derided the process:

¹⁵⁶ Richard Monette, "Former chairman answers accusations," *Turtle Mountain Star*, June 17, 2002; and Richard Monette, "Dear Editor:," *Turtle Mountain Times*, June 17, 2002.

¹⁵⁷ "Monette to have hearing today," *Turtle Mountain Times*, June 17, 2002.

¹⁵⁸ Suzanne Nadeau, "Fate of ousted chairman pending," *Turtle Mountain Star*, June 24, 2002; and Doug LaFromboise, "Chairman Decision Likely Today," *Turtle Mountain Times*, June 24, 2002.

¹⁵⁹ Suzanne Nadeau, "Tribal turmoil: Monette reinstated, Tribal Council sets another hearing for removal," *Turtle Mountain Star*, July 1, 2002; and "Monette Reinstated; Council Appeals Decision," *Turtle Mountain Times*, July 1, 2002.

¹⁶⁰ Nadeau, "Tribal turmoil," *Turtle Mountain Star*, July 1, 2002.

¹⁶¹ Nadeau, "Standing firm," *Turtle Mountain Star*, June 17, 2002. Also, see Doug LaFromboise, "Ousted For Second Time," *Turtle Mountain Times*, July 8, 2002.

¹⁶² Suzanne Nadeau, "Tribal Council removes chairman; Monette unsure of future plans," *Turtle Mountain Star*, July 8, 2002.

¹⁶³ Suzanne Nadeau, "Monette speaks publicly about council allegations," *Turtle Mountain Star*, July 8, 2002.

On July 5, the Council held a “show trial” to remove Chairman Monette and in that trial, the Council acted as the prosecution, the judge, and the jury all in one. That’s a “show trial” that would have pleased Adolf Hitler and Joe Stalin.¹⁶⁴

Another writer expressed a sense of disenfranchisement:

This letter is regarding the so-called trial that ousted Chairman Richard Monette. I’m 19 years old and have just started voting but it sickens me to know that my vote doesn’t count. We, the people, put Chairman Monette in office, we should be the ones that take him out if we feel the need to do so.¹⁶⁵

Yet another writer thought that the council was afraid of Monette:

We all know, pretty much, why our chairman was removed. I will go through the motions of writing some of it anyway. Mr. Monette is a lawyer. He knows Indian law, he is a university professor as well. He used his expertise in administering our tribal government. Apparently this intimidated some councilmen so they wanted no part of him.¹⁶⁶

And yet another writer echoed Monette and several other letter writers:

The open public meeting on July 5, 2002 was a waste of time. It was all cut and dried beforehand. It was a done deal, mafia style, with the Council as judge and jury. After the chairman spoke, it was clear, to the peoples’ satisfaction that there were no grounds for removal.¹⁶⁷

These letters and others expressed the sentiment that the process had been unfair, that the council’s decision was forgone, and that Monette had been removed for political reasons.

Two other events shaped the future of Turtle Mountain governance and constitutionalism during this pivotal time. First, a former tribal chairman and a former

¹⁶⁴ “Writer feels trial was a mockery,” *Turtle Mountain Star*, July 8, 2002.

¹⁶⁵ “Writer is ashamed by council action,” *Turtle Mountain Star*, July 8, 2002.

¹⁶⁶ “Writer upset with removal of Monette,” *Turtle Mountain Star*, July 15, 2002.

¹⁶⁷ “Writer feels tribal council’s action was wrong,” *Turtle Mountain Star*, July 15, 2002.

tribal official were indicted for embezzling from the community.¹⁶⁸ It was the first in a series of indictments and arrests for tribal officials during this time period and it produced anger and resentment toward the tribal government. The community responded to these indictments with several letters to the editor expressing distain for the council members and the situation as a whole. One writer found the corruption with the tribal government to be self-evident:

If you look at the past tribal council members, you can see their personal property or financial holding [sic] have increased substantially. I have worked for 30 years with earnings equivalent to the wages the council people are receiving. You cannot accumulate that much holding in two to four years like some of the tribal council have. It is no secret that the tribal councils have embezzled or manipulated tribal funds to benefit themselves or to benefit their families, relatives or their friends. You know who they are.¹⁶⁹

Another forewarned of retribution:

To those people who stole from us and violated the by-laws of our tribe and think they are above the law, you are next. Whoever stole from and made a mockery of our tribe, your day is coming. You know who you are and we know who you are.¹⁷⁰

Yet another writer drew a parallel to Monette's situation to express a feeling of unfairness:

Our tribal council has brought nothing but shame and misery to our community.

¹⁶⁸ Suzanne Nadeau, "Former chairman indicted," *Turtle Mountain Star*, July 1, 2002; "Former Officials Indicted," *Turtle Mountain Times*, July 1, 2002; "Trial Date Set for Former Tribal Official," *Turtle Mountain Times*, July 15, 2002; Suzanne Nadeau, "Under fire from feds: Current, former tribal officials hit with indictments, more charges pending," *Turtle Mountain Star*, Aug. 5, 2002; "Councilman, Former CEO Indicted By Federal Grand Jury," *Turtle Mountain Times*, Aug. 5, 2002; Jason Nordmark, "Three more tribal officials indicted," *Turtle Mountain Star*, Aug. 12, 2002; and Jason Nordmark, "Firing back: Tribal officials say indictments won't deter them from business," *Turtle Mountain Star*, Aug. 19, 2002.

¹⁶⁹ "Tribal members being stripped of funds," *Turtle Mountain Star*, Aug. 5, 2002.

¹⁷⁰ "It's a privilege to be enrolled in Tribe," *Turtle Mountain Star*, Aug. 5, 2002.

Their shady actions have resulted in the indictments of many of them with indictments of more of them likely in the future.

These same nefarious “leaders” that thought themselves so righteous as to seize the chairman’s position in a show trial, now face judgment for their conduct in a Federal court; a court of law in which they will receive a fair hearing, something they refused to allow in their show trial against Chairman Richard Monette.¹⁷¹

And another writer attempted to use the writer’s position within the community to ask members of the tribal government to step down for the good of the tribe.

As an elder, my suggestion to you is to step down, without pay, for the good of the tribe, until you clear yourselves.

If you prove you were innocent all along, then there is retroactive pay and a chance to redeem yourselves before the people.

This is the right thing to do. Do you have it in you to do the right thing?¹⁷²

These letters and others reflected a growing sense of resentment with tribal politics and tribal politicians. This resentment only grew and became ever more apparent, especially in the latter stages of the constitutional revision efforts.

The second event was that the constitutional committee had their day in court. According to one account, “The committee members claimed that their constitutional rights were violated when the council abolished the election board to prevent a duly called special election on [the proposed constitution]. They also asserted that the council violated the constitution when they refused to honor the petition containing nearly 1800 signatures.”¹⁷³ Acting tribal chairman Mike Lenoir attempted to diffuse the criticism of the constitutional committee. “We have called an election for this constitution. There is

¹⁷¹ “Writer calls for resignations,” *Turtle Mountain Star*, Aug. 12, 2002.

¹⁷² “Council has lost credibility,” *Turtle Mountain Star*, Aug. 12, 2002.

¹⁷³ Suzanne Nadeau, “Constitutional committee gets its day in court,” *Turtle Mountain Star*, July 1, 2002.

nothing within the constitution that says we must call an election immediately after receiving a petition. We have included the constitution in the primary this fall.”¹⁷⁴

The constitutional committee’s challenge for a special election failed. The tribal appellate court, in announcing the decision in mid August, stated, “The Council has not refused to call for an election, but instead has exercised its discretion to direct the election board to conduct the election in conjunction with the primary election. The court understands that this means, as a practical matter, that the amendments, if approved, would not become effective until the next general election.”¹⁷⁵

With this decision, the constitutional committee was forced to wait until the October primary for a tribal vote on the proposed constitution. During the time between the appellate court decision and the primary elections in late October tensions at Turtle Mountain rose even further. Community members sent several more letters to local newspapers expressing their concerns about the political situation.¹⁷⁶ One group of

¹⁷⁴ Ibid.

¹⁷⁵ Jason Nordmark, “Court affirms council decision regarding new constitution,” *Turtle Mountain Star*, Aug. 19, 2002. Also, see Doug LaFromboise, “Jones rules in favor of Tribal Council; Constitution to be voted on in October,” *Turtle Mountain Times*, Aug. 19, 2002.

¹⁷⁶ “Writer asks council members to ‘do the right thing’ – resign,” *Turtle Mountain Star*, Aug. 8, 2002; “Council members are employees of the Tribe,” *Turtle Mountain Star*, Aug. 26, 2002; “Writers issue challenge to council members,” *Turtle Mountain Star*, Aug. 26, 2002; “Letter To The Editor,” *Turtle Mountain Times*, Aug. 26, 2002; “To. Mr. Patrick Hemmy & BIA,” *Turtle Mountain Times*, Aug. 26, 2002; “Letter To The Editor,” *Turtle Mountain Times*, Aug. 26, 2002; “It’s a shame to scare people,” *Turtle Mountain Star*, Sep. 3, 2002; “‘Gang’ isn’t a bad word,” *Turtle Mountain Star*, Sep. 3, 2002; “Following Nixon’s example,” *Turtle Mountain Star*, Sep. 3, 2002; “People Are Fed Up,” *Turtle Mountain Times*, Sep. 3, 2002; “Letter To The Editor,” *Turtle Mountain Times*, Sep. 3, 2002; “Fundamental rights ‘stolen,’” *Turtle Mountain Star*, Sep. 9, 2002; “‘Too many chiefs’ in government,” *Turtle Mountain Star*, Sep. 9, 2002; “A quick question,” *Turtle Mountain Star*, Sep. 9, 2002; “Writer tells ‘what actually took place’ at tribal office,” *Turtle Mountain Star*, Sep. 9, 2002; “Looking For A Few Good Men,” *Turtle Mountain Times*, Sep. 9, 2002; “The ‘loop holes’ allowing corruption must be closed,” *Turtle Mountain Star*, Sep. 16, 2002; “Corruption,” *Turtle Mountain Times*, Sep. 16, 2002; “Ethics needed in government,” *Turtle Mountain Star*, Sep. 23, 2002; “Tribal Council meeting should not be put off due to petition,” *Turtle Mountain Star*, Sep. 23, 2002; “Young people have the power at the polls,” *Turtle Mountain Star*, Oct. 7, 2002; “Writer believes council changes rules to fit needs,” *Turtle Mountain Star*, Oct. 7, 2002; “Getting satisfaction at the polls,” *Turtle Mountain Star*, Oct. 7, 2002; “Writer wonders ‘how we got to this point,’” *Turtle Mountain Star*, Oct. 7, 2002; “Show your feelings at the polls,” *Turtle Mountain Star*, Oct. 14, 2002; and “Voters need to ask some important questions,” *Turtle Mountain Star*, Oct. 21, 2002. Several other

community members attempted to force the tribal council to accept a petition asking for a referendum on the removal of Monette, which the council refused.¹⁷⁷ The tribal trial court decided that felons were eligible to run for tribal office and the appellate court overturned the decision.¹⁷⁸ A former tribal judge was charged with a felony.¹⁷⁹ And the tribal council had to fend off rumors that it was planning to take over the tribal college.¹⁸⁰

After a long, tense summer, the people of Turtle Mountain voted on the proposed tribal constitution in the primary election. While the constitutional committee saw victory in this particular battle they lost the bigger fight. The proposed constitution was narrowly defeated by a vote 2050 to 1993.¹⁸¹ As the *Turtle Mountain Star* noted, “The slight margin was an indicator of how hotly contested the issue was throughout the last several months.”¹⁸² This was not the end of the struggle, however; the primary election had produced a slew of candidates that were supportive of constitutional reform and the constitutional committee itself shifted as well, reformulating as a group known as “We the People.”¹⁸³

letters to the editor carried concerns related either directly or tangentially to the tribal council, tribal government as a whole, or the proposed constitution during this time period.

¹⁷⁷ Suzanne Nadeau, “Group attempts to deliver petition to force vote on removal of chairman,” *Turtle Mountain Star*, Sep. 3, 2002; and Doug LaFrombois, “Tribal Council Refuses Referendum,” *Turtle Mountain Times*, Sep. 3, 2002.

¹⁷⁸ “Tribal council will appeal ruling allowing felons to run for office,” *Turtle Mountain Star*, Oct. 7, 2002; “Judge’s Decision Puts Gourneau in Running,” *Turtle Mountain Times*, Oct. 7, 2002; Council appeals Judge’s ruling,” *Turtle Mountain Times*, Oct. 7, 2002; “Appellate court rules felons not eligible to run for tribal office,” *Turtle Mountain Star*, Oct. 21, 2002; and “Tribal Appeals Court Says Felons Cannot Run For Council,” *Turtle Mountain Times*, Oct. 21, 2002.

¹⁷⁹ “Former chief tribal judge charged with felony,” *Turtle Mountain Star*, Oct. 14, 2002.

¹⁸⁰ Jason Nordmark, “Rumor control: Tribal Council tries to squelch concerns about TMCC ‘take over,’” *Turtle Mountain Star*, Sep. 23, 2002; Tim Belgarde, “Rumored Tribal Council Takeover of College Causes Uproar,” *Turtle Mountain Times*, Sep. 23, 2002; and Tim Belgarde, “Tribal Operations Officer Explains Controversial Letter,” *Turtle Mountain Times*, Sep. 30, 2002.

¹⁸¹ Jason Nordmark, “Voters narrowly defeat proposed constitution,” *Turtle Mountain Star*, Oct. 28, 2002; and Tim Belgarde, “The People Have Spoken,” *Turtle Mountain Times*, Oct. 28, 2002.

¹⁸² Nordmark, “Voters narrowly defeat,” *Turtle Mountain Star*, Oct. 28, 2002.

¹⁸³ Decoteau, *Constitution Convention*, 29.

The summer and fall also heated up for Monette, both politically and personally. The trouble began in early June when he was arrested and brought before the tribal court on the charge of contribution to the delinquency of a juvenile, to which he pled not guilty.¹⁸⁴ Additionally, about a week before the general election, things took a particularly ugly turn when two community members claimed that the United States Attorney's Office was covering up an alleged rape of a teenage girl by Monette.¹⁸⁵ The credibility of those making the accusation was immediately and vehemently criticized.¹⁸⁶ Monette denied the allegations as well. "All the accusations toward me that have been made are unequivocally false. I've known that all along. I just don't know how much I can share with the public about it. Hopefully, the air will clear on its own and we can move ahead with the work that we need to do for our tribe."¹⁸⁷ In January of 2003 the United States Attorney's Office announced that it would not pursue a case against Monette. According to the United States Attorney, not only was a highly detailed statement recanted by the complainant, but that some of the evidence that was collected actually further undermined the allegation.¹⁸⁸

Regardless of the accusations, tribal voters returned Monette to the office of tribal chairman in the general election. In fact, the election was cause for celebration for those who supported constitutional reform. Not only had Monette been reelected, but the entire

¹⁸⁴ "Former chairman, current councilman arraigned," *Turtle Mountain Star*, July 22, 2002.

¹⁸⁵ Jason Nordmark and Suzanne Nadeau, "Allegations tear through Turtle Mountains prior to election," *Turtle Mountain Star*, Nov. 4, 2002.

¹⁸⁶ "Story in daily paper was a 'disgrace,'" *Turtle Mountain Star*, Nov. 4, 2002; "Tribal members can't be fooled," *Turtle Mountain Star*, Nov. 4, 2002; "To The Editor," *Turtle Mountain Times*, Nov. 4, 2002; and "Smear Letters," *Turtle Mountain Times*, Nov. 4, 2002.

¹⁸⁷ Suzanne Nadeau, "It's a 'difficult time': Chairman-elect acknowledges tough road ahead, denies allegations," *Turtle Mountain Star*, Nov. 11, 2002.

¹⁸⁸ Jason Nordmark and Suzanne Nadeau, "U.S. Attorney's office won't pursue allegations against tribal chairman," *Turtle Mountain Star*, Jan. 20, 2003.

slate of “We the People” candidates was elected as well.¹⁸⁹ The new tribal council was sworn in on November 30, 2002, in a ceremony that drew in over 500 people to witness and celebrate.¹⁹⁰ Additionally, some members of the former regime were being brought to justice. In mid January of 2003 two former tribal officials plead guilty in federal court to stealing from the community.¹⁹¹

The sense of hope and optimism did not last long. In late 2002 the recently reelected chairman and the tribal council came to an agreement for \$20,000 for back pay for the time that he was ousted in 2002. Monette had originally sued the community in tribal court for \$40,000 during the time that he was removed from office.¹⁹² The settlement became a sore point for some tribal members and a distraction to the tribal leadership. One tribal member expressed his opinion about Monette and the money in late January of 2003. The letter to the editor also signaled an ominous tone for future accusations.

You should be trying to get the tribe back on track and start running the tribe as a successful business and not complaining about the past. Look for a better future. As for the \$20,000 you scammed out of the tribe, do you actually believe you deserved the money? What were you doing for the tribe? Were you working elsewhere or what? Right now, when you travel doing business for the tribe, do you route your travel to your home in Wisconsin and then on to the tribal destinations? Is it costing the tribe that is broke more money?¹⁹³

¹⁸⁹ Decoteau, *Constitution Convention*, 29; and Tim Belgarde, “...In With The New,” *Turtle Mountain Times*, Nov. 11, 2002.

¹⁹⁰ Tim Belgarde, “We Can Move This Tribe Forward...,” *Turtle Mountain Times*, Dec. 2, 2002; and Suzanne Nadeau, “Solemnly swearing: New tribal officials take the oath,” *Turtle Mountain Star*, Dec. 12, 2002.

¹⁹¹ “Former officials plead guilty to theft charges,” *Turtle Mountain Star*, Jan. 13, 2003; and “Former tribal officials plead guilty to embezzlement charges,” *Turtle Mountain Times*, Jan. 13, 2003.

¹⁹² Richard Monette, “Tribal chairman answers charges,” *Turtle Mountain Star*, Dec. 30, 2002.

¹⁹³ “From a clown’s point of view,” *Turtle Mountain Star*, Jan. 20, 2003.

Additionally, in mid January Monette vetoed two tribal council resolutions.¹⁹⁴ This move signaled a division between the chairman and the council; a division that quickly grew deeper.

Another major issue arose early in 2003. In February the tribal council began making rumblings about suspending the board of the Ojibwe Indian School (OIS), a local school for students from kindergarten through eighth grade, and taking over the operation itself. An earlier audit revealed the possibility of a financial impropriety at the school and the No Child Left Behind Act offered challenges to OIS's accreditation. These obstacles threatened the federal funding for a new school building.¹⁹⁵

The happenings with OIS grew in importance within the community. In early March the tribal council ordered a new audit for the school.¹⁹⁶ In late March the tribal council voted to establish a period of comment for a proposal to establish a tribal department of education.¹⁹⁷ And in early April the tribal council took over the operation of OIS and reduced the role of the school board to that of an advisory board.¹⁹⁸

Parents, administrators, and school board members continued to have questions and voice concerns about the tribal council's decision.¹⁹⁹ Eventually the OIS school

¹⁹⁴ Suzanne Nadeau, "Tribal chairman exercises veto power over council," *Turtle Mountain Star*, Jan. 13, 2003; and "Tribal Chairman Vetoes Resolution Calling For Huge Job Cuts At Casino, Monette Also Vetoes Selection Of Tribe's Officers," *Turtle Mountain Times*, Jan. 13, 2003.

¹⁹⁵ Suzanne Nadeau, "Ojibwa, budget are major issues for tribal council," *Turtle Mountain Star*, Feb. 10, 2003.

¹⁹⁶ Suzanne Nadeau, "A look at the books: Tribal Council moves forward on Ojibwa audit," *Turtle Mountain Star*, March 10, 2003.

¹⁹⁷ Suzanne Nadeau, "Tribe votes to establish education department," *Turtle Mountain Star*, March 31, 2003.

¹⁹⁸ Suzanne Nadeau, "Tribal council reduced role of school board, passes budget," *Turtle Mountain Star*, April 7, 2003.

¹⁹⁹ Suzanne Nadeau, "School rules: Parents, staff voice concern about changes at Ojibwa," *Turtle Mountain Star*, Apr. 21, 2003; and Suzanne Nadeau, "Ojibwa board looks further into resolution," *Turtle Mountain Star*, Apr. 28, 2003.

board filed an injunction against the tribal council.²⁰⁰ Other concerns rose within the community as well. Crime had risen on Turtle Mountain during 2002.²⁰¹ The tribal judiciary was suffering through its own turmoil, most notably the suspension and eventual arrest of the Chief Clerk of Court.²⁰²

June of 2003 proved to be a particularly eventful month. The OIS school board filed for an injunction and the tribal court awarded it.²⁰³ A preliminary audit was not promising for the community. The *Turtle Mountain Star* noted, “A preliminary report involving a forensic audit of Ojibwa Indian School records was released...and listed several concerns ranging from bidding processes to missing files.”²⁰⁴ Despite this newly emerging information, the tribal court reinstated the OIS school board.²⁰⁵

June also revealed some the cracks within the tribal council as well. While all of the members the council had been endorsed by We the People, whatever unanimity they had entering their terms was on the decline. Some councilmembers skipped a special meeting of the council. They explained that their reason for doing so was that they did not know what was supposed to be discussed at the meeting:

We, the undersigned councilmen of the tribe, want to explain why we did not attend the special tribal council meeting last Monday, June 9. The only reason we did not go to the meeting was because the agenda contained all kinds of items that we became aware of shortly before the meeting.

²⁰⁰ Suzanne Nadeau, “OIS board members file injunction against tribe,” *Turtle Mountain Star*, June 6, 2003.

²⁰¹ Jason Nordmark, “Major crime on reservation skyrockets,” *Turtle Mountain Star*, Mar. 17, 2003.

²⁰² Suzanne Nadeau, “Tribal judge positions in question,” *Turtle Mountain Star*, Mar. 24, 2003; “Tribe’s clerk of court suspended with pay,” *Turtle Mountain Star*, Apr. 21, 2003; and Suzanne Nadeau, “Board lifts suspension, chief clerk arrested,” *Turtle Mountain Star*, Apr. 28, 2003.

²⁰³ Suzanne Nadeau, “OIS saga continues,” *Turtle Mountain Star*, June 9, 2003.

²⁰⁴ “Preliminary audit of OIS released,” *Turtle Mountain Star*, June 16, 2003.

²⁰⁵ Suzanne Nadeau, “Tribal Court puts Ojibwa School Board back in power,” *Turtle Mountain Star*, June 23, 2003; and Tim Belgarde, “Ojibwa Indian School Board Wins Case Against Tribal Council,” *Turtle Mountain Times*, June, 23, 2003.

The agenda was a hidden one and also an illegal one. The tribal constitution requires that all agenda items are required to be publicly posted at least three days before meeting time. The only agenda we saw before the meeting was one that had four items on it without specifics relating to the topic or organization.

If we, as councilmen, are not aware of an agenda or what the meeting is about, how can we expect the people to know about the agenda? There is a purpose for a three-day notice and that is to inform the people and to let the affected individual, business or organization prepare for the meeting.

Agendas are not only for the council or chairman. Hidden agendas are only for a select few and for a secret reason.²⁰⁶

Others read the behavior of the councilmembers as an indirect way to show their discontent with the direction of the tribal government and Monette's leadership.

According to the story in the *Turtle Mountain Times*, "In what appears to be a hostile move, much of the Tribal Council declined to attend the meeting, despite the fact that attending these meetings and voting on various issues is a large part of their job description."²⁰⁷

Also in June, Monette called for a new vote on the proposed tribal constitution. The 2003 version of the proposed constitution was substantially similar to the 2002 version, although some relatively minor changes were made in order to more closely align the document with public sentiment.²⁰⁸ (See Appendix K) The most significant change was to essentially eliminate the requirement that land under tribal jurisdiction be sold to community members. In early July the tribal council approved a special election by a vote of five to four, with Monette casting the deciding vote for the deadlocked

²⁰⁶ "Councilmen explain reason for missed meeting," *Turtle Mountain Star*, June 30, 2003.

²⁰⁷ Tim Belgarde, "Tribal Councilmen Snub Open Public Meeting," *Turtle Mountain Times*, June, 16, 2003.

²⁰⁸ Jason Nordmark, "Tribal chairman calls for a vote of the people on newly-revised constitution," *Turtle Mountain Star*, June 30, 2003; and DeCoteau, *Constitution Convention*, 68-79.

council.²⁰⁹ The close vote was another indication of the lack of unanimity within the tribal government.

The special election was set for September 9, 2003. During that time the public debate was mixed. Also during that time the tribal council voted to dissolve the OIS school board.²¹⁰ The tribal council's actions infuriated some tribal members.²¹¹ This criticism often led to attacks on the proposed constitution. According to one tribal member, "At this point, our reservation is under a dictatorship... If they accomplish getting this revised constitution voted into play, an even greater danger of dictatorship will be on the people of the Turtle Mountain Reservation."²¹²

The growing divisions among the tribal council and within the community had a deep effect on the special election. All involved, both those for and against the proposed constitution, predicted a close vote, yet it was nowhere near close. The proposed constitution was soundly defeated by a vote of 1798 to 700.²¹³

Essentially, the vote on the constitution became a referendum on Monette and the tribal council. Monette himself noted this point.²¹⁴ Another community member, in a letter to the editor, also echoed that the voters were perhaps less concerned with the document in and of itself. "In my opinion this special election turned out not to be about voting for a new constitution, but a vote against Mr. Richard Monette.... I am sure many

²⁰⁹ Suzanne Nadeau, "Back to the polls: Tribal council narrowly approves special election," *Turtle Mountain Star*, July 7, 2003; and Tim Belgarde, "Special Tribal Council Meeting Deals With Tribal Court Concerns," *Turtle Mountain Times*, July 7, 2003.

²¹⁰ Suzanne Nadeau, "Tribal council votes 5-4 to dissolve Ojibwa School Board," *Turtle Mountain Star*, Aug. 11, 2003.

²¹¹ "What does the tribal council have to gain from Ojibwa situation?," *Turtle Mountain Star*, Aug. 18, 2003.

²¹² *Ibid.*

²¹³ Jason Nordmark and Suzanne Nadeau, "Proposed tribal constitution goes down to defeat," *Turtle Mountain Star*, Sep. 15, 2003.

²¹⁴ *Ibid.*

people voted against the new constitution because they associated Mr. Monette with it.”²¹⁵ In the wake of the resounding defeat, the movement for a new constitution slowed to a stop.²¹⁶ About a month after the election, Monette resigned his post as chairman, citing mounting physical and mental stress.²¹⁷ The fight for a new tribal constitution was over.

Conclusion

The tribal claim against the federal government had been the dominant motivating factor for political action for almost a century. The pursuit of a claim led to a tribal constitution and shaped the tribal discussion about constitutional reform. It also shaped the desires of the community, the tribal population, and the community’s own view of itself. After years of waiting and several different policy eras, the claim came to a relatively successful conclusion in the Self-Determination Era.

The resolution of the claim and the Self-Determination Era opened the possibility for the people of Turtle Mountain to once again turn their attention to constitutional reform. Without the enormous presence of the perhaps once seemingly interminable claim, additional tribal attention could be paid to the constitution. Additionally, the Self-Determination Era allowed a greater (although not completely unfettered) level of freedom for tribal communities to reassert their governmental authority.

Without the claim and within this newest era of federal policy, the people of Turtle Mountain did begin seriously reassessing and amending the tribal constitution. The

²¹⁵ “Vote wasn’t against constitution, it was against tribal chairman,” *Turtle Mountain Star*, Sep. 15, 2003.

²¹⁶ Jason Nordmark and Suzanne Nadeau, “Proposed tribal constitution,” *Turtle Mountain Star*, Sep. 15, 2003.

²¹⁷ Suzanne Nadeau, “With ‘regret’: Tribal chairman resigns,” *Turtle Mountain Star*, Oct. 6, 2003.

document underwent several changes in the 1990s and even into the new century. In the wake of these changes, a group of community members sought to completely rewrite the constitution.

In many ways the time appeared to be ripe for just such wholesale change. However, there was a growing sense of distrust of the tribal government within the community as a whole. The prospect of such a dramatic change, particularly at a time when members of the tribal government were being arrested and criminally prosecuted and when opponents of the new document were suggesting that increased authority would be placed in the hands of tribal governmental officials, was undoubtedly unnerving to many in the community. An increasingly polarizing tribal chairman no doubt provoked both proponents and opponents to the polls as well. The proposed constitution suffered a narrow defeat in 2002.

Those who supported constitutional reform had reason to think optimistically when their slate of candidates was elected into office. Yet, the momentum for constitutional reform began to quickly unravel. The tribal council made decisions that were unpopular within the community. Additionally, the increasingly controversial Monette and the council were no longer in accord and no longer cooperated with one another. The second vote in 2003 on a slightly revised draft of a new constitution became a referendum on Monette; it was a resounding defeat for both the proposed document and for the chairman. Shortly thereafter Monette resigned.

During a time when the tribal government was in flux, the people of Turtle Mountain used their votes in 2002 and 2003 to express their displeasure with the state of their government. For many within the community, a new constitution held the promise

of reform and a better government. It was an opportunity for change and to reject the failures of past governments and politicians.

Yet, for the majority of voters, the 2002 and 2003 votes were also an opportunity to reject the failure of the past tribal government and politicians and contemporary ones as well. The proposed constitution would have created positions for additional councilmembers and was often criticized for its potential to create a “dictatorship.” During a period of corruption and disharmony, the possibility of placing greater authority in the hands of the tribal government was assuredly distasteful to many. The fears produced by those circumstances were undoubtedly exacerbated under Monette’s combustible tenure. The majority of voters used their votes to express their distrust of the tribal government and the problems that it had produced in the past and present. It was yet another example of the people of Turtle Mountain using their vote on a constitution to accomplish their own ends.

Conclusion

Constitutionalism on the Turtle Mountain Reservation has been a product of the choices made by the people of the Turtle Mountain Band of Chippewa Indians. While, at various points, the federal government has played a role, sometimes even a major role, in the decisions that were made, it was tribal members themselves who came to embrace or reject constitutions and constitutionalism during Turtle Mountain's history. It was the community that made the choices to adopt or reject constitutions, and to do so for the community's own ends.

The majority of the scholarship concerning tribal constitutionalism has operated within the colonialist/revolutionary dialectic. Under this dialectic, the parameters of scholarly conversation on tribal constitutionalism have been generally limited to a study of the Indian Reorganization Act and a statement of its value and the value of its progenitor, John Collier. While these studies, including those that have considered specific tribal communities, are both necessary and illuminating, they nonetheless have neglected the role of tribal decisionmaking in the tribal constitutional process. As a consequence, many have claimed that constitutionalism is "foreign" to tribal communities and that it was "foisted" on tribal communities by the federal government.

This has not been the experience of the Turtle Mountain Band of Chippewa Indians. Rather, Turtle Mountain's experience is one almost completely outside of the colonialist/revolutionary dialectic. The community first embraced the prospect of constitutionalism and a constitution years before the IRA became law, reconsidered and replaced its constitution in the decidedly anti-tribal environment of the Termination Era,

and rejected wholesale reform in a time of increased attention within Indian Country to tribal constitutions and change. Like dozens of other tribal communities, Turtle Mountain had a constitution before the IRA. Also like dozens of other tribal communities, Turtle Mountain rejected the IRA. If there was a standard IRA constitution (and there continues to be some scholarly doubt as to whether there was), it was certainly not foisted on Turtle Mountain.

This is not to ignore the obvious: the federal government influenced Turtle Mountain constitutionalism, sometimes to a great degree. While the people of Turtle Mountain may not have been forced to endure an IRA-generated constitution, at various times the federal government nonetheless limited or shaped the constitutional choices that were available to the community. Yet, most of the scholarship on tribal constitutionalism does not look beyond the influence that the federal government exerted over tribal communities (and almost exclusively does not look beyond that influence outside of the IRA). As a consequence, this scholarship has neglected to recognize the agency expressed by tribal peoples within these circumstances. At various times the federal government did limit or shape the constitutional choices that were available to the people of Turtle Mountain. However, it was the people of Turtle Mountain who made the decisions among the choices available to them, and who did so for their own purposes.

Turtle Mountain constitutionalism began in the wake of the McCumber Agreement. Although relatively young at the time, the Turtle Mountain Band had established a homeland around the turn of the nineteenth century and established itself as a separate political entity from the Pembina Band shortly thereafter. The people of Turtle Mountain were (and are) a conglomeration of Ojibwe who moved westward, Métis

peoples, and other tribal and European peoples. By the final quarter of the nineteenth century, the community was seeking a treaty to secure a reservation and to sell some of its territory to the federal government. Various pressures contributed to an increasingly desperate situation, including increased white settlement, an increased tribal population (made even greater as a result of the Riel Rebellions), decreased resources, and the federal government's unilateral decision to open tribal lands for white settlement in 1882. Shortly thereafter, President Chester A. Arthur established a reservation by executive order. Two years later, most likely because of reports that the people of Turtle Mountain were not "real Indians," Arthur dramatically shrank the reservation to its present day size of twelve miles by six miles by another executive order. The small land base, coupled with the increased tribal population, decreased resources, and other pressures from white settlement, forced many tribal members to take allotments far away from the reservation.

The McCumber Agreement was negotiated under those trying conditions. Additionally, the federal policy of the Allotment Era meant that federal negotiators were not predisposed to recognizing and encouraging tribal autonomy. Just before the negotiations, the traditional leadership of Turtle Mountain, led by Chief Little Shell III, was usurped by mixed-blood members of the tribe. Although there is no hard evidence to testify to the motivations of the mixed-blood members who took over negotiations on behalf of the community, what evidence that is available makes it reasonable to surmise that they wanted to gain a greater voice in tribal affairs on behalf of mixed-bloods (by far the largest demographic segment of the community), they wanted to solidify their identity as Native peoples (thus also solidifying the rights that came with that identity), and they wanted to relieve the economic suffering that the community faced. Little Shell III

continued to protest the agreement, and was able to prevent its ratification for several years. After Little Shell III's passing, Congress did eventually ratify the McCumber Agreement in 1904. The tribal discontent with the agreement, its terms, and the dissolution of the leadership structure led community members to seek out constitutionalism.

The first Turtle Mountain tribal constitution was enacted in order to begin a claim against the federal government for the inequities produced by the McCumber Agreement. Almost as soon as Congress ratified the McCumber Agreement, the people of Turtle Mountain were not happy with it and sought a remedy in an American court. The McCumber Agreement did little to prevent the difficulties that the community faced: the land base continued to be too small to hold the population that was on the reservation, the various allotments spread across three states continued to be a burden to both members of the community and to federal bureaucrats, and economic opportunities on the reservation were scarce. Additionally, tribal members were still regarded by those outside of the community, including their tribal superintendents, as not truly "Indian." Under these conditions, the people of Turtle Mountain sought out constitutionalism as a new form of government to address the conditions within the community by increasing tribal autonomy and to initiate a claim.

The earliest efforts to get the federal government to recognize a tribal constitution did not meet with success. In 1932, the new tribal superintendent, Francis J. Scott, had a constitution drawn up for consideration. Scott told the community that his constitution was the only possible means for beginning a claim; yet he also probably believed that it would ease his administrative burden by centralizing tribal authority. For the community,

the decision on whether to adopt Scott's constitution presented a difficult choice: accept a document that held the promise of a lawsuit yet that many tribal members recognized limited tribal autonomy and granted tremendous deference to the superintendent, or reject the document and perhaps all promise of a lawsuit and a constitution. The desire for a claim overrode the trepidation that the document produced, and the community voted to ratify the federally-produced constitution. Turtle Mountain was one of many tribal communities to enact a constitution prior to the IRA. It was also one of many tribal communities to reject the IRA. In Turtle Mountain's case, the community rejected the IRA out of the fear that replacing the newly minted constitution might adversely affect the prospects of a claim.

The second Turtle Mountain constitution was enacted in 1959 in order to address several issues: to replace its failed predecessor, to reaffirm the community as a political unit during an exceptionally difficult policy era, and to express displeasure toward the activities of the tribal government. The 1932 constitution did not fulfill its promise. Congressional jurisdictional bills failed and the document did not produce a lawsuit against the United States. As such, the community became increasingly less willing to forgive the deference that the document gave to the federal government. Additionally, the Termination Era ushered in new policies that discouraged tribalism and sought to extinguish tribes as political bodies. Turtle Mountain was specifically enumerated in House Concurrent Resolution 108, which proclaimed termination as the new federal policy. Most likely chosen for termination because of its mixed-blood character, Turtle Mountain was probably spared from termination because of the impact that it would have had on the local non-Native population. Yet, while Turtle Mountain had escaped

termination at that time, the threat of termination still lingered and the community was still under the throes of economic and social disparity.

Under these conditions, the Advisory Committee, the lone governmental body established by the then-still operative 1932 constitution, sought reform. Led by Patrick Gourneau, the Advisory Committee created a draft of a new constitution. However, the Advisory Committee made the mistake of seeking to install the document as the new constitution without first seeking tribal approval. This misstep cost the Advisory Committee much good will and was routinely exploited as an example of the Advisory Committee's abuse of power. Additionally, a new group of tribal members, who came to be known as the "Rebel Group," began their own efforts at constitutional reform. Bold and perhaps overly tenacious, the so-called Rebel Group was nonetheless able to cultivate a growing following. When compared side-by-side, the final draft of both the Advisory Committee's "revised" constitution and the Rebel Group's "proposed" constitution are remarkably similar. As such, it is clear that the tribal decision to adopt the Rebel Group's proposed constitution was a gesture toward a new direction for tribal government and a repudiation of federal policy and the Advisory Committee, and was less of a statement on the minute differences between the two documents. Regardless, once in power, the Rebel Group found its own document to be deficient.

The tribal decision to reject wholesale constitutional reform in the early twenty-first century embodied the growing disenchantment the community felt toward the constitutional reform effort and the increasingly controversial tribal chairman. By the early twenty-first century, the people of Turtle Mountain found themselves in another new policy era and political context. The claim, which had been the foremost political

motivating factor for the community for decades, was finally resolved. Originally begun as an Indian Claims Commission case in 1951, the lawsuit ended in the early 1980s with the community earning a significant judgment. Additionally, by the late 1960s the federal government was transitioning into the Self-Determination Era. Unlike the previous Termination Era, the Self-Determination Era has been characterized by Congressional legislation that has sought to increase tribal sovereignty and autonomy (although it has also been characterized by Supreme Court decisions which have sought to limit tribal sovereignty and autonomy). During the Self-Determination Era Turtle Mountain has established an expanding tribal college and a gaming operation.

Under these conditions a group of tribal members sought to completely reform the tribal constitution. The community was not inherently opposed to constitutional change, as evidenced by the several amendments that had occurred to the document since its ratification in 1959. Additionally, the time appeared ripe for change, as the constitution had been amended regularly in the 1990s and early 2000s. Yet, those seeking wholesale constitutional reform ran into much resistance from the tribal council, which in turn also openly feuded with Richard Monette, the tribal chairman. Monette scheduled a vote on the new constitutional draft, however he was ousted by the council and the first vote on the new draft did not occur until months after it was originally scheduled. That vote produced a narrow defeat for the document, yet those candidates who supported constitutional reform won election to the tribal council shortly thereafter. Monette also won reelection. While the future seemed bright for those who supported constitutional reform, it quickly turned sour. Monette and the new council also clashed. Other factors combined to produce a hostile environment as well: previous members of tribal

government were charged with various crimes, there was concern over the tribal council's decision to take over a local school, and Monette was still being vigorously attacked by his opponents. The second vote on the proposed constitution produced a lopsided loss for the document. By the end, all parties seemed to agree that the constitutional vote was a referendum on Monette and a clear statement against the past and present activities of the tribal council.

These episodes make clear that the people of Turtle Mountain themselves were the main arbiters of their constitutional fate. The colonialist/revolutionary dialectic cannot adequately explain the various constitutional moments at Turtle Mountain because it does not adequately consider tribal decisions to adopt or reject constitutions. While the federal government often played a significant part in those decisions, it was nonetheless the people that made them.

Future scholarship that seeks to expand the understanding of tribal constitutionalism might look to research several questions. For instance, why were there so many pre-IRA tribal constitutions? The colonialist/revolutionary dialectic essentially neglects these constitutions. The Turtle Mountain experience, coupled with research about tribal claims before the IRA and the ICC, suggest that other tribal communities were seeking constitutionalism to begin claims against the federal government and to increase tribal autonomy. A more thorough study of these constitutions, and the purposes behind them, may dissuade scholars from dismissing constitutions as inherently foreign to tribal communities and as merely the by-products of the IRA. Additionally, more tribally specific constitutional histories are necessary to gain a fuller picture of tribal constitutionalism. These histories, when considered as a whole, may build a mosaic that

will allow scholars to look past the colonialist/revolutionary dialectic and onto a richer, more complex, more useful understanding of tribal constitutionalism. Also, future scholars may seek to better understand the actual influence of the IRA, and the influence of a standard IRA constitution (if there truly was one), within Indian Country. Currently, most information about the IRA might best be described as anecdotal. While several tribal communities voted to accept the IRA, several did not. And among those that did vote to accept it, not all wrote constitutions. By gaining a richer understanding of the actual influence of the IRA, the opaque, indeterminate haziness produced by the colonialist/revolutionary dialectic will be rendered clearer.

The Turtle Mountain Band of Chippewa Indians is but one of hundreds of tribal communities. Yet, the community's experience with constitutionalism critically challenges the efficacy of the colonialist/revolutionary dialectic. By using the Turtle Mountain experience to ask why a community might adopt or reject a constitution it becomes apparent that tribal peoples themselves were central to the choices that were made. They were often hard decisions, and they were often decisions that were limited by the contexts in which they were made, but it was the people who made them.

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Appendix A

The 1932 Turtle Mountain Tribal Constitution

CONSTITUTION AND BY-LAWS

FOR THE ORGANIZATION, GOVERNMENT AND ELECTION FOR AN ADVOSIRY COMMITTEE OF THE TURTLE MOUNTIAN BAND OF CHIPPEWA INDIANS.

We, the Indians of the Turtle Mountain Indian Reservation of North Dakota, in general tribal council assembled, do hereby establish an organization to be k own [sic] as the Turtle Mountain Advisory Committee, and do hereby adopt the following Constitution and by-laws to govern the same.

ARTICLE 1. The name of this organization shall be the Turtle Mountain Advisory Committee.

ARTICLE 2. The duties of said committee shall be to promote co-operation of the Turtle Mountain Band of Chippewa Indians with the Superintendent and the plans of the government, and to assist the Superintendent in an advisory way in promoting the social, financial and industrial welfare, and the best interests of the tribe. It is also hereby empowered to consider all business matters pertaining to the tribe and to execute such tribal papers as may be presented for action by the Superintendent, including such instruments which by law require the tribal action. When in the opinion of the Superintendent of a majority of the members of the advisory committee a matter requires action of the general tribal council, the Superintendent may take appropriate steps for the calling of a general council of the tribe.

ARTICLE 3. MEMBERSHIPS AND ELECTIONS.

Section 1. The advisory committee shall be composed of eight recognized enrolled members of the Turtle Mountain Bank [sic] of Chippewa Indians of the age of twenty-one years or more andhaving [sic] at least one fourth Indian blood, enrolled at the Turtle Mountain Agency, not under conviction for crime, and who shall be elected at a meeting of the tribe in general council, and who shall hold office for the term of two years or until their successors are elected and qualified, provided however, that at the first meeting of the council hereunder four members shall be elected for the term of two years, and four members shall be elected for the term of one year, and thereafter four members of the council shall be elected annually by the general council for a term of two years. The members of the council elected at such first meeting and election hereunder for the term of one year shall hold office until the 1st day of July, 1933, and the members of the advisory committee elected at such first meeting and election

hereunder for the term of two years shall hold [sic] office until the 1st day of July, A .D.1934, [sic] unless sooner removed from office or a vacancy occurs.

Section 2. The first meeting of the general tribal council for the purpose of adopting [sic] this constitution and by-laws shall be held [sic] after fifteen days notice thereof shall have been given by posting notices thereof at the agency office and at three other public places upon said Turtle Mountain Indian Reservation. At such first tribal adopting [sic] this constitution and by-laws, such tribal council shall elect members of the advisory committee. The first general tribal council adopting [sic] this constitution and by-laws and electing members of the Advisory Committee as herein provided, shall take the place of an annual council meeting for the year 1932.

Section 3. The annual meeting of the general tribal council for the election of members of the advisory committee and for the transaction of such other business as may be approved by the Superintendent of the Reservation and the Commissioner of Indian Affairs, shall be held on the first Friday of May in each year. The general tribal council shall convene at ten o'clock in the forenoon and balloting shall be conducted between twelve o'clock noon and four o'clock in the afternoon. Fifteen days notice of said annual meeting shall be given by posting notices [sic] thereof at the agency office and at three other public places upon the Turtle Mountain Indian Reservation. The members of the advisory committee elected at such annual meeting shall take office on the first day of July thereafter.

Section 4. Balloting at first meeting of General Tribal Council. The balloting at the first meeting of the general tribal council adopting this Constitution and By-laws shall be under the supervision of the Superintendent, and [sic] only such names shall appear upon the written ballot as shall have been nominated at such tribal council meeting previous to the commencement of balloting, and [sic] who shall be approved by the Superintendent. The superintendent shall keep the ballot open for a sufficient time to permit all members of the tribe present at such first meeting of the tribal council to ballot, but not exceeding three hours. The four persons receiving the largest number of votes shall be elected term expiring July 1st, 1934, and the four members receiving the next highest vote shall be elected for the term expiring July 1st, 1933. At such first meeting each enrolled member of the tribe qualified to vote may vote for eight candidates.

Section 5. Balloting. Balloting at the general tribal council shall be by written ballot and the hours of balloting shall be between the hours of twelve o'clock noon and four o'clock in the afternoon of the day of the meeting of the general tribal council. Balloting shall be upon ballots in such form as may be prescribed by the Superintendent, and the ballots shall be furnished by the Superintendent. The places of balloting shall be fixed by the advisory committee with the advise and consent of the Superintendent. Only such names shall appear upon the ballot as shall have been nominated in accordance with the provisions of these by-laws.

Section 6. Nominations. The advisory committee shall at its meeting in April of each year nominate two persons for every member of the advisory committee to be elected. The superintendent shall also have the right to nominate an equal number of persons to the members to be elected by submitting such names to the Advisory Committee at its meeting in April of each year. Nominations may further be made by petition of twenty-five enrolled members of the tribe entitled to vote, by filing such petitions of nomination with the Superintendent prior to the 20th day of April preceeding [sic] such annual election. Only such names shall appear upon the ballot as have been nominated in accordance with the provisions of this section. Provided however, that at the first meeting and election hereunder in the year 1932, nominations shall be made in open meeting of the general tribal council, but such general tribal council shall not nominate more than twenty persons to fill the eight offices provided for herein, and not more than twenty names shall appear upon the ballot to be prepared by the superintendent for use at such first election held hereunder.

Section 7. Members of the Turtle Mountain Bank [sic] of Chippewa Indians duly enrolled upon the records at the agency of the Turtle Mountain Indian Reservation, twenty-one years of age and over and of sane mind, and not under conviction for crime, shall be entitled to vote at all elections and meetings of the general tribal council provided for herein.

Section 8. Elections. All elections held under this constitution and by-laws shall be under the supervision and direction of the Superintendent of the Turtle Mountain Indian Reservation, who is hereby given power to prescribe such forms, rules and regulations as may be required, not inconsistent with the provisions of this Constitution and By-Laws. The judges of election shall be two in number at each place of balloting and shall be appointed by the advisory committee. The Clerks of election shall be appointed by the Superintendent. Provided However, [sic] that at the first election, all election officers shall be appointed by the Superintendent. The required number of persons receiving the highest number of votes at any election shall be declared elected members of the Advisory Committee. In case of a tie the result shall be determined by lot in the manner and form prescribed by the Superintendent.

Section 9. Special Meeting of General Council. Special meetings of the general tribal council shall be called only by the Superintendent of the Turtle Mountain Indian Agency in accordance with the provisions of Article 2 hereof, who shall give at least fifteen days notice thereof by posting such notices at the agency office and at three other public places upon the Reservation. The notice of the special election shall clearly state the purpose for which such special meeting is called, and only such matters shall be considered at such special meeting as are specified in the notice given therefor. [sic]

Section 10. The advisory committee provided for herein shall meet quarterly at the Agency Office at Belcourt, North Dakota, on the first Mondays of July, October,

January, and April of each year. Special meetings may be called by or with the approval of the superintendent.

ARTICLE 4. OFFICERS.

Section 1. The officers of the advisory committee shall consist of a Chairman, a Vice Chairman, a Secretary and a Treasurer, to be chosen by the members of the advisory committee. Their term of office shall be for the term of one year and they shall be elected annually at the meeting of the advisory committee held on the first Monday of July each year.

Section 2. Before entering upon the duties of their office, all members of the advisory committee and the officers elected shall subscribe to the following oath of office:

I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, and to faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the superintendent in charge of the reservation to promote and protect the best interests of the Indians of the Turtle Mountain Band of Chippewa Indians upon the Turtle Mountain Indian Reservation, and to assist them in every way in their efforts toward better citizenship and progress.

Section 3. The Chairman shall preside at all meetings of the advisory committee and at all meetings of the general tribal council. In his absence, the Vice Chairman shall preside, and in the absence of such officers the committee may choose a temporary chairman to preside over such meeting.

Section 4. The secretary shall make [sic] a record of the proceedings of the committee, and keep the records and books of the committee. Upon conclusion of a meeting of the committee, the secretary shall file a copy of the minutes with the superintendent bearing his signature and that of the Chairman, and shall also send one complete copy thereof to the Commissioner of Indian Affairs, through the Superintendent.

Section 5. The duties of the treasurer shall be to receive and receipt for all moneys paid into the funds of the committee or the council, and to deposit the same immediately in some safe depository in the name of the Turtle Mountain Advisory Committee, and to keep a correct record of all receipts and disbursements, said funds to be withdrawn or paid out only upon the written order of the Advisory Committee duly signed by the Chairman and countersigned by the Secretary. The treasurer shall furnish such security for the funds in his charge as may be deemed necessary by the committee.

Section 6. Any member of the tribe may be permitted to attend the meetings of the advisory committee, and upon unanimous consent of the committee, may be

permitted to discuss questions before the committee; but no one not a member of the committee shall be permitted to vote at meetings of the advisory committee.

ARTICLE 5. CONSTITUTION EFFECTIVE IMMEDIATELY.

Section 1. This constitution and by-laws shall become effective immediately upon its adoption by the tribe in general tribal council called in accordance with the provisions thereof, and upon approval by the Commissioner of Indian Affairs; provided however, that the first advisory committee may be elected at such first general tribal council adopting this constitution and by-laws, but such advisory committee shall not qualify as such or assume such office hereunder, until this constitution and by-laws shall have been approved as adopted by the Commissioner of Indian Affairs.

ARTICLE 6. AMENDMENTS

Section 1. Amendments to this constitution and by-laws may be proposed in writing at any regular meeting of the advisory committee and may be voted upon at the next regular meeting of the advisory committee, but such amendments shall not become effective until approved by the Commissioner of Indian Affairs. Amendments may also be proposed by resolution in writing and adopted at any regular meeting of the general tribal council, but such amendments shall not become effective until they have been approved by majority vote of the advisory committee and further approved by the Commissioner of Indian Affairs.

Appendix B

The constitution of the Turtle Mountain Co-Operative Association

Constitution and By-Laws, (Organization)

Art. 1. The name of the organization shall be the Turtle Mountain Cooperative Association.

The officers as elected chairman the President, Secretary, Treasurer, shall constitute an executer [sic] committee shall have charge of the affairs of the organization in General, and perform such business as is not otherwise provided for herein the executer [sic] committee shall have power to appropriate money only in and its best interest of the association, and then only with unininous [sic] vote of that body, the Treasurer shall be under bond to be arranged by the Superintendent of the Belcourt Agency.

Art. 2. The President and Chairmans [sic] shall at all times so conduct the meetings in harmony with the usages and the rules of the standard authorities, But [sic] not such strict confronety [sic] is [sic] to lessen the usefullness [sic] of the Association.

Art. 3. These by-laws may be changed or added to any regular meeting of the organization by a two-thirds vote of the members present, provided the amendment or addition has been read in open meeting at the previous meeting.

Art. 4. The president may authorize a calling of a meeting at any time, when he thinks its [sic] the best interest of the organization, and must call a meeting if presented with a petition containing 25 names of the association membership.

Art. 5. The Association is non-secreterian [sic] and non-partisen [sic] and politically we shall boast the candidacies of candidates who we are convinced will work and take a genuine interest in the welfair [sic] of the Indians on the Reservation.

Art. 6. Our two-thirds of the Association work on the Reservation is educational, therefor [sic] we bespeak the advice, goodwill sympathy and encouragement of the Indian Affairs on authorizing the work of the Association.

Art. 7. A chairman can hold a meeting only in his District.

Art. 8. We stand for law enforcement at all times and co-operation with the Agency officials and especially the Farm program and the work of the Field Nurse and Social Worker is desired and encouraged.

Art. 9. Every Indian of the Turtle Mountain Reservation, ward, patent-in-fee, enrolled or non-enrolled Indian man and woman of good character can become Members of the Association or Making Application [?] to the Chairman of the District in Which they Live.

Art. 10. In each of the Six Districts of the Turtle Mountain Officers are elected by the people at a Mass Meeting, meeting held for the Purpose consisting of a Chairman, Secretary, and Sergent [sic] at Arms, the Chairman then Elect [sic] a President, Secretary and Treasuray [sic] for the Association. The President shall be held Respondisblity [sic] for his action by the Chairman and when such action is justified, he can be Removed from office by a two thirds vote of the Chairmans.

Art. 11. The Association has the authority to put fort [sic] such Measures as will insure its good name and protection among [sic] its Members.

Art. 12. There can be no division of authority there for [sic] in working out our program with the Government, we shall offer Suggestion [sic] and dictate, [sic] but in the event our requests or suggestions are absolutely ignored we shall bring about a better understanding of our attitude.

Art. 13. The president to have power to remove any officer [sic] is not working for the best interest of the Organization.

Art. 14. The Turtle Mountain Indians are Organized in an Association for the purpose of the bettering their mutual welfair [sic] Protection and Responsibilities as Citizens can be advanced protected and promulgated.

Section 1. Every member of the Association, Man and Woman, who shall inter [sic] in the Records of the Charter of the Associationn [sic] shall consist to give a sum of Money required by these Constitution By-Laws, which a fee of twenty-five cents shall be provided to protect its Members on a Officials Emergency, as that such cases can be observed to Buy Cards and Bottons [sic] and such cases to rais [sic] fund for the Association benefit.

Any one who inters [sic] in the Association, will be given the authority to hold his Botton [sic] and card a period of one year, from the date required dated on card printed. If any Member wishes to change district, [sic] he shall dem [sic] to notify the Chairman in which he inters that he shall be recorded the Same as other Districts, of the Six Districts by Making a leave request to the Chairman Previous District.

Section 2. If any member of this organization who will leave to Other District [sic] to secure industrial welfair [sic] will be to Testfy [sic] his Reque [sic] to the Chiarman in which he inters [sic] to scure [sic] Help or work to be scured [sic] to the Member, without this sign of Membership he shall not be helped by the Ass'n.

Sect. 3. Every Member of the Association, who is a catholic [sic] and have the right [sic] have his children to be given a religious instruction by the Officials of the School in which School are attending to.

Sect. 4. The Trusty [sic] of the Association will be held responsibility [sic] to Write any Business Letters for the Members, that any special Letter for the Association, will be shown to all the Members, by calling attention to all the Secretaries of the six Districts, by writing Immediately.

Appendix C

The constitution of the Turtle Mountain Chippewa Indian Tribal Association, Inc.

Constitution

of the

TURTLE MOUNTAIN CHIPPEWA INDIAN TRIBAL ASSOCIATION,
INCORPORATED.

PREAMBLE: We, the duly enrolled and non-enrolled members of the Turtle Mountain Indian Reservation in the State of North Dakota, in order to secure to ourselves the benefits of Self-Government and the management of our own affairs without interference from other sources, and to perpetuate this Reservation as an abiding place for all members of the Turtle Mountain tribes, do establish this Constitution of the TURTLE MOUNTAIN CHIPPEWA INDIAN TRIBAL ASSOCIATION, INCORPORATED.

ARTICLE 1. Section 1. NAME:

This organization shall be known and do business as the Turtle Mountain Chippewa Indian Tribal Association, Incorporated.

Section 2. Objectives:

- A. To establish and enforce such rules as may be necessary to safe-guard Indian property for the use of present and future and to prevent the alienation of lands to whites and non-members of this Association.
- B. To establish and maintain a form of self-government that shall promote the advancement and welfare of the Indian Community of the Turtle Mountain Reservation.
- C. To establish and maintain such rules of inheritance as well as assure to all Indians of the present or future generations a share of lands upon which to establish a home.

ARTICLE II. Section 1. ELIGIBILITY:

Only persons who have 1/8 degree of Indian blood or more and are duly enrolled or should be enrolled of the Turtle Mountain Tribes are eligible for membership or holdings in this Association.

Section 2. ELECTION TO MEMBERSHIP:

Once each year, by a majority vote of the governing body of this Association, new members may be eligible under article 2, section 1, hereof.

Section 3. OBLIGATION OF MEMBERS:

All members are obligated to abide by and uphold the constitution and by-laws of this Association.

ARTICLE III. Section 1. LEGISLATIVE POWERS:

All legislative powers herein granted shall be vested in a Tribal Council which shall be elected as hereinafter prescribed.

Section 2. Tribal Council:

- A. The Tribal Council shall be composed of members chosen every second year by popular vote
- B. No persons shall represent the tribe on the Tribal Council who has not attained the age of twenty-five years, been a resident on the reservation for three years or the State of North Dakota, and is duly enrolled member of this Association.
- C. Representation on the Tribal Council shall be apportioned among the several districts according to their respective members, one councilman for every one hundred enrolled Association members. The actual enumeration shall be made prior to July 1st of each election year. The reservation shall be divided into four council districts with clearly defined boundaries and shall approximate the present farm districts. Other districts may be formed outside the limits of the reservation as required.
- D. When vacancies happen in the representation from any district, the President of the Tribal Council shall issue writ of election to fill such vacancies. At least 60 days' [sic] notice of such election shall be given.
- E. The organization of the Tribal Council shall consist of the following officers: President, Vice-President, Secretary-Treasurer, and these officers shall be chosen by the Tribal Council when properly convened.

Section 3. Election:

- A. Election to membership on the Tribal Council shall be held the first Tuesday in December of every second year. Duly elected Councilmen will take office on January 1 of the succeeding year.
- B. Election shall be taken by ballot, and polling places in each district shall be established by the Tribal Council. The Tribal Council shall appoint three election judges to serve at each polling place for each election.
- C. Candidates for election to membership on the Tribal Council shall give public notice of such intention at least 30 days prior to the election date and at the same time file with the Secretary of the Tribal Council a certificate of such intention endorsed by five duly qualified electors, other than immediate relative.
- D. All persons of either sex, over the age of 21 years, and duly qualified members of this Association, are entitled to vote provided they have registered as such at least sixty days prior to the election.
- E. The Tribal Council shall assemble at least once every month, and such meetings shall be on the first Monday of each month, unless otherwise provided by common consent.
- F. A majority of the members shall constitute a quorum to do business and they shall certify to the election returns and qualifications of its own members.

Section 4. COMPENSATION:

- A. The councilmen shall receive as compensation for their services \$5.00 per day while in session, and a mileage fee of five cents per mile for travel from their home to place of meeting and return. These expenses to be paid from tribal funds.

Section 5. COUNCIL POWERS:

- A. The Tribal Council may determine the rules of its proceedings, punish its members for disorderly behavior, and with concurrence of two-thirds, expel a member.
- B. Each Tribal Council shall keep a journal of its proceedings and may at its pleasure publish same.
- C. The Tribal Council shall have power to establish district or community governments inferior to the reservational [sic] government and authorize such governments to pass local ordinances which would specify

punishments for misdemeanors, such as drunkenness, [sic] disorderly conduct, dishonestly, etc.

- D. To establish ordinances, rules and regulations governing law enforcement on the reservation, to set up courts for the trial and punishment of offenders of such ordinances, rules and regulations, provided such cases did not come within the jurisdiction [sic] of the Federal Courts.
- E. To represent their tribes before Congress or the Executive Departments of the United States or in the Courts.
- F. To prohibit the sale, mortgage, or in any way the disposal of individual Indian or tribal lands to persons other than duly enrolled members of this Association.
- G. To prohibit the over-grazing of lands, excessive sale or slaughter of cattle, or other depletion of the capital of natural resources of the community and the Association.
- H. To prohibit excessive or unjust punishment of individuals by the community or reservational [sic] courts.
- I. To submit through proper government channels recommendations for the expenditure of tribal funds and to authorize their disbursement in accordance with budget recommendations when received.
- J. To seek grants of money through government channels for tribal support, reimburseable [sic] assistance, reservational [sic] improvement, health, education, and other necessary activities looking toward the advancement of the members of this Association, and to authorize the expenditure of these funds, when and if allotted, in accordance with approved budget recommendations.
- K. To establish laws relating to inheritance, assignments, use or transfer of allotted or tribal lands within the jurisdiction.
- L. To consolidate all existing executive officers into one executive head to be known at [sic] the Reservation Superintendent who shall have general executive jurisdiction and supervision, subject to limitations herein prescribed over the Indian reservation and all property thereunto belonging. All other officers of such reservation shall be under and subordinate to said reservation superintendent. The Reservation Superintendent shall be appointed by the Secretary of the Interior with the approval and confirmation of the Tribal Council.

- M. To confirm or reject nominations made by the Superintendent for the appointment of all skilled labor, all health and surgical, all clerical, educational forestry or other trained personnel. A majority vote of the Tribal Council is required for confirmation or rejection. Indian applicants, if duly qualified, shall have preference in all appointments and will not be required to be examined under Civil Service Rules.
- N. The cause of the removal of any appointee, except the Reservation Superintendent, by presenting to the Superintendent with a resolution signed by three-fourths or more of the Tribal Council, it being the duty of said Reservation Superintendent to remove such employee within thirty days after the date of receipt of such resolution.
- O. To cause the removal of Reservation Superintendent by submitting to the Secretary of the Interior a resolution signed by at least three-fourths of the Tribal Council, meeting in regular session, calling for the removal of said Superintendent, setting forth plainly and concisely the cause or causes that prompted such resolution. Within thirty days from the date of receipt of this resolution, it shall be the duty of the Commissioner of Indian Affairs to call, upon thirty days' notice, a referendum election upon the question of the removal of said Superintendent, at which election all of the adult members of the tribe possessing the qualifications hereinbefore set forth, shall be entitled to vote, and the action of the referendum election, in case it carry by a vote of at least two-thirds of all adult members having such qualifications, for the removal of said Reservation Superintendent, shall be final and binding, the Secretary of the Interior must, in accordance therewith and within thirty days after the returns of said election have been certified to him, remove said Superintendent and with the approval and confirmation of the Tribal Council appoint his successor.
- P. To employ legal counsel but the choice and fixing of the fees paid such legal counsel shall, on petition of at least five per cent of the adult members of the tribe having the qualifications of electors hereinbefore specified, be subject to review and approval by the Attorney General of the United States.
- Q. To assess fees against members of the Association or their property to obtain funds for payment of expenses of the Tribal Council or for carrying on any project that in the Tribal Council's opinion may be beneficial to the Association as a whole. This assessment must be made a referendum measure should a petition signed by five percent of the legal voters of the Association be presented to the Tribal Council within thirty days after the passage of said resolution.

- R. To set up on recommendation of the Reservation Superintendent, such positions as may be necessary to carry on the supervision and administrative affairs of the Association, and of the Reservation Superintendent's office.
- S. To enter into negotiations for leases, disposal of timber, minerals, or other natural resources of the tribe, and to approve such leases or other agreements, provided that this action may become a referendum measure should a petition signed by five percent of the legal voters be presented to the Tribal Council within thirty days after such action has been authorized.
- T. To collect and disburse tribal or individual income from such leases, timber sales, royalties or other sources, in accordance with government regulations now in effect.

ARTICLE IV. DUTIES OF SUPERINTENDENT:

1. The Reservation Superintendent shall be the executive head of the entire jurisdiction and be responsible only to the Tribal Council and the Government of the United States. He shall carry out all rules, regulations and ordinances legally passed for the Government of this jurisdiction and may appoint duly authorized employees to act for him.
2. Every measure or resolution which shall be passed by the Tribal Council, before it becomes effective, shall be presented to the Reservation Superintendent; if he approves, he shall sign it, but, if not, he shall return it with his objections to the Tribal Council who shall enter the objections at large on their records, and proceed to reconsider it. If, after due consideration, two-thirds of the Tribal Council agree to pass the resolution, it shall be referred to the legal voters of the Association, and must be carried by a two-thirds vote of all adult members having the qualifications hereinbefore set forth. If any resolution shall not be returned by Reservation Superintendent within thirty days (Sunday excepted) after it shall have been presented to him, the same shall become effective, in like manner as if he had signed it. Return of resolution to the Secretary of the Tribal Council shall be deemed legal notice.
3. The Reservation Superintendent shall act as Disbursing Agent for the Association and maybe required to furnish bond for the proper performance of his office. He shall refuse to make any disbursements which in his opinion are illegal until authorized to do so by the Commissioner of Indian Affairs.
4. The Reservation Superintendent shall have power, by and with the advice of the Tribal Council, provided two-thirds of the Tribal Council present shall concur, to establish needful positions, and shall nominate and by and with

the advice and consent of the Tribal Council, appoint employees to these positions, but the Tribal Council may, by resolution, vest the appointment of such inferior employees as they think proper in the Reservation Superintendent alone.

5. The Reservation Superintendent shall from time to time give to the Tribal Council information as to the state of the Association, and recommend for their consideration such measures as he shall judge necessary and expedient.

ARTICLE V. JUDICIAL POWERS:

1. The judicial powers of the Association shall be vested in one reservational [sic] court, and in such inferior courts as the Tribal Council from time to time establish. The judges, both of reservational [sic] and inferior courts, shall hold their office during good behavior, and shall receive for their services a compensation which shall be determined by the Tribal Council.
2. The reservational [sic] court shall consist of a member selected from each district, and their judicial power shall extend to all cases in law and equity, arising under this Constitution.
3. Reservational [sic] judges, police officers, shall be elected by the Tribal Council and their appointment confirmed by a two-thirds vote.
4. In cases affecting state or federal laws, full power is granted these officials in performing their duties upon the reservation.

ARTICLE VI. AMENDMENTS:

Amendments to this Constitution can be made by a two-thirds referendum vote of all the duly qualified Association members and the approval of the Congress of the United States of America.

BY-LAWS:

By-Laws governing in detail the activities of the Association and its officers or members may be proposed by any member of the Tribal Council at any meeting and become effective upon passage by a majority vote, provided they do not conflict with the provisions of the Constitution and their approval is in accordance with such action herein authorized.

APPROVAL OF CONSTITUTION:

Before this Constitution can become binding upon the Tribes of Turtle Mountain Indian Reservation, it must be approved by a two-thirds vote by ballot of all enrolled adult members of these tribes. Notice of such election shall be given 60 days before date of such election, and polling places and judges authorized for each district.

BY-LAWS

of the

TURTLE MOUNTAIN CHIPPEWA INDIAN COUNCIL

1. MEETING PLACE:

Section 1. The official meeting place of the Tribal Council shall be at the Agency Headquarters, Belcourt, North Dakota.

2. DUTIES OF OFFICERS:

1. The President shall preside at all meetings of the Tribal Council and to direct the work of its officers. He shall appoint such standing committees as are provided for in the By-Laws and Constitution and such temporary committees as the business of the Association may require. He shall issue all necessary writs for regular or special elections, setting dates place or polling, cause due notices to be posted and in other ways perform any and all duties devolving upon his office with diligence and dispatch.
2. The Vice President shall preside at any meeting of the Tribal Council from which the President is absent, and in the event of the death of the President or his resignation or removal from office, he shall serve the remainder of the term as President.
3. The Secretary-Treasurer shall conduct the correspondence of the Tribal Council, shall keep all records, minutes of the meetings, roster of members, records as to the expenditures and allotments of tribal, gratuitous or other funds over which the Tribal Council has sole charge. Approval of Tribal Council expenses. He shall keep an accurate record of all members of the Association, prepare necessary resolutions for appropriate action by the Tribal Council; he shall prepare or cause to be prepared by such assistants as are assigned to

him by the President, such reports or registers as the President or Tribal Council may direct.

3. AUTHORITY OF TRIBAL COUNCIL

1. The Tribal Council shall established one reservational [sic] court, consisting of three members, one chosen by the Tribal Council from each district, who shall be authorized to pass judgment upon all matter of law and equity arising under the Constitution. These courts will have the same status as that of State and County courts and will confine itself to powers not invested in Federal or State courts. Appeal from inferior or community courts may be made to the reservational [sic] courts.
2. The Tribal Council shall establish in each district one Community or Police court to pass judgment on all misdemeanors, such as drunkenness, disorderly conduct, nuisances, etc.
3. The Tribal Council shall authorize the establishment of a Community or District Government, consisting of one Commissioner and two assistants, who shall be elected by ballot, and shall transact the business of the district in accordance with the provisions of a Constitution which has been submitted to the Tribal Council and received two-thirds vote of approval, and the district authorized to act thereunder. No provisions of district Constitution must conflict with the Reservational [sic] Constitution of the Association.
4. The Tribal Council may commission one police officer for each district to enforce either Tribal or District rules, regulations or resolutions and Federal Laws. One Chief of Police shall be commissioned.
5. The Tribal Council hereby prohibits the sale or alienation of Indian lands, either individual or tribal, to persons other than members of the tribe, except on specific authority from the United States Congress.
6. The Tribal Council hereby provides that all inherited lands must be kept intact as originally allotted, and must pass to the oldest direct descendent who is without land holdings, provided such heir is a qualified member of this Association. No title shall pass into the possession of non-qualified members of this Association, though such heirs may be permitted to reside upon the reservation and make use of selections of lands during their lifetime, provided they procure the consent of the Tribal Council to such action.

7. All lands belonging to deceased Indians, who do not have heirs that can qualify under the preceding provisions, shall revert to the tribe and be available for reallocation to orphans or landless members of the Association, provided, however, that direct heirs of the deceased relative may arrange exchanges of allotments with the approval of the Tribal Council whereby improved lands may be held in the family and unimproved lands in their stead revert to the tribe for reallocation as herein provided. The order of succession and right to exchange privileges will be determined by the Tribal Council for each individual case, though the customary practice will be for the older heir to receive preference, should such be requested.
8. In the event that any aged and destitute Indian member of this Association desire to transfer his original or inherited allotments to the tribe before his death, the same may be accepted provided the Tribal Council will authorize a payment of a monthly pension, of not less than \$10.00 and not more than \$25.00, to such individual from tribal or gratuitous [sic] funds under their control or specifically appropriated for this purpose.
9. Allotments can not be transferred by will to other than landless Indian members of this Association. Aged and destitute Indian members of this Association may transfer by will to landless Indians who are eligible under this section, their original allotments or inherited lands in return for their support and maintenance during their declining years by such beneficiary, provided that such agreement has the approval of the Tribal Council.
10. When a duly qualified enrolled member of this Association shall reach the age of five years and still remain landless, his legal guardian shall be permitted to purchase from tribal holdings, an allotment suitable to the future needs of the child but not in excess of the present allotment unit, payment for which may be made in twenty annual payments, either from combined income of the family or from lease rentals upon this tract or both.
11. The Tribal Council shall seek either gratuitous or tribal grants to purchase all reservational [sic] lands now alienated through direct gift to the State for school purposes or through the past issuance of patent-in-fee, or disposal through inheritance under State laws, or allotted to Indians who can not qualify for membership in this Association.

12. Present holdings of inherited lands must be transferred in original units to the next oldest landless heir of the present heir who owns the larger interest in the holding. When the estate is held in equal parts by two or more heirs, the oldest then living heir may have the right to choose to whom the land may be transferred.
13. Tribal funds and income is to be used to meet the necessary expenses of the Tribal and Community governments, payment of compensation and expenses of councilmen, community commissioners, reservational [sic] and community judges and police officers.
14. The United States Government through its Congress will be expected to grant funds for the use of this Association in furthering the educational, health, industrial and agricultural advancement of these Indians. All expenditures of funds from these grants will be disbursed in accordance with Government regulations and in accordance with Budgets prepared by said Tribal Council. Necessary expenses in the administration of the affairs of this Association and of this jurisdiction will be met from these grants. The Tribal Council, upon recommendation of the Superintendent will determine the number of necessary employees, their rate of pay, the type of work performed and the necessary qualifications. The recall provision, as outlined in the Constitution shall be in effect at all times.

Appendix D

The first “revised” Turtle Mountain Tribal Constitution

(Revised)
CONSTITUTION AND BY-LAWS
of the
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

PREAMBLE

We, the members of the Turtle Mountain Advisory Committee, the governing body of the Turtle Mountain Band of Chippewa Indians, operating under a constitution and by-laws which is outmoded, inadequate, and a detriment to fit our actions to present day needs, do hereby adopt a revision of our constitution and by-laws in the interests of increased effectiveness of tribal government, and a change of name for the governing tribal organization as a matter of convenience.

ARTICLE 1. NAME OF ORGANIZATION.

The name of this organization henceforth shall be the Turtle Mountain Tribal Council, an elective body, as distinguished from the general tribal council, composed of membership of the tribe as a whole.

ARTICLE 2. POWERS AND DUTIES OF THE TRIBAL COUNCIL.

The duties of the tribal council shall be to cooperate with the Commissioner of Indian Affairs or his representatives, or any branch of the Federal, State, or local governments in promoting the best interests of the Turtle Mountain Band of Chippewa Indians in relation to social, economic, educational and health welfare. It is empowered to consider all business matters pertaining to the tribe, and to transact any such business consistent with current regulations and tribal plans of operation, and to execute such tribal papers as may be presented for action, including such instruments which by law requires tribal action. It is also empowered to negotiate with Federal, State and local governments, to employ legal counsel other than claims attorneys, and to assess fees for license upon non-tribal members for special privileges, and the same may apply to tribal members if approved by referendum of the general tribal council. It is further empowered to establish codes and ordinances for the protection of game and fish and for the regulation of the taking thereof, including the establishing of penalties for violations. It is finally empowered to establish districts for the purpose of promoting fair and equitable representation on the tribal council, and codes and ordinances to fit local needs not specifically covered in 25 C.F.R., including the establishing of penalties for violations, provided, however, that none of its powers shall be in conflict with the Constitution of the United States and statutes imposing limitations.

ARTICLE 3. MEMBERSHIPS AND ELECTIONS.

Section 1. Eligibility for nomination.

The Tribal Council shall be composed of eight recognized enrolled members of the Turtle Mountain Band of Chippewa Indians of the age of twenty one years or more, and having at least one-fourth Indian blood, enrolled at the Turtle Mountain Consolidated Agency, not under conviction of crime, of sane mind, and who shall be elected at the annual tribal elections to be held on the second Friday of May each year, and who shall hold office for the term of two years or until their successors are qualified and subscribe to oath of office at the first regularly called meeting of July of each year.

Section 2. Eligibility for Voting.

Members of the Turtle Mountain Band of Chippewa Indians duly enrolled upon the records of the Turtle Mountain Consolidated Agency, eighteen years or age or over, of sane mind, and not under conviction of crime, shall be entitled to vote at all elections and meetings of the general tribal council.

Section 3. Nominations.

The Tribal Council shall at its first meeting of April in each year nominate two persons for every member of the tribal council to be elected. In addition to the foregoing nominations, each incumbent whose term of office expires within the year shall also be a nominee. Nominations may be further made by petition of twenty five members of the tribe entitled to vote, provided, however that the nominee by petition shall be twenty one years of age or over, by filing such petition of nominations with the Superintendent, Chairman of the Tribal Council, or the Tribal Clerk prior to the 20th day of April preceding such annual elections. Only such names shall appear upon the ballot as have been nominated in accordance with the provisions of this section.

Section 4. Elections.

All elections held under this constitution and by-laws shall be under the supervision of the tribal council, and they are hereby empowered to prescribe such forms, rules and regulations as may be required, not inconsistent with this constitution and by-laws. The places of voting shall be designated by Tribal Council with the consent of the Superintendent where necessary, and two judges of election together with one inspector shall be appointed by the Tribal Council and shall be stationed at each place of voting. The clerks of election shall be recruited from the high school student body of the Belcourt Community School, with safe conduct to and from places of voting a prerequisite, and appointment shall be made by the Superintendent upon recommendations of the officer in charge of the school. When such appointments are not possible, the Chairman of the Tribal Council shall be empowered to appoint clerks of election. The required number of persons receiving the highest number of votes at any election shall be declared elected members of the tribal council. In case of a tie the results shall be determined by lot in the manner and form acceptable to the parties tied.

Section 5. Voting.

Voting at the annual tribal elections shall be by written ballot and the hours of voting shall be between the hours of nine O'clock and six O'clock in the afternoon of the day of the election. Voting shall be upon ballots prepared and furnished by the Tribal Council, and such ballots shall not be counted at the place of voting but shall be sealed in the ballot boxes by the inspectors at each place of voting and delivered immediately after the closing hour to a central point designated by the Tribal Council for counting, and such counting shall be under the supervision of the Superintendent, the Chairman of the Tribal Council, or their representative. Voting at meetings of the general tribal council shall be by hand count unless otherwise requested by a majority of tribal members at the meeting.

Section 6. Irregularities in annual tribal elections.

Upon evidence of irregularities or improper conduct or elections, the Tribal Council shall review such evidences and when in the opinion of a majority of its members such evidence is substantiated, it may declare the election void and of no effect and order a special election for the same purpose, the same general rules apply as in the annual tribal election. Also, when in the opinion of a nominee there is reason to question the ballot count, he may file a protest with the Chairman of the Tribal Council and demand a recount of ballots.

Section 7. Meetings of the Tribal Council.

The Tribal Council provided for herein shall meet monthly on the first Monday of each month at the agency office in Belcourt, North Dakota, or other places so designated by them. Special meetings may be called by the Chairman of the Tribal Council, or at the request of a majority of the members of the Tribal Council when the need of such meetings are deemed urgent and necessary. Should any regular meeting dates fall on a holiday, the regular date of the meeting shall be set by the Chairman.

Section 8. Admittance to attend meetings of the Tribal Council.

Any member of the tribe may be permitted to attend the meetings of the tribal council, and upon unanimous consent of the council, may be permitted to discuss questions before the council; but no one not a member of the tribal council shall be permitted to vote at such meetings.

Section 9. Special meeting of the General Tribal Council.

Special meetings of the general tribal council shall be called only by the Superintendent of the Turtle Mountain Consolidated Agency or the Chairman of the Turtle Mountain Tribal Council, who shall give at least fifteen days notice thereof by posting such notices at the agency office or in the press optional, and at three or more public places frequented by members of the tribe. The notice of the special meeting shall clearly state the purpose for which such special meeting is called, and only such matters shall be considered at such special meeting as are specified in the notice given.

Section 10. Quorums.

A quorum of the tribal council shall consist of five members and no business shall be transacted unless a quorum is present. A quorum of the general tribal council shall consist of one hundred members and the same rules will apply as in a quorum of the tribal council.

ARTICLE 4. OFFICERS.

Section 1. Officers of the Tribal Council.

The officers of the Tribal Council shall consist of a chairman, a vice-chairman, a secretary, and treasurer, to be chosen by the members of the Tribal Council. Their term of office shall be for one year and they shall be elected annually at the first regularly called meeting of July in each year. The office of secretary, and treasurer, may be combined or separate, provided, however, that the office of treasurer may be omitted or activated at the discretion of the tribal council.

Section 2. Oath of Office.

Before entering upon the duties of their office, all members of the tribal council and the officers elected shall subscribe to the following oath of office:

I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, and to faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the Superintendent in charge of the reservation to promote and protect the best interests of the Turtle Mountain Band of Chippewa Indians enrolled upon the Turtle Mountain Indian Reservation, and to assist them in every way in their efforts toward better citizenship and progress.

Section 3. Duties of the Chairman, and Vice-Chairman.

The chairman shall preside at all meetings of the tribal council and at all meetings of the general tribal council, and shall be empowered to affix his signature to official documents, appoint committees, exercise any authority delegated to him by the tribal council, and shall vote only in the case of a tie or at tribal council meetings with a minimum number of members to form a quorum. In his absence the vice-chairman shall preside with equal authority, and in the absence of such officers, the tribal council may choose a temporary chairman to preside.

Section 4. Duties of the Secretary.

The secretary shall record the proceedings, and keep the records and books of the tribal council. Upon completion of minutes of a meeting of the tribal council or the general tribal council, the Secretary shall file copies of the minutes in accordance with current regulations pertaining thereto. At the request of the Secretary, the chairman of the tribal council may delegate the secretarial duties to the tribal clerk.

Section 5. Duties of the Treasurer.

The duties of the treasurer shall be to receive and receipt for all monies paid into the funds of the tribal council, and to deposit the same in accordance with such rules as may be adopted by the tribal council, in a safe depository in the name of the Turtle Mountain Tribal Council, or any such other name designated by them. He shall also keep a current record of all receipts and disbursements; said funds to be withdrawn or paid out only upon written approval of the tribal council. Authority shall be vested in the chairman or secretary to sign when funds are withdrawn or paid out by check, and such authority shall also be vested in the tribal clerk, provided, however, that he is bonded in the amount deemed appropriate by the tribal council. The treasurer shall also be bonded as prescribed by the tribal council for the funds in his charge. When the office of the treasurer is inactive the tribal clerk shall assume the regular duties of the treasurer.

Section 6. Compensation.

The tribal council may prescribe such compensation for its officers, members and committees of the council as it may deem advisable from such funds as provided for the purpose in the tribal budget.

ARTICLE 5. CONSTITUTION EFFECTIVE IMMEDIATELY.

Section 1. This constitution and by-laws shall become effective immediately upon its adoption by the tribal council and upon the approval by the Commissioner of Indian Affairs.

ARTICLE 6. AMENDMENTS.

Section 1. Amendments to the constitution and by-laws.

Amendments to this constitution and by-laws may be proposed in writing at any regular meeting of the tribal council and may be voted upon at the same meeting, or tabled until the next regular monthly meeting of the tribal council, and at such time a vote on the amendment shall become mandatory. Amendments may also be proposed by resolution in writing adopted at any meeting of the general tribal council, but such amendments by one method or the other shall not become effective until they have been approved by the Commissioner of Indian Affairs.

ARTICLE 7. VACANCIES.

Section 1. To fill vacancies.

Any vacancy caused by death, resignation or other cause may be filled by appointment for the unexpired term made by the chairman and confirmed by a majority vote of the tribal council. Should the vacancies involve the office of Chairman, and the office of Vice-Chairman simultaneously, the remaining members of the tribal council shall elect from among themselves or nominees from the previous tribal election replacements for such offices for the unexpired terms. Absence from two consecutive regular meetings except for reasons of sickness or family distress shall be cause for declaring the office vacant.

Section 2. Removal for cause.

Any officer or member of the tribal council may be removed for cause, and such cause shall be based upon evidence of gross negligence of duty or misconduct in discharging the duties of office. Charges to remove from office any such officer or member of the tribal council shall be made by signed complaint filed before the tribal council and any officer or member so charged may appeal a hearing of his case before a court of proper jurisdiction or the Tribal Council and the decision of said court or proper jurisdiction or tribal council shall be final.

CERTIFICATION

I, the undersigned, as Secretary of the Advisory Committee of the Turtle Mountain Band of Chippewa Indians, an unincorporated tribe, hereby certif. that the Advisory Committee is composed of eight members of whom seven constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held the 26th day of April, 1957, that the foregoing revision of the Constitution and By-Laws of the Turtle Mountain Band of Chippewa Indians was duly adopted at such meeting by the affirmative vote of seven members, and said revision has not been rescinded or amended in any way.

Dated this 4th day of December, 1957.

S/ Fays Albert
Fays Albert, Secretary-Treasurer

ATTEST:

S/ Patrick Gourneau
Patrick Gourneau, Chairman

Commissioner of Indian Affairs

Date

Appendix E

The first “proposed” Turtle Mountain Tribal Constitution

PROPOSED

CONSTITUTION AND BY LAWS
OF THE
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

PREAMBLE

We, the members of the Turtle Mountain Band of Chippewa Indians of Belcourt, North Dakota, in order to develop [sic] and enjoy the advantages of self-rule; to instill democratic processes and opportunities [sic]; to promote our general welfare, education and prosperity; to insure self-sustenance and efficient peoples and to promote good and law-abiding citizens, do ordain and establish this constitution and by laws for the Turtle Mountain Band of Chippewa Indians.

ARTICLE I TERRITORY

Section 1. Jurisdiction. The jurisdiction of the Turtle Mountain Band of Chippewa Indians shall extend to individual trust and Tribal lands, within the present confines of the Turtle Mountain Agency, together with such other lands without said reservation which have been or maybe [sic] added since executive [sic] Order of March 29, 1884, as amended.

Section 2. Area. The Boundaries of said jurisdiction shall be as follows: District I shall comprise a rectangular area four (4) miles wide on the North, six (6) miles long on the East, being the Eastern most district; Districts II, III and IV shall follow consecutively to the West, each district being the same size and shape.

ARTICLE II MEMBERSHIP

Section 1. The membership of the Tribe shall consist of all persons now carried on the official census role [sic] and all children born to such members.

Section 2. The Tribal Business Council shall have power to adopt ordinances, subject to review by the Secretary of the Interior, governing future memberships, the adoption of new members and the revision and/or closing of membership rolls.

ARTICLE III GOVERNING BODY

Section 1. The governing body of the Turtle Mountain Tribe shall be known as the Tribal Business Council, and [sic] elective body, as distinguished from the General Tribal Council, composed of members of the entire Tribe.

Section 2. The Tribal Business Council shall be composed of eight (8) members elected from the Districts as follows: District I, 2 representatives; District II, 2 representatives; District III, 2 representatives; District IV, 2 representatives.

Section 3. The first election of the Tribal Business Council shall be called by the Superintendent of the Reservation within 30 days after the adoption and approval of this constitution; manner of calling, conduction of election , [sic] election officers and canvassing the ballots shall be supervised by the superintendent of the Reservation.

Section 4. Within 10 days after [sic] the election, the duly elected members of the Tribal Council shall meet and organize by electing a chairman, vice chairman, secretary and treasurer from its own members; Any other officers or employees shall be elected by the Council within or without the Council members as the Council deems necessary.

Section 5. Term of office shall be two years and until their successors are elected and qualified.

Section 6. Any qualified voter of 1/4 degree of Turtle Mountain Band of Chippewa Indian, who is 21 [sic] years of age or over, shall be entitled to become a candidate for the Tribal Business Council by filing notice of his candidacy with the Tribal Clerk.

Section 7. A quorum at all council meetings shall [sic] be represented by a simple majority.

Section 8. The Tribal Business Council shall meet monthly on the 1st Monday of each month at the agency office in Belcourt, North Dakota, or such other place which may be designated. Special meetings may be [sic] called by the Chairman of the Council by giving due notice to each member. If the regular meeting date falls on a holiday, the following day shall be the meeting day.

ARTICLE IV OFFICERS

Section 1. Chairman. The Chairman shall preside at all meetings of the Council and generally direct its work and activities; he shall be empowered to affix his signature to official documents and papers, appoint committees to carry out the policies of the Council, to exercise any and all authority to obtain the wishes of the Council; he shall vote only in case of tie vote and shall be counted as a member of the council to constitute a quorum. The VICE-CHAIRMAN shall have the same duties in case of the absence of the chairman.

Section 2. Clerk. The clerk shall record the proceedings and keep the records and books of the Tribal Council. Upon completion of minutes of a meeting, the clerk shall file copies of the minutes in accordance with current regulations pertaining thereto.. [sic]

Section 3. Treasurer. The duties of the treasurer shall be to receive and receipt for all monies paid into the funds of the Tribal Council and to deposit said funds in accordance with such rules as maybe [sic] adopted by the Tribal Council in a safe depository in the name of the Trutle [sic] Mountain Tribal Council. He shall keep a record of all receipts and disbursements; all monies paid out of such fund must be done on Council authorization and all checks countersigned by the Chairman; the Tribal Council shall in their discretion demand that the Treasurer post bond in an amount to equal the average to be handled by said treasurer during any given year.

Section 4. The duties of any and all other officers or employees [sic] shall be prescribed by the Tribal Business Council.

Section 5. At all general or special meetings of the Tribal Business Council the members shall be paid a per diem of \$8.00.

ARTICLE V ELECTIONS

Section 1. Alelections [sic] shall be by secret ballot with a simple majority vote deciding any and all elections.

Section 2. Any duly enrolled member of the Tribe who is 18 years of age or over shall be entitled to vote at any election at which he or she appears at the polls in his or her district during official voting hours on election day.

Section 3. Any duly enrolled member of the Tribe who [sic] 18 years age or over shall be entitled to vote by absentee ballot, duly subscribed before a notary public; Such ballot must be post-marked on or before the day of election to be counted.

Section 4. The regular bi-annual election, after the first election, of members os [sic] the Tribal Council shall be between the hours of nine o'clock [sic] A.M. and 6 o'clock P.M. on the second Friday of May each appropriate year.

Section 5. All elections, except the first, held under this constitution shall be supervised by the Tribal Business Council or an election board duly appointed and approved by a majority vote of the Council; the place of voting in each District shall be established by residents of the District; The clerk, inspector and 2 judges of election shall be appointed by the majority of the Council from residents of each District who shall be present at the place of voting; All ballots shall be folded and placed in a sealed ballot box; the ballots

shall be canvassed at the polling places, resealed and stored in a safe place for a minimum of 30 days after each election.

Section 6. Upon evidence of irregularities or improper conduct of election being presented to an appeal board, consisting of the superintendent of the Agency, the superintendent of the Belcourt Community School and one member of the Tribe chosen by the other two members, the Board shall have the power to declare any election in any District void and order a special election; Their decision shall be appealable [sic] to the Secretary of the Interior.

Section 7. Special elections shall be called by a majority of the Tribal Council or by petition duly presented to the Tribal Council signed by at least 10 per cent of the qualified electors of each District.

ARTICLE VI POWERS

Section 1. The Tribal Business Council shall have the powers enumerated herein, and any powers incidental thereto, subject to popular referendum and approval by the Secretary of the Interior as specified.

Section 2. The powers set forth herein shall be in conformity with usage and custom, the Constitution of the Federal and State Government, and existing Federal and State Statutes.

Section 3. Subject to section 1 & 2 supra, the Tribal Business Council shall have the following powers:

- a. To consider, transact and conclude all business matters pertaining to the Tribe.
- b. To present and prosecute any claims or demands in Court or agencies of the Government and to employ and retain attorneys for such services and to determine their fees.
- c. To establish, maintain and ordain a set of ordinances and codes to regulate domestic relations, crimes and other private and public matters; and to establish a Tribal Court for their enforcement.
- d. To employ and retain legal council other than claims attorneys, and to establish and set fees therefore.
- e. To manage, supervise and establish all economic affairs and enterprises of the Tribe.
- f. To create and maintain a Tribal Business Council Fund.
- g. To protect and preserve property, wildlife [sic] and natural resources of the Tribe and to establish regulations governing the same.

h. To advise and cooperate with the Department of the Interior in all things concerning the Reservation.

ARTICLE VII REFERENDUM

Upon a petition signed by at least 10 percent of the qualified voters of each District, demanding a referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council, the Council shall call an election, and the vote of majority of the qualified voters in such election, shall be binding upon the Council.

ARTICLE VIII AMENDMENTS

This Constitution and By-laws maybe [sic] amended by a majority vote of the qualified voters of the Tribe voting at an election called for the purpose of amending the Constitution or By-laws; said election shall be called by the Tribal Business Council upon presentation to them in writing of a proposed amendment which has been approved by a majority of the Council members.

ARTICLE IX VACANCIES

Any vacancy caused by death, resignation or other cause may be filled by appointment for the unexpired term by the chairman and confirmed by a majority vote of the Council; absence from two consecutive meetings of the Tribal Council, except for sickness or family distress, shall be cause to declare the office vacant; all appointments shall be from the District where the vacancy occurred.

Dated this 21st day of July, 1958.

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,
BY:

Appendix F

The final “proposed” Turtle Mountain Tribal Constitution

PROPOSED CONSTITUTION OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

PREAMBLE

We, the people of the Turtle Mountain Band of Chippewa Indians of Belcourt, North Dakota, in order to develop and enjoy the advantages of Democratic processes and opportunities to promote our general welfare, education, and prosperity; to promote good and law-abiding citizens, do ordain and establish this constitution and bylaws for the Turtle Mountain Band of Chippewa Indians.

ARTICLE I – NAME

Section 1. The name of this organization shall be the Turtle Mountain Band of Chippewa Indians.

ARTICLE II – JURISDICTION

Section 1. The jurisdiction of this organization shall extend to all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said tribe and be added thereto under the laws of the United States.

ARTICLE III – MEMBERSHIP

Section 1. The membership in the Turtle Mountain Band of Chippewa Indians shall consist of:

(a) All persons whose names appear on the roll prepared pursuant to Section 2 of the Act of May 24, 1940 (54 Stat. 219), and approved by the Secretary of the Interior on March 15, 1943.

(b) All descendants of persons whose names appear on the roll defined in Section 1(a) of this article, provided that such descendants possess one-fourth or more Indian blood, and provided further that such descendants are not domiciled in Canada.

Section 2. Current Roll. The membership roll shall be kept current by the Secretary of the Interior or his designated representative by striking therefrom the names of deceased persons and adding thereto the names of persons who qualify for membership under section 1(b) of this article. A copy of such additions and elections shall be furnished to the Tribal Council

Section 3. Definition. The word “domicile” as used in this article means a permanent residence.

ARTICLE IV – GOVERNING BODY

Section 1. The governing body shall be the Tribal Council and shall consist of nine members, eight of whom shall be district representatives and one shall be chairman elected by the tribe as a whole, regardless of districts.

Section 2. The Tribal Council shall have authority to regulate its own procedures, to appoint a Vice-Chairman from its membership, to act in the absence or disability of the Chairman, to appoint subordinate committees, delegates, and employees not otherwise provided for in this constitution, and to provide their tenure and duties; provided, that any delegation of authority described in this constitution shall be granted only by written resolution or ordinance and shall be withdrawn in the same manner.

ARTICLE V – NOMINATION AND ELECTION

Section 1. All elections shall be by secret ballot and a majority vote shall rule.

Section 2. (a) Any enrolled member of the Tribe, 21 years of age or over shall be entitled to vote in any election provided they have resided in the district for a period of 90 days immediately prior to a given election.

(b) All eligible resident voters shall register in the district of their residence as provided by tribal ordinance. All eligible nonresident voters shall register with the district or their former residence or affiliation.

Section 3. Absentee ballots shall be furnished to eligible non-resident members upon their request to the Secretary-Treasurer provided that all such ballots shall be returned to the Secretary-Treasurer on or before the date of the election in order that the ballots may be counted.

Section 4. (a) A qualified member to be eligible to become a candidate as a district representative or as an officer shall be 25 years of age or over, having resided in the district for one year.

(b) Eligible candidates shall file their notice of intent to run for office with the Secretary-Treasurer of the Tribal Council, identifying the office for which he is a candidate at least 15 days before the election date. The Secretary-Treasurer shall post a list of eligible candidates at least 12 days before the election in each voting district.

Section 5. The first election of the Tribal Council shall be called by the Secretary of the Interior after the adoption and approval of this constitution by the people of this Reservation.

Section 6. The Reservation shall consist of 4 districts. The 4 districts are described as follows:

(a) District 1 – Fishlake road East to the town of Rolla and open North and South. 2 representatives.

(b) District 2 – Fishlake road West to Rolette road, and open North and South. 2 representatives.

(c) District 3 – Rolette road West to Suckerlake road or Moran road, and open North and South. 2 representatives.

(d) District 4 – Suckerlake road or Moran road West to St. Paul Butte, and open North and South. 2 representatives.

Votes for candidates for district representatives shall be confined to the eligible voters of the district the candidate is to represent.

ARTICLE VI – OFFICERS AND THEIR DUTIES

Section 1. There shall be the following tribal officers: A Chairman, a Secretary-Treasurer, a Chief Judge, and a Chief of Police, who shall be elected on a reservation-wide or at-large basis for a term of four years or until the successors shall have been elected and qualified.

Section 2. Chairman. He shall preside at all regular and special meetings. He shall vote only in case of a tie. He shall see that all resolutions and ordinances of the Tribal Council are carried into effect. He shall exercise general supervision of all other officers and employees and see that their respective duties are performed. He shall be the chief executive officer of the tribe.

Section 3. Secretary-Treasurer. He shall keep the minutes at the principal office of the Tribal Council of all meetings of the Tribal Council. He shall keep the tribal roll, showing all changes therein as required by this constitution or ordinance duly approved by the Tribal Council. He shall attend to all correspondence, distribution or tribal information or other duties incidental to his office including the reproduction of minutes, resolutions and ordinances and see to their distribution within the deadlines, if there be deadlines. He shall keep and maintain adequate and correct accounts of the properties and business transactions of the Tribal Council. He shall have care and custody of the funds and valuables of the Tribal Council and deposit same in the name of and to the credit of the Band with such depositories as the Tribal Council may direct and which are acceptable to the Area Director. Disburse funds of the Tribal Council as may be ordered by the Tribal Council, taking proper signed invoices, vouchers or other recordable data. Render [sic] to the Tribal Council a monthly statement and report of all his transactions as Treasurer and render also an annual financial statement in the form and with the detail required by the Tribal Council.

ARTICLE VII – TRIBAL COUNCIL PRODECURES

Section 1. A regular monthly meeting shall be held as set by the Tribal Council. The Chairman or any three members of the Tribal Council may call special meetings.

Section 2. A quorum shall consist of 5 members and no business shall be conducted in the absence of a quorum.

Section 3. The Tribal Council shall cause to be installed maintained and audited, a complete and detailed accounting system.

Section 4. All officers and employees of the tribe responsible for the safety and property and money shall be bonded in an amount sufficient to insure the [sic] tribe from loss.

Section 5. The newly elected district representatives (councilmen) and officers shall be installed in office at the first regular meeting of the Tribal Council after certifications of their election have been issued by the Secretary-Treasurer.

Section 6. The duties of any and all other officers or employees shall be prescribed by the Tribal Council. At all general or special meetings of the Tribal

Council the members of the Tribal Council shall be paid at hourly rates set by resolution of the Tribal Council. All other officers will be paid per month.

ARTICLE VIII – REFERENDUM AND RECALL

Section 1. Upon receipt of a petition by 20% of the resident voters, or by an affirmative vote of five members of the Tribal Council an enacted or proposed resolution or ordinance of the Tribal Council shall within 30 days be submitted to a referendum of the eligible voters of the Turtle Mountain Band of Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Council and if a resolution or ordinance is rejected by such vote, such resolution or ordinance shall be null and void, as of the date of the referendum, and shall not be reconsidered for a period of at least six months. The Tribal Council shall call such referendum and prescribe the manner of conducting the vote.

Section 2. The Tribal Council shall enact ordinances which shall prescribe regulations, charges, and reasons for removal or recall of a district representative or officer. The grounds for removal, right of petition, and other factors shall be carefully framed to protect the interest of the Turtle Mountain Band of Chippewa Indians.

Section 3. The Tribal Council by an affirmative vote of the majority shall appoint a replacement to fill any of a district representative or other elected officer, caused by removal, death, or resignation, provided the term of the replacement shall not extend beyond the next regular election regardless of the length of the unexpired term.

ARTICLE IX – POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers, subject to any limitations imposed by this Constitution and by-laws or the laws and regulations of the Federal Government:

(a) Governmental Powers.

Section 1. To represent the Band and to negotiate with the Federal, State, and local governments and with private persons.

Section 2. To employ legal counsel, subject to the approval of the Secretary of the Interior, or his duly authorized representative, so long as such approval is required by Federal law.

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment upon nonmembers trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

Section 4. To enact ordinances to remove from the reservation persons not legally entitled to reside thereon and whose presence may be injurious to the peace, happiness or welfare of the members of the Band, subject to review of the Secretary of the Interior, or his duly authorized representative.

Section 5. To enact ordinances, subject to the review of the Secretary of the Interior, or his duly authorized representative, governing conduct of the members of the

Band and Indians from other tribes on the reservation, providing for the maintenance of law and order and the administration of justice by establishing a police force and a tribal court and defining their powers and duties; and regulating the inheritance of property of the members of the Band except trust land.

Section 6. To enact ordinances to provide rules and regulations governing fishing, hunting and trapping on the reservation.

(b) Administrative Powers.

Section 7. (a) To administer any funds within the control of the Band; to make expenditures from available funds for tribal purposes, including salaries and expenses of tribal officials or employees. All expenditures or tribal funds under the control of the Tribal Council shall be authorized by resolution duly enacted by the Tribal Council in legal session and the amounts so expended shall be a matter of public record to the members of the Band at all reasonable time.

Section 8. The Tribal Council of the Band shall prepare annual budget requests for the advancement to the control of the Band such money as now or may hereafter be deposited to the credit of the Band in the United States Treasury or which may hereafter be appropriated for the use of the Band.

Section 9. To deposit to the credit of the Band of Chippewa Indians tribal funds, without limitation on the amount in any account, in any approved National or State Bank whose deposits are insured by an agency of the Federal Government; or with a bonded disbursing officer or the United States whenever the conditions prescribed by the Secretary of the Interior or his authorized representative in connection with such advances require the advance to be so deposited.

(c) Business Powers.

Section 10. To manage, lease, permit, or otherwise deal with tribal land, interest in lands and other lands or assets under tribal jurisdiction; and to purchase or otherwise acquire lands, or interests in lands within the Turtle Mountain Reservation, in accordance with law; or dispose of such land, or interest in lands, as authorized by law.

Section 11. To engage in any business that will further the economic well-being of the members of the tribe, or to undertake any programs or projects designed for the economic advancement of the people.

Section 12. To borrow money from the Federal Government, or other source, and to direct the use of such funds for productive purposes, or to loan the money thus borrowed to members of the tribes, with the approval of the Secretary of the Interior, or his authorized representative.

Section 13. To pledge or assign chattel or future income due or to become due, provided such agreement, pledge, assignment, or extension thereof shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

Section 14. To make and perform contracts and agreements of every description, not inconsistent with law or the provisions of this constitution and by-laws, provided that any contract shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

ARTICLE X – FUTURE AND RESERVED POWERS

Section 1. The Tribal Council may exercise such powers as may in the future be granted to the Council by members of the Turtle Mountain Band or the Secretary of the Interior or by any other duly authorized official or agency of the Federal Government, provided such power is accepted by the Tribe by appropriate amendment of this Constitution.

Section 2. Any right or power heretofore vested in the Turtle Mountain Band of Chippewa Indians, but not expressly referred to in this Constitution, shall remain in the Band, and may be exercised by the Turtle Mountain Band of Chippewa Indians or by the Tribal Council through the adoption of appropriate constitutional amendment if that be the wishes of the people.

ARTICLE XI – MANNER OF REVIEW

Section 1. Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior shall within 10 days of its enactment be presented to the Superintendent of the Turtle Mountain Agency who shall within 10 days after its receipt by him approve or disapprove it.

Section 2. If the Superintendent approves any resolution or ordinance, it shall become effective, but the Superintendent shall transmit the enactment bearing his endorsement to the Secretary of the Interior, who may, within 90 days of the date of its enactment rescind the resolution or ordinance for any cause by notifying the Turtle Mountain Tribal Council of his veto.

Section 3. If the Superintendent disapproves any resolution or ordinance, he shall within 10 days after its receipt by him advise the Tribal Council of his reasons therefore, and if these reasons appear to the council insufficient, it may, by vote of the five members, refer the resolution or ordinance to the Secretary of the Interior, and if approved by him in writing it shall become effective.

ARTICLE XII – ADOPTION

Section 1. (a) This revised constitution when adopted by a majority vote of the tribal members voting at a special meeting called by the Secretary of the Interior, shall be submitted to the Secretary of the Interior, and shall be in full force and effect from the date of such approval.

ARTICLE XIII – AMENDMENT

Section 1. This Constitution and By-laws may be amended by a majority of the qualified voters of the Turtle Mountain Band of Chippewa Indians at an election called for that purpose; provided that at least 20 per cent of the resident voters of the tribe entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or his delegated representative.

Section 2. It shall be the duty of the Tribal Council to call such election on any proposed amendment upon receipt of a petition signed by 20 per cent of the qualified resident voters of the tribe or the Tribal Council may call such an election by an affirmative vote of 5 members of the Tribal Council.

Dated this 7th day of February 1959.

TURTLE MOUNTIAN BAND OF CHIPPEWA INDIANS

APPROVED BY:

Appendix G

The final “revised” Turtle Mountain Tribal Constitution

REVISED CONSTITUTION AND BYLAWS OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

PREAMBLE

We, the members of the Turtle Mountain Band of Chippewa Indians, in order to secure for ourselves and for our descendants the benefits and equity granted under the laws of our nation and to pursue the practices of democratic government, do hereby amend and revise our tribal Constitution and Bylaws and organize a Tribal Council as the governing organization of the Band, and we do ordain and establish this Constitution and Bylaws as the rules under which it shall operate.

ARTICLE 1. NAME OF ORGANIZATION

The name of the organization shall be the Turtle Mountain Band of Chippewa Indians.

ARTICLE 2. JURISDICTION

The jurisdiction of this organization shall extend to lands within the boundaries of the Turtle Mountain Reservation and to such other lands as have been or may be acquired by or in behalf of said Band and added thereto under the laws of the United States.

ARTICLE 3. MEMBERSHIP

Section 1. The membership of the Turtle Mountain Band of Chippewa Indians shall consist of:

(a) All persons whose names appear on the roll prepared pursuant to Section 2 of the Act of May 24, 1940 (54 Stat. 219), and approved by the Secretary of the Interior on March 15, 1943.

(b) All descendants of persons whose names appear on the roll defined in Section 1 (a) of this article, provided that such descendants possess one-fourth degree or more of Indian blood, and provided further that such descendants are not domiciled in Canada. The term “domiciled in Canada” as used in this section shall apply to a descendant of a member of the Band who is a permanent resident of Canada.

Section 2. The membership roll shall be kept current by the Secretary of the Interior or his delegated representative by striking therefrom the names of deceased

persons and adding thereto the names of persons who qualify for membership under Section 1 (b) of this article.

ARTICLE 4. GOVERNING BODY

Section 1. The governing body of the organization shall be known as the Turtle Mountain Tribal Council and shall consist of eight district representatives from which shall be elected by the members of the Tribal Council a chairman, a vice chairman and a secretary-treasurer.

Section 2. The Tribal Council shall have the power to regulate its own procedures; to appoint subordinate committees, delegates, boards, tribal officials and authorized employees not otherwise provided for in this Constitution and Bylaws and to provide for their tenure and duties; provided, that any delegation or authority described in this Constitution and Bylaws shall be granted only written resolution or ordinance and shall be withdrawn on the same manner.

ARTICLE 5. NOMINATIONS AND ELECTIONS

Section 1. All elections shall be by secret ballot and a majority vote shall rule.

Section 2. (a) Any enrolled member of the Band, 21 years of age or over, shall be entitled to vote in any election.

(b) All eligible resident voters shall register with the district of their residence at the time of election. All eligible non-resident voters shall register with the district of their choice.

Section 3. (a) Absentee ballots shall be furnished to eligible non-resident voters upon their request to the Tribal Council Secretary-Treasurer.

(b) In order that they may be counted, absentee ballots shall be returned to the Secretary-Treasurer of the Tribal Council by registered mail, return receipt requested on or before the date of election.

Section 4. The first election of the Tribal Council shall be called by the Secretary of the Interior after the adoption and approval of this Constitution and Bylaws by the qualified voters of the Turtle Mountain Band of Chippewa Indians. All subsequent elections shall be held under the supervision of the Tribal Council who shall enact an ordinance to provide the rules and regulations under which elections shall be held.

Section 5. (a) A qualified voter to be eligible to become a candidate for a district representative shall be 25 years of age or over and a resident of the district he is to represent.

(b) Eligible candidates for district representative intending to run for office shall file notice of such intent with the Secretary-Treasurer at least 15 days before the election date. The Secretary-Treasurer shall post a list of eligible candidates at least 10 days before the election in each voting district.

Section 6. (a) The jurisdiction shall for the purpose of electing representatives on the Tribal Council consist of 4 districts and each district shall have 2 representatives.

(b) Votes for candidates for district representatives shall be confined to the eligible voters of the district the candidate is to represent.

(c) The 4 districts are described as follows:

District 1. From the section line on which the Belcourt Lake Road lies extending to the northern and southern boundaries of Rolette County, thence eastward embracing all territory to the eastern boundary of Rolette County.

District 2. From the western boundary of District 1, westward 5 miles to the section line running north and south of which lies the Rolette Road. The section lines forming the boundaries of District 2 shall run parallel the distance of Rolette County.

District 3. From the western boundary of District 2, westward 5 miles to the section line running north and south. The section lines forming the boundaries of District 3 shall run parallel the distance of Rolette County.

District 4. From the western boundary of District 3 westward embracing all territory to the western boundary of Rolette County. Eligible voters resident in the Butte St. Paul area in Bottineau County shall be included in District 4.

Section 7. The successful candidates in the first election shall hold office as follows:

(a) The successful district representatives from each district in the first election receiving the largest number of votes shall hold office for 2 years, or until their successors are elected.

(b) The other successful district representative receiving the second largest vote in the first election shall hold office for 1 year or until their successors are elected.

(c) All successful candidates in all succeeding elections shall hold office for 2 years.

(d) After the first election all succeeding annual elections of the Tribal Council shall be held during the month of May on a date set by the Tribal Council.

ARTICLE 6. POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers subject to any limitation imposed by this Constitution and bylaws or the laws and regulations of the Federal Government.

GOVERNMENTAL POWERS

Section 1. The Tribal Council, or its authorized officers or delegates, on behalf of the Turtle Mountain Band of Chippewa Indians shall have the sole right and authority to represent the Band and to negotiate with Federal, State and local governments and with private persons and to transact any business for the Band not in conflict with this Constitution and Bylaws or with existing Federal Law.

Section 2. To employ legal council, subject to the approval of the Secretary of the Interior, or his authorized representative where by Federal Law such approval is required.

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment

upon non-members trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

Section 4. To enact ordinances, subject to review by the Secretary of the Interior, or his authorized representative where required by Federal law, to provide for the maintenance of law and order and the administration of justice.

Section 5. To enact membership ordinances or resolutions pursuant to Federal regulations governing tribal enrollment and membership, such ordinances or resolutions subject to review by the Secretary of the Interior, or his delegated representative.

Section 6. The Tribal Council shall have the power to redistrict the jurisdiction of the organization and to apportion the representatives, subject to the vote of the people whenever such action is deemed advisable by the Tribal Council.

ADMINISTRATIVE AND BUSINESS POWERS

Section 1. (a) To administer any funds within the control of the Band; to make expenditures from available funds for tribal purposes, including salaries of tribal officials or employees. All expenditures of tribal funds under the control of the Tribal Council shall be authorized by motion or resolution duly made or enacted by the Tribal Council in legal session and the amounts so expended shall be a matter of public record to members of the Band at all reasonable time.

(b) The Tribal Council shall prepare annual budget requests for the advancement to the control of the Band such money as now or may hereafter be deposited to the credit of the Band in the United States Treasury or which may hereafter be appropriated for the use of the Band.

(c) To deposit to the credit of the Turtle Mountain Band of Chippewa Indians tribal funds, without limitation on the amount in any account, in any approved National or State Bank whose deposits are insured by an agency of the Federal government; or with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior or his authorized representative in connection with such advances require the advance to be deposited.

Section 2. (a) To manage, lease or otherwise deal with tribal lands and tribal resources in accordance with existing Federal law.

(b) No action shall be taken by the Tribal Council which in any way operates to destroy or injure tribal grazing land, timber or any other natural resource of the Band.

Section 3. (a) To engage in any business that will further the economic well being of the Band.

(b) To borrow money from Federal, state, or private sources; to pledge or assign chattels or future tribal income, due or to become due, as security for such borrowing; to make and perform contracts and agreements of every description, provided that any action taken under this paragraph shall be subject to that approval of the Secretary of the Interior or his duly authorized representative.

Section 4. The Tribal Council shall cause to be installed, maintained and audited a complete and detailed accounting system.

ARTICLE 7: FUTURE AND RESERVED POWERS

Section 1. The Tribal Council of the Turtle Mountain Band of Chippewa Indians may exercise such future powers as may in the future be granted to the Tribal Council by amendments to this Constitution and Bylaws or the Secretary of the Interior or by any other duly authorized official or agency of the Federal Government.

Section 2. any right or power heretofore vested in the Turtle Mountain Band of Chippewa Indians, but not expressly referred to in this Constitution and Bylaws, shall remain in the Band, and may be exercised through appropriate constitutional amendment.

ARTICLE 8: MANNER OF REVIEW

Section 1. Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior shall within 15 days of its enactment be presented to the Superintendent of the Turtle Mountain Agency who shall within 10 days after its receipt by him approve or disapprove it.

Section 2. Upon the Superintendent's approval, any resolution or ordinance shall become effective, but the Superintendent shall transmit the enactment bearing his enforcement to the Secretary of the Interior, who may, within 90 days of the date of its enactment rescind the resolution or ordinance for any cause by notifying the Turtle Mountain Tribal Council of his veto.

Section 3. If the Superintendent disapproves any resolution or ordinance, he shall within 10 days after its receipt by him advise the Turtle Mountain Tribal Council of his reasons therefore, and if these reasons appear to the council insufficient, in may, by vote of the majority of all members, refer the resolution or ordinance to the Secretary of the Interior, and if approved by him in writing it shall become effective.

ARTICLE 9. REFERENDUM AND RECALL

Section 1. Upon receipt of a petition by 20 percent of the eligible voters, or by an affirmative vote of 5 members of the Tribal Council, any enacted or proposed resolution or ordinance of the Tribal Council shall be submitted to a referendum of the

eligible voters of the Turtle Mountain Band of Chippewa Indians. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Council. The Tribal Council shall call such referendum and prescribe the manner of conducting the vote.

Section 2. The Tribal Council shall enact an ordinance which shall prescribe regulations, charges and reasons for removal or recall of a district representative who shall be given proper notice of charges against him and a chance to be heard. The grounds for removal, right of petition, and other factors shall be carefully framed to protect the interest of the Turtle Mountain Band of Chippewa Indians.

Section 3. The Tribal Council by an affirmative vote of the majority shall appoint a replacement to fill any vacancy of a district representative or officer, caused by removal, death or resignation, provided the term of the replacement shall not extend beyond the next regular election.

ARTICLE 10. ADOPTION AND AMENDMENT

Section 1. This revised Constitution and Bylaws when adopted by a majority vote of the adult tribal members voting at a special meeting called by the Secretary of the Interior, shall be submitted to the Secretary of the Interior, and shall be in full force and effect from the date of such approval and shall supersede the revised tribal constitution and bylaws adopted December 4, 1957.

Section 2. This constitution and Bylaws may be amended by a majority of qualified voters of the Turtle Mountain Band of Chippewa Indians at an election called for the purpose; provided, that at least 20 percent of resident voters entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or his authorized representative.

Section 3. It shall be the duty of the Tribal Council to call such election on any proposed amendment upon receipt of a petition signed by 20 percent of qualified resident voters of the Band, or the Tribal Council may call such an election by an affirmative [sic] vote of 5 of its members.

BYLAWS

ARTICLE 1. DUTIES OF OFFICERS

Section 1. Chairman. The Chairman shall preside at all regular and special meetings. He shall vote only in the case of a tie. He shall see that all resolutions and ordinances of the Tribal Council are carried into effect. He shall exercise general supervision of all other officers and employees and see that their respective duties are performed.

Section 2. Vice Chairman. In the absence of disability of the chairman he shall perform the duties of chairman.

Section 3. (a) Secretary-Treasurer. Unless otherwise provided for under the provisions of Article 4, Section 2 of the Constitution and Bylaws, he shall keep the minutes of all meetings of the Tribal Council.

(b) He shall assist in keeping current the tribal roll as directed in Section 2 of the Act of May 24, 1940 (54 Stat. 219), or as required by duly approved membership ordinances or resolution of the Tribal Council.

(c) He shall be responsible for all correspondence, distribution of tribal information or other duties incidental to his office including the reproduction of minutes, resolutions and ordinances and see to their distribution within the deadlines, if there be deadlines.

(d) He shall be responsible for the maintenance of adequate and correct accounts of the properties and business transactions of the Tribal Council. He shall be responsible for the care and custody of the funds and valuables of the Tribal Council and have the same deposited in the name of and to the credit of the Turtle Mountain Band of Chippewa Indians with such depositories at the Tribal Council may direct and which are acceptable to the Area Director. He shall cause funds of the Tribal Council to be disbursed as ordered by the Tribal Council, taking proper signed invoices, vouchers or other recordable data and he shall cause a monthly statement and report of all his transactions as Secretary-Treasurer to be rendered to the Tribal Council as well as an annual financial statement in the form and with the detail required by the Tribal Council.

ARTICLE 2. QUALIFICATIONS FOR ELECTIVE OFFICE

Section 1. A qualified voter to be eligible to become a candidate for district representative shall meet requirements as follows:

- (a) Twenty-five years of age or over, of at least 1/4 degree of Indian blood and a resident of any of the 4 districts.
- (b) Never convicted of any of the following crimes whether under State or Federal law: murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, embezzlement and theft from an Indian tribal organization, and larceny within Indian country provided that the Tribal Council shall enact an ordinance to determine the type and amount of larceny which shall disqualify a candidate.

- (c) Be able to speak, read, write and understand the English language in a degree sufficient to understand the fundamentals of conducting and transacting business.

ARTICLE 3. TRIBAL COUNCIL PRODEDURES

Section 1. The newly elected district representatives shall be installed in office at the first regular meeting of the Tribal Council after certifications of their election have been issued by the Secretary-Treasurer of the Tribal Council.

Section 2. The Tribal Council shall set the rate of pay for its officers, employees, delegates and meetings by appropriate resolution.

Section 3. The Tribal Council shall set a date for its regular monthly meeting. The Chairman shall call special meetings when he deems it necessary or a majority of the Tribal Council members may request him to do so.

Section 4. A quorum shall consist of 5 members and no business shall be conducted in the absence of a quorum.

Section 5. Any member of the Band may be permitted to attend the meetings of the Tribal Council but no one not a member of the Tribal Council shall be permitted to vote at such meetings.

Section 6. All tribal officers and employees responsible for the safety of property and money shall be bonded in an amount sufficient to insure the Band from loss.

CERTIFICATION OF ADOPTION

The attached revised Constitution and Bylaws was submitted for adoption to the adult members of the Turtle Mountain Band of Chippewa Indians in North Dakota pursuant to Secretarial order dated _____, 1959, and was on _____, 1959, adopted by a vote of _____ for, and _____ against, in an election in which a majority of those voting cast their ballots in favor of its adoption.

Dated this _____ day of _____ 1959.

Turtle Mountain Band of Chippewa Indians

Chairman

Vice Chairman

Secretary-Treasurer

Appendix H

The proposed constitutional amendments of October 1960

VOTE "YES" OR "NO" ON THESE ARTICLES LISTED BELOW!!

ARTICLE III MEMBERSHIP

Section I The membership in the Turtle Mountain Band of Chippewa Band of Chippewa Indians [sic] shall consist of:

(a) All persons whose names appear on the roll prepared pursuant to Section 2 of the Act of may 24, 1940, (54 Stat. 219), and approved by the Secretary of the Interior on March 15, 1943.

(b) All descendants of persons whose name appear on the roll defined in Section 1 (a) of this article, provided that such decendants [sic] possess one-fourth or more Indian blood, and provided further that such descendants are not domsciled [sic] in Canada,

(c) Any Indian who can prove to be a descendant of the Turtle Mountain Band of Chippewa Indians, and possesses one-fourth or more Indian blood regardless or residence in the U.S. only may be adopted into membership of the Band by three-fourths vote of the full Tribal Council,

(d) Any illegitimate child born to a female member of the Turtle Mountain Band shall be enrolled with one-half of the degree of blood possessed by the mother.

Section II Application for membership shall be submitted by the applicant or his or her parent or guardian to the Tribal Council or delegated committee, with birth certificate for each applicant.

Section III Vested property rights shall not be acquired or lost through membership in this Band, except as provided herein.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Band of Chippewa Indians, do hereby give the Tribal Council of the Turtle Mountain the right to collect and receive the sum of \$1.00 from each applicant (to cover expenses) providing the applicant is not on the Official Roll of the Turtle Mountain Indian Chippewa Band.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Tribe, do hereby give the Tribal Council of the Turtle Mountains the right to regulate and permit hunting on the Reservation and Tribal Land, to regulate and permit by a fee of \$1.00 to an Indian who wants to hunt thereon.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Band of Chippewa Indians, do hereby adopt our children into the Tribe and anyone else who may belong to the Tribe.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Tribe of Indians, give the sole right to the Tribal Council to regulate and make resolutions to regulate fires on Tribal Land or any place on or near the Reservation with a fine to anyone setting fires without a permit.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Tribe of Indians, give the sole power to the Tribal Council to enact and approve by Resolution to adopt a code of Law and Order Regulations for the Turtle Mountain Chippewa Band of Indians.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Tribe of Indians, do hereby vote and decide by vote by a majority of the people of the Turtle Mountain Band of Chippewa, to give the powers to the Tribal Council the right to sign for the people of the Turtle Mountains any leases or contracts of which there are five (5) or more persons involved such as; leases on trust land to where there are more than five (5) persons as hiers [sic] to the benefit of the people.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Band of Chippewa Indians, give the sole powers by majority vote of the Band now in force, the right to work on such claims as may be had by the Turtle Mountain Band of Indians to the Tribal Council to bring such claims to the claims commission and bargain with the U.S. Government or any such government as may be interested for the benefit of the band.

Vote: YES _____ NO _____

We, the people of the Turtle Mountain Tribe of Chippewa Indians, do hereby vest the power to the Turtle Mountain Tribal Council to remove all trouble makers and those that do not belong to the Tribe from our Reservation and Territory.

Vote: YES _____ NO _____

Appendix I

The current Turtle Mountain Tribal Constitution

CONSTITUTION AND BYLAWS
of the
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
NORTH DAKOTA

(including 1962, 1975, 1990, 1992, 1995, 1997, 2000, 2001, and 2005 amendments)

PREAMBLE

We, the people of the Turtle Mountain Band of Chippewa Indians of Belcourt, North Dakota, in order to develop and enjoy the advantages of democratic processes and opportunities to promote our general welfare, education, and prosperity, to promote good and law-abiding citizens, do ordain and establish this constitution and Bylaws for the Turtle Mountain Band of Chippewa Indians.

ARTICLE I – NAME

Section 1. The name of this organization shall be the Turtle Mountain Band of Chippewa Indians.

ARTICLE II – JURISDICTION

Section 1. The jurisdiction of this organization shall extend to all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States.

ARTICLE III – MEMBERSHIP

Section 1. The membership in the Turtle Mountain Band of Chippewa Indians shall consist of:

- a) All persons whose names appear on the roll prepared pursuant to Section 2 of the Act of May 24, 1940 (54 Stat. 219), and approved by the Secretary of the Interior on March 15, 1943.

b) All descendants of persons whose names appear on the roll defined in Section 1 (a) of this Article, provided that such descendants possess one-fourth or more Indian blood, and provided further that such descendants are not domiciled in Canada.

Section 2. Current Roll. The membership roll shall be kept current by the Secretary of the Interior or his designated representative by striking therefrom the names of deceased persons and adding thereto the names of persons who qualify for membership under Section 1 (b) of this Article. A copy of such additions and deletions shall be furnished to the Tribal Council.

Section 3. Definition. The word “domicile” as used in this Article means a permanent residence.

ARTICLE IV – GOVERNING BODY

Section 1. The governing body shall be the Tribal Council and shall consist of nine (9) members, eight (8) of whom shall be district representatives and one (1) shall be Chairman elected by the tribe as a whole, regardless of the districts.

Section 2. The Tribal Council shall have the authority to regulate its own procedure, except as specified in Article VI, to appoint a Vice-Chairman from its membership, to act in the absence or disability of the Chairman, to appoint subordinate committees, delegates, and employees not otherwise provided for in the constitution, and to provide tenure and duties; provided that any delegation of authority described in this Constitution shall be granted only by written resolution or ordinance and shall be withdrawn in the same manner. (Amendment XIV, Approved February 3, 1995)

Section 3. The Turtle Mountain Tribal Council shall establish a Code of Ethics that will govern all elected officials and tribal personnel to become effective May 1, 1993. (Amendment XV, Approved November 3, 1992)

Section 4. Voting on Council actions shall be by roll call. (Amendment XV (b) Approved November 3, 1992)

ARTICLE V – NOMINATIONS AND ELECTIONS

Section 1. All elections shall be conducted by secret ballot. The candidate or issue receiving the greatest number of votes cast shall prevail. In the event more than one representative is required to be elected for a district, the positions shall be filled by the candidates receiving the most votes in descending order. (Amendment XX, Approved February 5, 1997).

Section 2.

a) Any enrolled member of the Tribe, eighteen (18) years of age or over, shall be entitled to vote in any Tribal election. (Amendment XXIV, Approved August 7, 2001)

b) All eligible resident voters shall register in the district of their residence as provided by tribal ordinance. All eligible nonresident voters shall register with the district of their former residence or affiliation.

Section 3. Absentee ballots shall be furnished to eligible members upon their request to the Secretary-Treasurer provided that all such ballots shall be returned to the Secretary-Treasurer on or before the date of the election in order that the ballots may be counted. "Eligible member" is defined as:

- a. Those non-resident members who are attending off reservation higher education facilities or serving in the United States Services; or
- b. Those resident members who maintain Rolette residency, but have to leave the county for employment purposes; or
- c. Those members that are physically and medically disabled.

Any non-resident member may vote non-absentee in the district of their former residence or affiliation. (Amendment XXV, Approved August 7, 2001)

Section 4.

a) To become a candidate for an elected position, a person must (1) be an enrolled member of the Turtle Mountain Band of Chippewa Indians, (2) be twenty-five years of age or over, (3) have not been convicted of a felony, (4) have not been convicted of a misdemeanor of fraud, embezzlement, forgery or thefts of monies entrusted to the Tribal Government, and (5) must reside within Rolette County. In addition, candidates for District Representative must reside in the district they seek to represent. (Amendment XIX, Approved February 5, 1997) (Amendment XXVII, approved June 15, 2005).

b) Eligible candidates shall file their notice of intent to run for office with the Secretary-Treasurer of the Tribal Council, identifying the office for which he is a candidate at least fifteen (15) days before the election date. The Secretary-Treasurer shall post a list of eligible candidates at least twelve (12) days before the election in each voting district.

Section 5. There shall be a primary election held in two weeks prior to the general election. The general elections shall be held on the first Tuesday in November, in even numbered years commencing in 2000. If a holiday, the tribal election will coincide to National, State, and County election date. In descending order of votes, the top three (3) candidates receiving the majority, which shall mean the greatest number of votes cast, in the primary shall be included in the general election and the top two (2) candidates for Chairman receiving the majority of votes, in the primary election shall be included in the general election corresponding to the number of vacancies in the district and the candidate for the Chairman's vacancy receiving the majority of votes shall be considered elected. (Amendment XXIII, Approved March 22, 2000)

Section 6. The Reservation shall consist of four (4) districts. [sic] The districts are described as follows:

a) District 1 – Fishlake Road East to the town of Rolla and open North and South. Two (2) representatives.

b) District 2 – Fishlake Road West to Rolette Road, and open North and South. Two (2) representatives.

c) District 3 – Rolette Road West to Suckerlake Road or Morin Road, and open North and South. Two (2) representatives.

d) District 4 – Suckerlake Road or Morin Road West to St. Paul Butte, and open North and South. Two (2) representatives.

Within three (3) months after each general election, the Tribal Council will convene at the call of the Chairman, as a redistricting board, and redesignate the boundaries of the four (4) districts by majority voted, so that the districts shall be as regular and compact in form as practicable and as substantially equal in eligible voters as possible. A map of Rolette County, North Dakota, shall then be prepared by the Tribal Secretary with the boundaries of the four (4) districts drawn thereon, which map shall then be certified to by the Tribal Chairman and Tribal Secretary and kept on file in the Office of the Tribal Secretary with a copy of thereof posted in the Tribal Office. (Approved April 3, 1975)

Votes for candidates for district representatives shall be cast at large. Eligible voters my vote for two (2) representatives from each of the four (4) districts for a combined total of eight (8) votes cast. (Approved February 3, 1995)

Section 7. District representatives to the Tribal Council shall be elected in even numbered years commencing in the year 1962 and shall hold office for two (2) years and each district shall be entitled to elect two (2) representatives. (Amendment III, Approved April 26, 1962)

ARTICLE VI – OFFICERS AND THEIR DUTIES

Section 1. There shall be the following Tribal Officers: A Chairman, Vice-Chairman, and a Secretary-Treasurer. The Chairman shall be elected on a reservation wide or at large basis for a term of two (2) years or until a successor shall have been elected and qualified. The Vice-Chairman shall be elected from within the Tribal Council and his only duty shall be to serve as presiding officer of the Council in the absence of the Chairman. The Secretary-Treasurer shall be selected by vote of the Tribal Council and the Chairman shall vote on same also if his vote is necessary to break a tie. (Amendment V, Approved April 26, 1962)

Section 2. Chairman. He shall preside at all regular and special meetings. He shall vote only in the case of a tie. He may veto any resolution and ordinance that is passed by the Tribal Council members however, he must provide a written rationale for the

veto. Such vetoed resolution or ordinance must then be presented for a reconsideration vote of the Tribal Council at the next regularly scheduled meeting, but no later than thirty (30) days after the veto. Should the resolution or ordinance fail to pass with at least five (5) affirmative votes or in the event the Tribal Council fails to reconsider the vote within the required thirty (30) day time period, such resolution or ordinance shall be deemed vetoed and may not be reconsidered for ninety (90) days. The Chairman shall see that all resolutions and ordinances of the Tribal Council are carried into effect. He shall exercise general supervision of all other officers and employees and see that their respective duties are performed. He shall be the Chief Executive Officer of the Tribe. (Amendment XVI, Approved February 3, 1995)

Section 3. Secretary-Treasurer. He shall keep the minutes at the principal office of the Tribal Council of all meetings of the Tribal Council. He shall keep the tribal roll, showing all changes therein as required by this Constitution or ordinance duly approved by the Tribal Council. He shall attend to all correspondence, distribution of tribal information or other duties incidental to his office including the reproduction of minutes, resolutions and ordinances and see to their distribution within the deadlines, if there be deadlines. He shall keep and maintain adequate and correct accounts of the properties and business transactions of the Tribal Council. He shall have care and custody of the funds and valuables of the Tribal Council and deposit same in the name of and to the credit of the Band with such depositories as the Tribal Council may direct and which are acceptable to the Area Director. Disburse funds of the Tribal Council, taking proper signed invoices, vouchers or other recordable data. Render to the Tribal Council a monthly statement and report of all his transactions as Treasurer and render also an annual financial statement in the form and with the detail required by the Tribal Council.

ARTICLE VII – TRIBAL COUNCIL PROCEDURES

Section 1. All Tribal Council meetings shall be open to the public and held in a publicly accessible place. A published agenda will be noticed to the Tribal membership at least three (3) days prior to the meeting time. A 30 day comment period must be provided prior to the adoption of any ordinances or amendments to the Tribal Code, whether proposed by resolution or otherwise. Adoption must occur through a roll call vote of the Tribal Council at a publicly held meeting. Special closed meetings of the Tribal Council may be held without public attendance for matters regarding protected personnel privacy considerations and governmental contract concerns that require confidentiality. The Chairman or any three (3) members of the Tribal Council may call special meetings. (Amendment XV, Approved February 3, 1995)

Section 2. A quorum shall consist of five (5) members and no business shall be conducted in the absence of a quorum.

Section 3. The Tribal Council shall cause to be installed, maintained and audited, a complete and detailed accounting system.

Section 4. All officers and employees of the tribe responsible for the safety of property and money shall be bonded in an amount sufficient to insure the tribe from loss.

Section 5. The newly elected district representatives (councilmen) and officers shall be installed in office at the first regular meeting of the Tribal Council after certifications of the election have been issued by the Secretary-Treasurer. In no event shall an individual convicted of a felony be installed into office. (Amendment XXI, Approved February 5, 1997).

Section 6. The duties of any and all other officers or employees shall be prescribed by the Tribal Council. At all general or special meetings of the Tribal Council the members of the Tribal Council shall be paid at hourly rates set by resolution of the Tribal Council. All other officers will be paid per month.

ARTICLE VIII – REFERENDUM AND RECALL

Section 1. Upon receipt of a petition by twenty percent (20%) of the resident voters, or by an affirmative vote of five (5) members of the Tribal Council any enacted or proposed resolution or ordinance of the Tribal Council shall within thirty (30) days be submitted to a referendum of the eligible voters of the Turtle Mountain Band of Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Council and if the resolution or ordinance is rejected by such vote, such resolution or ordinance shall be null and void, as of the date of the referendum, and shall not be reconsidered for a period of at least six (6) months. The Tribal Council shall call such referendum and prescribe the manner of conducting the vote.

Section 2. The Tribal Council shall enact ordinances which shall prescribe regulations, charges, and reasons for removal or recall of a district representative or officer. The grounds for removal, right of petition, and other factors shall be carefully framed to protect the interest of the Turtle Mountain Band of Chippewa Indians. Conviction of a felony is grounds for automatic removal of a district representative or other elected official. (Amendment XXII, Approved February 5, 1997).

Section 3. The Tribal Council by an affirmative vote of the majority shall appoint a replacement to fill any vacancy of a district representative or other elected officer, caused by removal, death, or resignation, provided the term of the replacement shall not extend beyond the next regular election regardless of the length of the unexpired term.

ARTICLE IX – POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers; subject to any limitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government:

(a) Governmental Powers.

Section 1. To represent the Band and to negotiate with the Federal, State, and local governments and with private persons.

Section 2. To employ legal council, subject to the approval of the Secretary of the Interior, or his duly authorized representative, so long as such approval is required by federal law.

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment upon non-members trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

Section 4. To enact ordinances to remove from the reservation persons not legally entitled to reside thereon and whose presence may be injurious to the peace, happiness or welfare of the members of the Band, subject to review of the Secretary of the Interior, or his duly authorized representative.

Section 5. To enact ordinances, subject to the review of the Secretary of the Interior, or his duly authorized representative, governing conduct of the members of the Band and Indians from other tribes on the reservation, providing for the maintenance of law and order and the administration of justice by establishing a police force and a tribal court and defining their powers and duties; and regulating the inheritance of property of the members of the Band except trust land.

Section 6. To enact ordinances to provide rules and regulations governing fishing, hunting and trapping on the reservation.

(b) Administrative Powers.

Section 7. To administer and funds within the control of the Band; to make expenditures from available funds for tribal purposes, including salaries and expenses of tribal officials or employees. All expenditures of tribal funds under the control of the Tribal Council shall be authorized by resolution duly enacted by the Tribal Council in legal session and the amounts so expended shall be a matter of public record to the members of the Band at all reasonable times.

Section 8. The Tribal Council of the Band shall prepare annual budget requests for advancement to the control of the Band such money as now or may hereafter be deposited to the credit of the Band in the United States Treasury or which may hereafter be appropriated for the use of the Band.

Section 9. To deposit to the credit of the Band of Chippewa Indians tribal funds, without limitation on the amount in any account, in any approved National or State Bank whose deposits are insured by an agency of the Federal Government, or with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior, or his authorized representative, in connection with such advances required the advance to be so deposited.

(C) Business Powers.

Section 10. To manage, lease, permit or otherwise deal with Tribal Land, interest in lands and other lands or assets under tribal jurisdiction; and to purchase or otherwise acquire lands, or interest in lands within and outside the Turtle Mountain Reservation, in accordance with law; or dispose of such land, or interest in lands, as authorized by laws. (Amendment X approved 10/25/90)

Section 11. To engage in any business that will further the economic well-being of the members of the tribe, or to undertake any programs or projects designed for the economic advancement of the people. The services of a licensed attorney with training and experience in corporate law shall be secured [sic] and initiated [sic] to oversee programs or projects designed for the economic advancement of the tribe, on a continuing basis. (Amendment XXVI, Approved, August 7, 2001)

Section 12. To borrow money from the Federal Government, or other source, and to direct the use of such funds for productive purposes, or to loan the money thus borrowed to members of the tribe, with the approval of the Secretary of the Interior, or his authorized representative.

Section 13. To pledge or assign chattel or future income due or to become due, provided such agreement, pledge, assignment or extension thereof shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

Section 14. To make and perform contracts and agreements of every description, not inconsistent with law or the provisions of this Constitution and Bylaws, provided that any contract shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

ARTICLE X – FUTURE AND RESERVED POWERS

Section 1. The Tribal Council may exercise such powers and may in the future be granted to the Council by members of the Turtle Mountain Band or the Secretary of the Interior or by any other duly authorized official or agency of the Federal Government, provided such power is accepted by the Tribe by appropriate amendment of this Constitution.

Section 2. Any right of power heretofore vested in the Turtle Mountain Band of Chippewa Indians, but not expressly referred to in this Constitution, shall remain in the Band, and may be exercised by the Turtle Mountain Band of Chippewa Indians or by the Tribal Council through the adoption of appropriate constitutional amendment if that be the wishes of the people.

ARTICLE XI – MANNER OF REVIEW

Section 1. Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior shall within ten (10) days of its enactment be presented to the Superintendent of the Turtle Mountain Agency who shall within ten (10) days after its receipt by him approve or disapprove it.

Section 2. If the Superintendent approves any resolution or ordinance it shall thereupon become effective, but the Superintendent shall transmit the enactment bearing his endorsement to the Secretary of the Interior, who may, within ninety (90) days fo the date of its receipt by him rescind the resolution or ordinance for any cause by notifying the Turtle Mountain Tribal Council of his veto.

Section 3. If the superintendent disapproves any resolution or ordinance, he shall within ten (10) days after its receipt by him advise the Tribal Council of his reasons therefore, and if these reasons appear to the Council insufficient, it may, by vote of the five (5) members, refer the resolution or ordinance to the Secretary of the Interior, and if approved by him in writing, it shall become effective.

ARTICLE XII – ADOPTION

Section 1. This (revised) Constitution, when adopted by a majority vote of the tribal members voting at a special meeting called by the Secretary of the Interior, shall be submitted by the Secretary of the Interior, and shall be in full force and effect from the date of such approval.

ARTICLE XIII-AMENDMENT

Section 1. This Constitution and Bylaws may be amended by a majority of the qualified voters of the Turtle Mountain Band of Chippewa Indians at an election called for that purpose; provided that at least twenty per cent (20%) of the resident voters of the Tribe entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or his delegated representative.

Section 2. It shall be the duty of the Tribal Council to call such election on any proposed amendment upon receipt of a petition signed by twenty per cent (20%) of the qualified resident voters of the Tribe or the Tribal Council may call such an election by an affirmative vote of five (5) members of the Tribal Council.

ARTICLE XIV – SEPARATION OF POWERS
(Amendment XI approved November 3, 1992)

Judiciary

Section 1. Purpose:

To provide for a separate branch of government free from political interference and conflicts of interest for the development and enhancement of the fair administration of justice.

Section 2. Establishment:

This section shall create a separate and equal judicial branch of government. All judicial powers of the Turtle Mountain Band of Chippewa Indians shall be vested in the Judicial Branch of government (exhaustion of any applicable administrative remedy requirement is still required) and such branch shall consist of the Turtle Mountain Appellate Court, the Tribal Court, the Judicial Board and the elected officials, appointees and employees of said courts.

Section 3. Powers:

- a) The Judicial Branch of government of the Turtle Mountain Band of Chippewa Indians shall have jurisdiction, as determined by legislative action pursuant to Chapter 1.05 and Chapter 2.01 of the Turtle Mountain Tribal Code and applicable federal law, to adjudicate actual cases and [sic] controversies that arise under the Turtle Mountain Constitution, statutes, resolutions, civil and criminal causes of action and legal decisions, and to ensure due process, equal protection, and protection of rights arising under the Civil Rights Act of 1968, as amended, for all persons and entities subject to the criminal and civil jurisdiction on the Turtle Mountain Tribe.
- b) The Judicial Branch shall have authority to independently develop its operating budget and independently secure funding for its operations directly from funding sources. Nothing within this section shall prohibit the Tribal Council from providing funds from its general accounts to supplement the budget of the court or assist the court in obtaining needed funding.

Section 4. Selection of Judges and Chief Clerk of Court:

- a) The Office of Chief Judge shall be filled as follows: Persons who possess the requisite qualifications as developed by the Judicial Board and approved by the

Tribal Council, shall file their intention of seeking such office with the Secretary/Treasurer in the manner described in ARTICLE V, Section 4 (b) of the Turtle Mountain Constitution. Properly registered candidates for the Office of Chief Judge shall then be subjected to a reservation-wide or at large election. The candidate receiving the most votes, as determined by the vote of the people at a duly held election held in conjunction with the tribal general election, shall then be seated as the Chief Judge of the Turtle Mountain Tribe.

- b) The position of Associate Judge shall be filled as follows: Persons who possess the requisite qualifications as developed by the Judicial Board and approved by the Tribal Council, shall file their intention of seeking such office with the Secretary/Treasurer in the manner described in ARTICLE V, Section 4 (b) of the Turtle Mountain Constitution. Properly registered candidates for the Office of the Associate Judge shall then be subjected to a reservation-wide or at large selection. The candidate receiving the most votes, as determined by the vote of the people at a duly held election held in conjunction with the tribal general election, shall the be seated as the Associated [sic] Judge of the Turtle Mountain Tribe. The candidate in the general election for the position of the Associate Judge who shall receive the second largest popular vote for this position shall also be seated as an Associate Judge of the Turtle Mountain Tribe if more than one Associate Judge is required. The determination of the number of Associate Judges needed to serve the court shall be made by the Judicial Board prior to the election.
- c) The position of Chief Clerk of Court shall be filled as follows: Persons who possess the requisite qualifications as developed by the Judicial Board and approved by the Tribal Council, shall file their intention of seeking such office with the Secretary/Treasurer in the manner described in ARTICLE V, Section 4 (b) of the Turtle Mountain Constitution. Properly registered candidates for the office of Chief Clerk of Court shall then be subjected to a reservation-wide or at large selection. The candidate receiving the most votes, as determined by the vote of the people at a duly held election held in conjunction with the tribal general election, shall the be seated as the Chief Clerk of the Tribal Court of the Turtle Mountain Tribe. The Chief Clerk of court shall not serve in any judicial capacity.
- d) All Trial and/or Special judges shall be appointed in the manner as presently provided in Section 1.0506 of the Turtle Mountain Tribal Code.
- e) The term of office of the Chief Judge of the Turtle Mountain Tribe and all other judges and Chief Clerk of Court shall be four years. Vacancy in the office of Chief Judge by reason of impeachment, illness or incapacity shall be filled by appointment of one of the currently sitting judges of the Judicial Branch by the Judicial Board. This appointment shall be effective only for the remaining term of the duly elected Chief Judge. Associate Judges, during the first election term

of judges pursuant to this amendment, shall serve for a period of two years. Thereafter, all terms of Associate Judge(s) shall be for a four-year term. The effect of this provision to provide continuity to the court by providing staggered terms for the Chief Judge and Associate Judge(s). Vacancy in the Office of Associate Judge(s) shall be filled by appointment in the manner presently provided in Section 1.0506 of the Turtle Mountain Tribal code. This appointment shall be effective only from the remaining term of the duly elected Associate Judge.

- f) Appellate Court Judges shall be appointed by the Judicial Branch of Government and ratified by the Tribal Council.
- g) No justice of the appellate court or judge of the tribal court shall engage in the practice of law before the Turtle Mountain Tribal or Appellate Court nor shall they hold any public office, elective or appointive, not judicial in nature.
- h) All other employees of the judicial branch of government shall be deemed staff employees and shall not serve in any judicial capacity.

Section 5. Impeachment of Judges, including chief Judge:

- a) All judges of the judicial branch of government shall be subject to the impeachment based only upon cause, as developed by the Judicial Board, only after due process of law is provided. The applicable standard shall be clear and convincing evidence.
- b) Impeachment proceedings shall be heard before an impeachment judge empowered to hear only impeachment hearings and who shall serve n [sic] no other capacity in the Turtle Mountain Judicial Branch of Government.
- c) Qualifications of said special Impeachment Judge: This judge must be currently licensed to practice law in any State with previous experience as a tribal, state or federal judge. This position shall be appointed by the Judicial Board and ratified by the Tribal Council. Funding for this position shall be provided by the Tribal Council.

Section 6. Judicial Board:

- a) This section shall establish a Judicial Board that shall consist of the following voting members:
 - (i) one lay person from each district; and
 - (ii) one lay person elected at large who shall serve as the Chairperson of the Judicial Board; and
 - (iii) one member of the Turtle Mountain Tribal Council; andThe following non-voting advisors:
 - (iv) two attorneys; and

- (v) one member of the Turtle Mountain Judicial Branch.

The lay members of the Judicial Board must be enrolled members of the Turtle Mountain Tribe residing within the district he/she represents and must not serve in any tribal elective or appointive position. Attorneys must be licensed in the Turtle Mountain Tribal Court and be members in good standing with any state or federal court. (Amendment XVII, Approved February 3, 1995)

- b) Duties:The [sic] Judicial Board shall have authority to develop, and implement the overall general policy of the Judicial Branch of government, to develop and implement a code of judicial and professional ethics, to establish rules of procedure for the court, develop and implement impeachment procedures and to recommend legislative change to the Tribal Council for the enhancement and development of the Judicial Branch of Government. Nothing within this policy shall be construed to grant the Judicial Board authority to regulate the day-to-day activities of the court, develop the court's budget or to interfere with the administration of justice.

- c) Selection of Judicial Board members and terms of Office:
District lay members shall be enrolled members of the Turtle Mountain Band of Chippewa, residents of the districts they represent (See also Section 6(a) above) and shall be elected by a majority vote of eligible voters of each district at the regularly scheduled general election. Candidates for the Judicial Board shall file their candidacy with the Secretary/Treasurer in the manner described in ARTICLE V, Section 4 (b) of the Turtle Mountain Constitution. Attorney Positions shall be appointed by the Judicial Branch of government by consensus of the Chief Judge and Associate Judge(s). The Judicial Branch representatives shall be appointed by consensus of all judges, except the impeachment judge, of the judicial branch of government. The Tribal Council representative shall be appointed by the majority vote of the Tribal Council. Terms of office shall be for a two-year period. No member of the Judicial Board may serve more than two consecutive terms but may be reappointed after their absence from the Judicial Board by at least one term.

- c) [sic] A special election shall be held no later that 45 days after the effective date of ARTICLE XIV for the purpose of selection [sic] the lay members of the Judicial Board. Thereafter, the election of lay members shall occur in conjunction with the regularly scheduled general election.

Section 7. Implementation and Saving Clause:

This amendment establishing an independent Judicial Branch of Government shall take effect 30 days after affirmative vote by the voters of the Turtle Mountain Tribe subject to the following limitations: Section 4 (a) Selection of Judges; The Missouri Plan of

judicial appointment shall remain in effect until the next regularly scheduled general election at which time all judicial appointments made pursuant to the Missouri Plan, except for trial and/or special judges shall terminate.

Section 8. Reservation of powers by Tribal Council and saving provision of the Tribal Constitution:

- a) Only those sections and articles of the current Constitution and Tribal Code are repealed that are necessary to give effect to the above provisions. The Turtle Mountain Tribal Council retains any and all power not provided to the Judicial Branch of Government under this Article. Nothing within this amendment is or shall be construed as a waiver of sovereignty currently enjoyed by the Turtle Mountain Tribe.

Appendix J

The 2002 constitutional draft

**Constitution
of the
Turtle Mountain Band of Chippewa**

PREAMBLE

We the People of the Turtle Mountain Band of Chippewa, in order to from a fair and just government by the People and for the People, safeguard the inherent rights and sovereignty of the Band and our rights recognized by treaty, foster our values, traditions, and teachings, respect and protect our natural environment and resources, advance the general welfare, and serve the People with equal justice, do establish this Constitution.

**ARTICLE I – TERRITORY AND
JURISDICITON**

Section 1. Territory. The Territory of the Band shall extend to all lands within the exterior boundaries of the Reservation, all lands outside the exterior boundaries of the Reservation held by the United States for the benefit of the Band or the People, and to other lands outside the exterior boundaries of the Reservation acquired by the Band or by the People, and held by the United States for the benefit of the Band or the People. The Territory shall include all lands, air, skies above, water, surface, subsurface, minerals, natural resources, and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise by the government of the United States or the Band existing now or in the future.

Section 2. Jurisdiction. The Jurisdiction of the Band shall extend to all persons, property, and activities within the Territory. Every person who enters the Territory shall, by entering, be deemed to have consented to the Jurisdiction of the Band. Every license or permit issued under the authority of the Band shall include a provision that the parties consent to the Jurisdiction of the Band. Every person within the Territory shall, by accepting employment or by doing business within the Territory, be deemed to have consented to the Jurisdiction of the Band. The Band shall have the authority to assert its Jurisdiction over any matter that affects the interests of the Band.

ARTICLE II – MEMBERSHIP

Section 1. Membership Requirements. The membership of the Band shall consist of:

- (a) All persons whose name appear on the roll approved on March 15, 1943.

- (b) All descendants of persons whose names appear on the roll defined in Section 1(a) of this Article, provided that such descendants possess one-fourth or more Indian blood and provided further that such descendants are United States citizens.

Section 2. Current Roll. The membership roll shall be kept current by striking therefrom the names of deceased persons and adding the names of persons who qualify for membership under Section 1(b) of this Article.

ARTICLE III – BILL OF RIGHTS

Section 1. Bill of Rights. The government of the Band shall not:

- (a). make or enforce any law which infringes upon the religious beliefs, faith, or spirituality or prohibits the free exercise thereof, nor any law which establishes religion;
- (b). make or enforce any law prohibiting the freedom of speech, expression, or of the press, or the right of the People peaceably to assemble, and to petition the government for redress of grievances;
- (c). violate the right of the People to be secure in the privacy of their persons, houses, papers, electronic and telecommunications information, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a Judge and particularly describing the place, person, house, or things to be searched, the object and scope of such search, and the person or thing to be seized, nor execute an arrest without reasonable suspicion;
- (d). arrest individuals without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be held against them in a court of law, to have these rights explained at the time of arrest, and to ask the arrested individuals if they understand these rights;
- (e). prosecute or punish any person more than once for the same offense arising out of the same incident; nor compel any person in any criminal case to be a witness against himself or herself;
- (f). discharge any person from employment, or take any private property or possessory interest in private property for public use, without due process and just compensation;
- (g). deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the action, to be confronted with the witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and to have the assistance of counsel for his or her defense;

- (h). deny to any person in a civil proceeding the right to a speedy and public trial;
- (i). require excessive bail, impose excessive fines or, inflict cruel or unusual punishment;
- (j). deny to any person within its jurisdiction the equal protection and opportunity under the law or deprive any person of liberty or property without due process of law, provided, that the Council shall have the power to enact an Indian preference law and a Veterans preference law;
- (k). execute any action which singles out an individual or group for punishment without trial, or pass any ex post facto law;
- (l). deny to any person accused of an offense punishable by imprisonment the right upon request, to a trial by an impartial jury or not less than six persons, and all persons shall be presumed innocent until proven guilty in a court of law;
- (m). deny to any person the access to his or her own personal information maintained by the Band;
- (n). discriminate against anyone based on age, gender, creed, religion, traditional Indian status, disability, familial status, sexual orientation, or social or economic status;
- (o). prohibit the right of the People to own and use firearms, to fish, hunt, trap and to gather foods, plants and traditional medicines, subject to restrictions established by law for the protection and preservation of the People, natural resources, and sacred sites.

Section 2. Reserved Powers. Powers not granted to the government shall be reserved to the People.

ARTICLE IV – LEGISLATIVE BRANCH

Section 1. Composition.

- (a). The Legislative Branch shall be comprised of a Council of sixteen members. Each District shall have four Representatives, two of whom shall be elected at large by the voters and two of whom shall be elected by the voters from the District in which they reside.
- (b). The Council shall select a Speaker from among its Members.

Section 2. Qualifications.

- (a). Each Council Member must be a Member of the Band, must physically reside in the district from which he or she is elected, and must have physically resided in the District

at least sixty days immediately prior to the Primary Election. No person who has been convicted of a felon shall be eligible as a candidate for Council Member.

(b). Each Council Member shall have reached the age of twenty-five years on the date of the Primary Election.

Section 3. Terms. Members of the Council shall serve four year staggered terms or until successors are sworn into office.

Section 4. Legislative Sessions.

(a). The Council shall convene on the Reservation for six Regular Sessions of five days each during the first full calendar week in the months of January, March, May, July, September, and November.

(b). Special Sessions of the Council may be called by the Chairperson or upon the written request of ten percent of the number of voters who voted in the most recent General Election of the Band. All Special Sessions shall be held on the Reservation. The purposes of the Special Session shall be stated in the notice published not less than ten days prior to the Special Session, and the Council shall not consider any other subject not within such purposes. No Special Session may convene until thirty days has elapsed after the adjournment of the prior Session unless called by the Chairperson.

Section 5. Compensation. Council Members shall be paid a reasonable compensation per day while in session as established by the Council in a law passed pursuant to the Legislative Process which shall include a written Bill setting the rate of compensation, at least thirty days advance public notice of the Bill, a public hearing on the Bill, a published record of the vote by each Council Member on the Bill, and approval by the Chairperson or approval by veto override by the Council, provided, that the voters of the Band retain the right to invalidate the rate of compensation by placing the law before the voters in a Referendum election. No increase in compensation for Council Members shall take effect unless approved and authorized within the annual balanced budget by a vote of at least twelve Members of the Council. All approved increases in compensation for Council Members shall not take effect until after the next General Election.

Section 6. Powers.

(a). Legislative powers shall be vested in the Council. The Council shall have the power to make laws and resolutions in accordance with this Constitution to facilitate and protect the health, safety, education, and general well-being of the Band.

(b). The Council shall enact and publish an annual balanced budget by law by September thirtieth. The budget shall include an appropriation of operating funds for each branch of government. The Council shall have the power to raise revenue and

appropriate funds for expenditure by the Executive Branch and Judicial Branch. Every funding item in the annual budget must be previously authorized by law. No money shall be drawn from the Treasury except by Order signed by the Chairperson and upon authorization and appropriation by law.

(c). The Council shall have the power to set its own procedures, establish legislative committees, and enact laws governing attendance of its members including penalties for absences.

(d). The Council shall have the power to override an Executive veto by a vote of at least twelve Members of the Council.

(e). The Council shall have the power to confirm or deny nominees selected by the Chairperson as Directors within the Executive Branch. Council Members shall not be permitted to serve as Directors within the Executive Branch.

(f). The Council shall have the power to establish the duties of each Executive Department.

(g). The Council shall have the power to create Regulatory Commissions by law. Any Commission created by the Council shall be in the Executive Branch of government. No Member of the Council may also be a member of any Commission created by the Council. All Commissions shall be subject to the laws of the Band. Any Commission created by the Council shall have the authority to promulgate written regulations pursuant to law and due process. Members of all Commissions shall be selected by nomination by the Chairperson, subject to confirmation by the Council.

(h). The Council shall have the power to create Executive Boards by law. Any Board created by the Council shall be in the Executive Branch of government and shall be subject to the powers of the Executive Branch. No member of the Council may also be a member of any Board created by the Council. All Boards shall be subject to the laws of the Band. Members of all Boards shall be selected by election as required by law, or by nomination by the Chairperson, subject to confirmation by the Council.

Section 7. Legislative Process. The Council shall adopt a public legislative process which shall include the following:

(a). All legislative proposals shall be formally introduced as written Bills. All Bills shall include a statement identifying the specific law, if any, to be superseded, repealed, or amended.

(b). All Bills shall be read into the legislative record. All Bills shall be published in a legislative Calendar for at least thirty days prior to action on the Bill. All Bills shall be made the subject of a public legislative hearing prior to action on the Bill.

(c). All decisions of the Council shall be made by a majority vote of the Members present in a Regular Session or Special Session unless otherwise specified in this Constitution. The names and votes of each Council Member shall be recorded and published. Proxy voting shall be prohibited.

(d). All Bills passed by the Council shall be presented to the Chairperson for signature or veto. All laws shall take effect ninety days after approval by the Council, and by the Chairperson or by veto override. Any action by the Council which does not follow the legislative process shall be deemed void.

(e). The Council may declare a Bill an emergency measure by a vote of at least twelve Members of the Council. The Council shall be required to publish an emergency Bill on the legislative Calendar for five days prior to passage of the Bill. An emergency Bill approved by the Council and approved by the Chairperson shall take effect immediately upon passage or on a date specified in the law.

(f). All laws shall be compiled into a Code which shall be published annually.

Section 8. Code of Ethics. The Council shall develop, implement, and maintain enforceable Code of Ethics for all branches and operations of Government. This shall include but not be limited to a Code of Professional and Judicial Ethics.

ARTICLE V – EXECUTIVE BRANCH

Section 1. Composition.

(a). The Executive Branch shall be comprised of a Chairperson and Vice Chairperson and all Departments that the Legislative Branch deems necessary by law for the effective operation of the Government. The Departments shall include at a minimum a Department of Treasury.

(b). The Chairperson and Vice Chairperson shall be elected at large by the voters of the Band. The Chairperson and Vice Chairperson shall seek office as a single candidacy for the same term of office. The Vice Chairperson shall be subordinate to the Chairperson.

Section 2. Qualifications.

(a). The Chairperson and Vice Chairperson shall have reached the age of twenty-five by the date of the Primary Election. No person who has been convicted of a felony shall be eligible as a candidate for Chairperson or Vice Chairperson. The Chairperson and Vice Chairperson shall be enrolled Members of the Band. The Chairperson and Vice Chairperson shall physically reside on or within twenty miles of the Reservation for at least six months immediately prior to the Primary Election.

(b). The Chairperson, Vice Chairperson, and the executive director of the Department of Treasury shall be bonded or insured in an amount sufficient to protect the property and financial assets of the Band.

Section 3. Terms. The Chairperson and Vice Chairperson shall serve a term of four years or until successors are sworn into office.

Section 4. Compensation. The salary of the Chairperson and Vice Chairperson shall be established by the Council by law. Any increase or decrease in the salary of the Chairperson or Vice Chairperson shall take effect after the next General Election for that office.

Section 5. Powers.

(a). Executive power shall be vested in the Chairperson. The Chairperson shall execute, administer, and enforce the laws.

(b). Funds which have been appropriated by law shall not be drawn from the Treasury except by Order signed by the Chairperson. Spending government funds or drawing funds from the Treasury without authorization and appropriation by law and without an Order signed by the Chairperson shall constitute fraud and embezzlement.

(c). The Chairperson shall have the power to veto any legislative enactment passed by the Council within three days of passage with a written explanation of any objections, and if the Chairperson takes no action within three days, then the enactment shall become law in accordance with this Constitution.

(d). The Chairperson shall have the power to nominate an Executive Director for each Department subject to confirmation by the Council prior to the start of a Regular Session. Any nominee that is neither confirmed nor denied after the sixtieth day of nomination shall be considered confirmed.

(e). The Chairperson shall have the power to remove an Executive Director of a Department.

(f). The Chairperson shall have the sole power to represent the Band in all matters with any other government. The Chairperson shall not negotiate any treaty, compact, or contract which has not been generally authorized by law. Any treaty or compact negotiated by the Chairperson shall be subject to ratification of the Council.

(g). The Chairperson shall have the power to make recommendations to the Council on matters of interest or benefit to the Band. The Chairperson shall propose an annual balanced budget to the Council. The Chairperson shall give to the Council an annual State of the Band address which shall include his or her plans and goals for the Band.

(h). The Chairperson and Vice Chairperson shall not serve on any Commissions or Boards created by the Council.

(i). The Vice Chairperson shall have the power to vote in the Council only to break a tie vote.

ARTICLE VI – JUDICIAL BRANCH

Section 1. Composition.

(a). The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, such other lower courts of special jurisdiction as deemed necessary by the Council at law, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Council at law.

(b). The Supreme Court shall be comprised of one Chief Justice and two Associate Justices.

(c). The Trial Court shall be comprised of one Chief Judge and other Associate Judges as deemed necessary by the Council at law.

Section 2. Terms.

(a). The Chief Justice of the Supreme Court shall be elected for a term of six years or until a successor is sworn into office. The Associate Justices of the Supreme Court shall be appointed by the Chairperson subject to confirmation by a majority vote of the Council. An Associate Justice shall serve a term of four years or until a successor is sworn into office.

(b). The Chief Judge of the Trial Court shall be elected for a term of four years or until a successor is sworn into office. The Associate Judges shall be appointed by the Chairperson subject to confirmation by a majority vote of the Council. An Associate Judge shall serve a term of four years or until a successor is sworn into office. For the first appointment, the Chairperson shall appoint one Associate Judge to serve for two years and one Associate Judge to serve for four years, thereafter, each appointed Associate Judge shall serve for four years.

Section 3. Qualifications.

(a). The Chief Justice and Chief Judge shall be Members of the Band.

(b). The Chief Justice and Chief Judge shall each possess a law degree.

(c). No person convicted of a felony shall serve as a Justice or Judge.

(d). For the positions of Chief Justice and Chief Judge, if no member of the Band meets the qualifications of Section 3(a) and (b), the Council may establish temporary qualifications by law until the next General Election.

Section 4. Jurisdiction.

(a). The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Band, including cases in which the Band or its officials and employees shall be a party. Any such case or controversy arising within the jurisdiction of the Band shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction shall not be construed to be a waiver of the Sovereign Immunity of the Band.

(b). The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court. The Supreme Court shall have exclusive jurisdiction over all election disputes.

Section 5. Powers and Duties.

(a). The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity.

(b). The Trial Court shall have the power to declare the laws of the Band void if such laws are not in agreement with this Constitution.

(c). The Supreme Court shall have the power to interpret the Constitution and laws of the Band and to make conclusions of law. Any decision of the Supreme Court shall be final.

(d). The Supreme Court shall have the power to declare the laws of the Band void if such laws are not in agreement with this Constitution.

(e). All orders, opinions, and decisions of the Supreme Court shall be written and published.

(f). The Courts shall render a final disposition in all cases properly filed.

(g). The Judicial Branch shall have the power to administer funds appropriated by law for the Judicial Branch.

Section 6. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal to the Supreme

Court. All appeals that are accepted for review by the Supreme Court shall be heard by the full court.

Section 7. Compensation. Justices and Judges shall receive reasonable compensation. No Increase or decrease in compensation for Justices and Judges shall take effect until after the next General Election.

ARTICLE VII – ELECTIONS

Section 1. Election Board. There shall be an Election Board to conduct all elections in accordance with the election laws. The Election Board shall be comprised of five persons, at least one person from each District, nominated by the Chairperson subject to confirmation by the Council. Election Board Members shall serve terms of four years or until their successors have been sworn into office. Election Board Members may serve more than one term.

Section 2. Ballots. All elections shall be conducted by secret written ballot. The candidate or issue receiving the greatest number of votes cast shall prevail. In the event of a tie in the General Election, the successful candidate shall be selected by drawing a name out of a hat.

Section 3. Primary Election. A Primary Election shall be held for all available elective offices on the first Tuesday of September prior to the General Election. The candidates receiving the two highest number of votes in the Primary Election for each Office shall proceed to the General Election.

Section 4. General Election. The General Election shall be held on the first Tuesday following the first Monday in November in even numbered years commencing in 2002.

Section 5. Districts.

(a). The Turtle Mountain Indian Reservation shall have four Districts within Rolette County.

(b). After each General Election, the Election Board shall establish new voting Districts for future elections to ensure an equal population in each District.

Section 6. Nominations. Eligible candidates shall file their notice of intent to run for office with the Chairperson of the Election Board, identifying the office for which he or she is a candidate at least forty-five days prior to the Primary Election date. The Chairperson of the Election Board shall post a list of eligible candidates at least thirty days before the Primary Election in each voting District.

Section 7. Voters. Any enrolled Member of the Band, eighteen years of age or older shall be entitled to vote in any election provided he or she has resided in Rolette County or the Territory for a period of thirty days immediately prior to an election.

Section 8. One Office. No person shall be allowed to run for or hold more than one elected position at any one time.

Section 9. Absentee Voting. All qualified voters of the Band shall be permitted to vote by absentee ballot according to the procedures established by law.

Section 10. Polling Sites. There shall be a polling site in each voting District. Polling places outside a District or the Territory shall be prohibited.

Section 11. Certification of Election Results. The Election Board shall certify all election results within four working days of the election.

Section 12. Challenges to Election Results. Any challenges to the election results shall be filed with the Supreme Court within five days of certification of the results by the Election Board. The Supreme Court shall hear and decide all election challenges prior to the deadline for administering the Oath of Office. The decision of the Supreme Court shall be final.

Section 13. Oath of Office. A Judge of the Trial Court shall administer the Oath of Office for all newly elected officials on the fourth Friday after the certification of election results. The Oath of Office shall require all elected officials to swear oath and allegiance to uphold the Constitution of the Band.

Section 14. First Election. In the First Election after the adoption of this Constitution, the candidate elected at large in each District with the highest number of votes shall serve a four year term. The candidate elected from within the District with the highest number of votes shall serve a four-year term. The remaining two candidates for Council from both groups shall serve a two-year term. In the event of a tie, the successful candidate shall be selected by drawing the name out of a hat. Elections shall follow every two years thereafter.

ARTICLE VIII – REFERENDUM

Section 1. Referendum. Upon receipt of a petition by twenty percent of the voters, any enacted Bill shall not become law until submitted to the voters in a Special Election. Upon receipt of a petition by twenty percent of the voters, any enacted law shall be submitted to the voters in a Special Election. Petitions shall be submitted to the Election Board. The Election Board shall conduct a Special Election within ninety days of receipt of a valid petition. The majority of votes cast in such referendum shall be conclusive and binding on the Band and shall take effect immediately.

ARTICLE IX – REMOVAL AND VACANCIES

Section 1. Removal of Council Members. The Council shall have the power to remove a Council Member by a vote of at least thirteen Members of the Council. A Council Member subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 2. Removal of a Chairperson or Vice Chairperson. The Council shall have the power to remove a Chairperson or Vice Chairperson by a vote of at least thirteen Members of the Council. A Chairperson or Vice Chairperson subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 3. Removal of a Judge or Justice. The Council shall have the power to remove a Judge or Justice by a vote of at least thirteen Members of the Council. A Judge or Justice subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 4. Removal for Felony Conviction while in Office. Any person serving as Chairperson, Vice Chairperson, Council Member, or a Member of the Judiciary who is convicted of a felony while in office shall be removed from office.

Section 5. Vacancy in the Council. In the event that a Council Member cannot fulfill his or her term, the candidate from the respective District who received the next highest number of votes in the most recent General Election shall serve the remainder of the term.

Section 6. Vacancy in the Office of Chairperson. The Vice Chairperson shall assume the role of Chairperson in the event of death, incapacitation, or removal of the Chairperson.

Section 7. Vacancy in the Office of Vice Chairperson. A vacancy in the Office of Vice Chairperson shall be filled by appointment by the Chairperson subject to confirmation by the Council.

Section 8. Vacancies in the Judicial Branch. A vacancy in the Office of Chief Judge or Chief Justice shall be filled by he voters in an election. A vacancy in the Office of Associate Judge or Justice shall be filled by appointment by the Chairperson subject to confirmation by the Council.

ARTICLE X – RECALL

Section 1. Recall.

(a). The Chairperson and Vice Chairperson shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the most recent General Election. At least sixty percent of the number of voters in the last general election shall be required to vote in a Special Election to recall the Chairperson or Vice Chairperson. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Chairperson or Vice Chairperson.

(b). Council Members elected by a District shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the respective District at the most recent General Election. At least sixty percent of the number of voters from the respective District in the last General Election shall be required to vote in a Special Election to recall the Council Member. At least fifty percent of the total votes cast in a Special Election must vote in favor of the recall in order to have a valid recall of the Council Member.

(c). Council Members elected at large shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast at the most recent General Election. At least sixty percent of the number of voters in the last general election shall be required to vote in a Special Election to recall the Council Member. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Council Member.

(d). The Chief Justice and Chief Judge shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the most recent General Election. At least sixty percent of the number of voters in the last General Election shall be required to vote in a Special Election to recall the Chief Justice or Chief Judge. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Chief Justice or Chief Judge.

Section 2. Recall Procedures. A separate petition shall be required for each person subject to recall. The Election Board shall provide a list of the voters to the petitioners upon request. The petitioners shall have one hundred twenty days to collect the requisite number of signatures on a recall petition. The Election Board shall hold a Special Election within ninety days of certification of a valid petition.

Section 3. Recall Limits. No more than two Council Members shall be removed by recall at the same time. No recall petition shall be initiated against any elected official until six months has elapsed from their inauguration into office.

ARTICLE XI – AMENDMENTS

Section 1. Request for an Election.

(a). The Council may call by law for a Special Election to amend the Constitution.

(b). The voters may call for an election to amend the Constitution by submitting a petition to the Election Board signed by at least twenty percent of the voters of the Band. The Election Board shall call a Special Election to amend the Constitution within ninety days of receipt of a valid petition.

Section 2. Requirements. The Constitution may be amended by a majority vote of the voters who vote in the Special Election, provided, that at least forty percent of the voters cast a vote in the Special Election. Amendments approved by the voters shall become effective immediately unless otherwise indicated in the amendment.

ARTICLE XII – SOVEREIGN IMMUNITY

Section 1. Sovereign Immunity. The Band shall possess Sovereign Immunity.

Section 2. Immunity from Suit by Foreign Parties. The Band and its officials and employees acting within the scope of their duties shall be immune from suit brought by any foreign entity, government, or person except to the extent that the Council expressly waives Sovereign Immunity by law. Nothing in this Constitution shall be deemed to waive Sovereign Immunity from foreign suit.

Section 3. Immunity from Suit by Domestic Parties. The Band and its officials and employees acting within the scope of their duties shall be immune from suit brought by any public or private entity or individual within the Territory or subject to the Jurisdiction of the Band except to the extent that the Council expressly waives Sovereign Immunity by law.

Section 4. Suit Against Officials and Employees. Officials and employees of the Band who act beyond the scope of their duties or authority shall be subject to suit in equity in the Judicial Branch by persons subject to its jurisdiction for purposes of enforcing the rights and duties established by this Constitution or other applicable laws.

ARTICLE XIII – REAL PROPERTY

Section 1. Property Code. The Council shall enact a comprehensive Property Code establishing a Land Office and governing a system of property for all lands within the Territory. The Property Code shall include provisions governing the issuance of patents in fee or any lesser interest, the establishment of a Registry, eminent domain, the recordation of patents, deeds, wills, trusts, leases, gifts, mortgages, liens, and other writings used to memorialize transactions of property interests, and land use and zoning.

The Council shall have the power by law to issue patents to property interests only to Members. All property interests within the Territory, by whomever held, shall be deemed to have originated in a patent issued pursuant to the sovereign authority of the Band and such interests shall be recorded in the Land Office.

Section 2. Transfer of Land. Interests in land within the Territory shall not be conveyed or otherwise transferred, by sale, gift, devise, descent, forfeiture, or otherwise, to any person who is not a Member, and any such conveyance or transfer shall be deemed void and any action to execute such a conveyance or transfer, if intentional, shall constitute a crime as determined by law for persons who are subject to the jurisdiction of the Band, and any property subjected to such conveyance or transfer determined to be criminal shall be forfeited to the Band.

Appendix K

The 2003 constitutional draft

**Constitution
of the
Turtle Mountain Band of Chippewa**

PREAMBLE

We the People of the Turtle Mountain Band of Chippewa, in order to from a fair and just government by the People and for the People, safeguard the inherent rights and sovereignty of the Band and our rights recognized by treaty, foster our values, traditions, and teachings, respect and protect our natural environment and resources, advance the general welfare, and serve the People with equal justice, do establish this Constitution.

ARTICLE I – TERRITORY AND JURISDICITON

Section 1. Territory. The Territory of the Band shall extend to all lands within the exterior boundaries of the Reservation, all lands outside the exterior boundaries of the Reservation held by the United States for the benefit of the Band or the People, and to other lands outside the exterior boundaries of the Reservation acquired by the Band or by the People, and held by the United States for the benefit of the Band or the People. The Territory shall include all lands, air, skies above, water, surface, subsurface, minerals, natural resources, and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise by the government of the United States or the Band existing now or in the future.

Section 2. Jurisdiction. The Jurisdiction of the Band shall extend to all persons, property, and activities within the Territory. Every person who enters the Territory shall, by entering, be deemed to have consented to the Jurisdiction of the Band. Every license or permit issued under the authority of the Band shall include a provision that the parties consent to the Jurisdiction of the Band. Every person within the Territory shall, by accepting employment or by doing business within the Territory, be deemed to have consented to the Jurisdiction of the Band. The Band shall have the authority to assert its Jurisdiction over any matter that affects the interests of the Band.

ARTICLE II – MEMBERSHIP

Section 1. Membership Requirements. The membership of the Band shall consist of:

- (c) All persons whose name appear on the roll approved on March 15, 1943.

- (d) All descendants of persons whose names appear on the roll defined in Section 1(a) of this Article, provided that such descendants possess one-fourth or more Indian blood and provided further that such descendants are United States citizens.

Section 2. Current Roll. The membership roll shall be kept current by striking therefrom the names of deceased persons and adding the names of persons who qualify for membership under Section 1(b) of this Article.

ARTICLE III – BILL OF RIGHTS

Section 1. Bill of Rights.

- (a). The government of the Band shall not make or enforce any law which infringes upon the religious beliefs, faith, or spirituality or prohibits the free exercise thereof, nor any law which establishes religion;
- (b). The government of the Band shall not make or enforce any law prohibiting the freedom of speech, expression, or of the press, or the right of the People peaceably to assemble, and to petition the government for redress of grievances;
- (c). The government of the Band shall not violate the right of the People to be secure in the privacy of their persons, houses, papers, electronic and telecommunications information, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a Judge and particularly describing the place, person, house, or things to be searched, the object and scope of such search, and the person or thing to be seized, nor execute an arrest without probable cause;
- (d). The government of the Band shall not arrest individuals without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be held against them in a court of law, to have these rights explained at the time of arrest, and to ask the arrested individuals if they understand these rights;
- (e). The government of the Band shall not prosecute or punish any person more than once for the same offense arising out of the same incident; nor compel any person in any criminal case to be a witness against himself or herself;
- (f). The government of the Band shall not discharge any person from employment, or take any private property or possessory interest in private property for public use, without due process and just compensation;
- (g). The government of the Band shall not deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the action, to be confronted with the witnesses against him or her, to have compulsory

process for obtaining witnesses in his or her favor, and to have the assistance of counsel for his or her defense;

(h). The government of the Band shall not deny to any person in a civil proceeding the right to a speedy and public trial;

(i). The government of the Band shall not require excessive bail, impose excessive fines or, inflict cruel or unusual punishment;

(j). The government of the Band shall not deny to any person within its jurisdiction the equal protection and opportunity under the law or deprive any person of liberty or property without due process of law, provided, that the Council shall have the power to enact an Indian preference law and a Veterans preference law;

(k). The government of the Band shall not execute any action which singles out an individual or group for punishment without trial, or pass any ex post facto law;

(l). The government of the Band shall not deny to any person accused of an offense punishable by imprisonment the right upon request, to a trial by an impartial jury or not less than six persons, and all persons shall be presumed innocent until proven guilty in a court of law;

(m). The government of the Band shall not deny to any person the access to his or her own personal information maintained by the Band;

(n). The government of the Band shall not discriminate against anyone based on age, gender, creed, religion, traditional Indian status, disability, familial status, sexual orientation, or social or economic status;

(o). The government of the Band shall not prohibit the right of the People to own and use firearms, to fish, hunt, trap and to gather foods, plants and traditional medicines, subject to law established by law for the protection and preservation of the People, natural resources, and sacred sites.

Section 2. Reserved Powers. Powers not granted to the government shall be reserved to the People.

ARTICLE IV – LEGISLATIVE BRANCH

Section 1. Composition.

(a). The Legislative Branch shall be comprised of a Council of sixteen members. Each District shall have four Representatives, two of whom shall be elected at large by the voters and two of whom shall be elected by the voters from the District in which they reside.

(b). The Council shall select a Speaker from among its Members.

Section 2. Qualifications.

(a). Each Council Member must be a Member of the Band, must physically reside in the district from which he or she is elected, and must have physically resided in the District at least sixty days immediately prior to the Primary Election. No person who has been convicted of a felon shall be eligible as a candidate for Council Member.

(b). Each Council Member shall have reached the age of twenty-five years on the date of the Primary Election.

Section 3. Terms. Members of the Council shall serve four year staggered terms.

Section 4. Legislative Sessions.

(a). The Council shall convene on the Reservation for six Regular Sessions of five days each during the first full calendar week in the months of January, March, May, July, September, and November.

(b). Special Sessions of the Council may be called by the Chairperson or upon the written request of ten percent of the number of voters who voted in the most recent General Election of the Band. All Special Sessions shall be held on the Reservation. The purposes of the Special Session shall be stated in the notice published not less than ten days prior to the Special Session, and the Council shall not consider any other subject not within such purposes. No Special Session may convene until thirty days has elapsed after the adjournment of the prior Session unless called by the Chairperson.

Section 5. Compensation. Council Members shall be paid a reasonable compensation per day while in session as established by the Council in a law passed pursuant to the Legislative Process which shall include a written Bill setting the rate of compensation, at least thirty days advance public notice of the Bill, a public hearing on the Bill, and a published record of the vote by each Council Member on the Bill. The voters of the Band retain the right to invalidate the rate of compensation by placing the law before the voters in a Referendum election. No increase in compensation for Council Members shall take effect unless approved and authorized within the annual budget by a vote of at least twelve Members of the Council. All approved increases in compensation for Council Members shall not take effect until after the next General Election.

Section 6. Powers.

(a). Legislative powers shall be vested in the Council. The Council shall have the power to make laws and resolutions in accordance with this Constitution to facilitate and protect the health, safety, education, and general well-being of the Band.

(b). The Council shall enact and publish an annual balanced budget by law by September thirtieth. The budget shall include an appropriation of operating funds for each branch of government. The Council shall have the power to raise revenue and appropriate funds for expenditure. Every funding item in the annual budget must be previously authorized by law. No money shall be drawn from the Treasury without authorization and appropriation by law.

(c). The Council shall have the power to set its own procedures, establish legislative committees, employ legislative staff, and enact laws governing attendance of its members including penalties for absences.

(d). The Council shall have the power to override an Executive veto by a vote of at least twelve Members of the Council.

(e). The Council shall have the power to confirm or deny nominees selected by the Chairperson as Cabinet Officials. Council Members shall not be permitted to serve as Cabinet Officials, Directors, or members of any Commissions or Boards.

(f). The Council shall have the power to establish the duties of each Executive Department.

(g). The Council shall have the power to create Regulatory Commissions by law. No member of the Council may also be a member of any Regulatory Commission or Executive Board created by the Council. All Regulatory Commissions and Executive Boards shall be subject to the laws of the Band. Any Regulatory Commission created by the Council shall have the authority to adopt written regulations pursuant to law and due process. Members of all Commissions and Executive Boards shall be selected by nomination by the Chairperson, subject to confirmation by the Council. The Council shall establish a Judicial Commission.

Section 7. Legislative Process. The Council shall adopt a public legislative process that shall include the following:

(a). All legislative proposals shall be formally introduced as written Bills. All Bills shall include a statement identifying the specific law, if any, to be superseded, repealed, or amended.

(b). All Bills shall be read into the legislative record. All Bills shall be published in a legislative Calendar for at least thirty days prior to action on the Bill. All Bills shall be made the subject of a public legislative hearing prior to action on the Bill.

(c). All decisions of the Council shall be made by a majority vote of the Members present in a Regular Session or Special Session unless otherwise specified in this Constitution. The names and votes of each Council Member shall be recorded and published. Proxy voting shall be prohibited.

(d). All Bills passed by the Council shall be presented to the Chairperson for signature or veto. All laws shall take effect ninety days after enactment. Any action by the Council which does not follow the legislative process shall be deemed void.

(e). The Council may declare a Bill an emergency measure by a vote of at least twelve Members of the Council. The Council shall be required to publish an emergency Bill on the legislative Calendar for five days prior to passage of the Bill. An emergency Bill shall take effect immediately upon enactment or on a date specified in the law.

(f). All laws shall be compiled into a Code which shall be published annually.

Section 8. Code of Ethics. The Council shall develop, implement, and maintain enforceable Code of Ethics for all branches and operations of Government. This shall include but not be limited to a Code of Professional and Judicial Ethics.

ARTICLE V – EXECUTIVE BRANCH

Section 1. Composition.

(a). The Executive Branch shall be comprised of a Chairperson and Vice Chairperson and all Departments that the Legislative Branch deems necessary by law for the effective operation of the Government. Any Department established by the Council by law shall be in the Executive Branch. The Departments shall include at a minimum a Department of Treasury.

(b). The Chairperson and Vice Chairperson shall be elected at large by the voters of the Band. The Chairperson and Vice Chairperson shall seek office as a single candidacy for the same term of office.

Section 2. Qualifications.

(a). The Chairperson and Vice Chairperson shall have reached the age of twenty-five by the date of the Primary Election. No person who has been convicted of a felony shall be eligible as a candidate for Chairperson or Vice Chairperson. The Chairperson and Vice Chairperson shall be enrolled Members of the Band. The Chairperson and Vice

Chairperson shall physically reside on or within twenty miles of the Reservation for at least six months immediately prior to the Primary Election.

(b). The Chairperson, Vice Chairperson, and the executive director of the Department of Treasury shall be bonded or insured in an amount sufficient to protect the property and financial assets of the Band.

Section 3. Terms. The Chairperson and Vice Chairperson shall serve a term of four years or until successors are sworn into office.

Section 4. Compensation. The salary of the Chairperson and Vice Chairperson shall be established by the Council by law. Any increase or decrease in the salary of the Chairperson or Vice Chairperson shall take effect after the next General Election for that office.

Section 5. Powers.

(a). Executive power shall be vested in the Chairperson. The Chairperson shall see that all laws and resolutions of the Council are carried into effect.

(b). Funds which have been appropriated by law shall not be drawn from the Treasury except by signature of the Chairperson. Spending government funds or drawing funds from the Treasury without authorization and appropriation by law and without the signature of the Chairperson shall constitute fraud and embezzlement.

(c). The Chairperson shall have the power to veto any legislative enactment passed by the Council within ten days of passage with a written explanation of any objections, and if the Chairperson takes no action within ten days, then the enactment shall become law in accordance with this Constitution.

(d). The Chairperson shall have the power to nominate Cabinet Officials subject to confirmation by the Council. Any nominee that is neither confirmed nor denied after the sixtieth day of nomination shall be considered confirmed. Cabinet Officials shall serve for the duration of the term of the Chairperson unless replaced by the Chairperson

(e). The Chairperson shall have the power to represent the Band in all matters with other governments. No treaty, compact, or contract shall be valid which has not been authorized by law. A proposed treaty or compact shall be subject to ratification by the Council.

(f). The Chairperson shall propose an annual balanced budget to the Council. The Chairperson shall give to the Council an annual State of the Band address that shall include his or her plans and goals for the Band.

(g). The Chairperson and Vice Chairperson shall not serve on any Commissions or Boards created by the Council.

(h). The Vice Chairperson shall have the power to vote in the Council only to break a tie vote.

ARTICLE VI – JUDICIAL BRANCH

Section 1. Composition.

(a). The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, such other lower courts of special jurisdiction as deemed necessary by the Council at law, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Council at law.

(b). The Supreme Court shall be comprised of one Chief Justice and two Associate Justices.

(c). The Trial Court shall be comprised of one Chief Judge and other Associate Judges as deemed necessary by the Council at law.

Section 2. Terms.

(a). The Chief Justice of the Supreme Court shall be elected for a term of six years or until a successor is sworn into office. The Associate Justices of the Supreme Court shall be appointed by the Chairperson subject to confirmation by a majority vote of the Council. An Associate Justice shall serve a term of four years or until a successor is sworn into office.

(b). The Chief Judge of the Trial Court shall be elected for a term of four years or until a successor is sworn into office. The Associate Judges shall be appointed by the Chairperson subject to confirmation by a majority vote of the Council. An Associate Judge shall serve a term of four years or until a successor is sworn into office. For the first appointment, the Chairperson shall appoint one Associate Judge to serve for two years and one Associate Judge to serve for four years.

Section 3. Qualifications.

(a). The Chief Justice and Chief Judge shall be Members of the Band.

(b). The Chief Justice and Chief Judge shall each possess a law degree.

(c). No person convicted of a felony shall serve as a Justice or Judge.

(d). For the positions of Chief Justice and Chief Judge, if no member of the Band meets the qualifications of Section 3(a) and (b), the Council may establish temporary qualifications by law until the next General Election.

Section 4. Jurisdiction.

(a). The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Band, including cases in which the Band or its officials and employees shall be a party. Any such case or controversy arising within the jurisdiction of the Band shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction shall not be construed to be a waiver of the Sovereign Immunity of the Band.

(b). The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court. The Supreme Court shall have exclusive jurisdiction over all election disputes.

Section 5. Powers and Duties.

(a). The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity.

(b). The Trial Court shall have the power to declare the laws of the Band void if such laws are not in agreement with this Constitution.

(c). The Supreme Court shall have the power to interpret the Constitution and laws of the Band and to make conclusions of law. Any decision of the Supreme Court shall be final.

(d). The Supreme Court shall have the power to declare the laws of the Band void if such laws are not in agreement with this Constitution.

(e). All orders, opinions, and decisions of the Supreme Court shall be written and published.

(f). The Courts shall render a final disposition in all cases properly filed.

(g). The Judicial Branch shall have the power to administer funds appropriated by law for the Judicial Branch.

(h). The Chief Justice shall establish rules for the Judicial Branch subject to law.

Section 6. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal to the Supreme

Court. All appeals that are accepted for review by the Supreme Court shall be heard by the full court.

Section 7. Compensation. Justices and Judges shall receive reasonable compensation. No Increase or decrease in compensation for Justices and Judges shall take effect until after the next General Election.

ARTICLE VII – ELECTIONS

Section 1. Election Board. There shall be an Election Board to conduct all elections in accordance with the election laws. The Election Board shall be comprised of five persons, at least one person from each District, nominated by the Chairperson subject to confirmation by the Council. Election Board Members shall serve terms of four years or until their successors have been sworn into office. Election Board Members may serve more than one term.

Section 2. Ballots. All elections shall be conducted by secret written ballot. The candidate or issue receiving the greatest number of votes cast shall prevail. In the event of a tie in the General Election, the successful candidate shall be selected by drawing a name out of a hat.

Section 3. Primary Election. A Primary Election shall be held for all available elective offices on the first Tuesday of September prior to the General Election. The candidates receiving the two highest number of votes in the Primary Election for each Office shall proceed to the General Election.

Section 4. General Election. The General Election shall be held on the first Tuesday following the first Monday in November in even numbered years.

Section 5. Districts.

(a). The Turtle Mountain Indian Reservation shall have four Districts within Rolette County.

(b). After each General Election, the Election Board shall establish new voting Districts for future elections to ensure an equal population in each District.

Section 6. Nominations. Eligible candidates shall file their notice of intent to run for office with the Chairperson of the Election Board, identifying the office for which he or she is a candidate at least forty-five days prior to the Primary Election date. The Chairperson of the Election Board shall post a list of eligible candidates at least thirty days before the Primary Election in each voting District.

Section 7. Voters. Any enrolled Member of the Band, eighteen years of age or older shall be entitled to vote in any election provided he or she has resided in Rolette County or the Territory for a period of thirty days immediately prior to an election.

Section 8. One Office. No person shall be allowed to run for or hold more than one elected position at any one time.

Section 9. Absentee Voting. All qualified voters of the Band shall be permitted to vote by absentee ballot according to the procedures established by law.

Section 10. Polling Sites. There shall be a polling site in each voting District. Polling places outside a District or the Territory shall be prohibited.

Section 11. Certification of Election Results. The Election Board shall certify all election results within four working days of the election.

Section 12. Challenges to Election Results. Any challenges to the election results shall be filed with the Supreme Court within five days of certification of the results by the Election Board. The Supreme Court shall hear and decide all election challenges prior to the deadline for administering the Oath of Office. The decision of the Supreme Court shall be final.

Section 13. Oath of Office. A Judge of the Trial Court shall administer the Oath of Office for all newly elected officials on the fourth Friday after the certification of election results. The Oath of Office shall require all elected officials to swear oath and allegiance to uphold the Constitution of the Band.

Section 14. First Election. In the First Election after the adoption of this Constitution, the candidate elected at large in each District with the highest number of votes shall serve a four year term. The candidate elected from within the District with the highest number of votes shall serve a four-year term. The remaining two candidates for Council from both groups shall serve a two-year term. In the event of a tie, the successful candidate shall be selected by drawing the name out of a hat. Elections shall follow every two years thereafter.

ARTICLE VIII – REFERENDUM

Section 1. Referendum. Upon receipt of a petition by twenty percent of the voters, any enacted Bill shall not become law until submitted to the voters in a Special Election. Upon receipt of a petition by twenty percent of the voters, any enacted law shall be submitted to the voters in a Special Election. Petitions shall be submitted to the Election Board. The Election Board shall conduct a Special Election within ninety days of receipt of a valid petition. The majority of votes cast in such referendum shall be conclusive and binding on the Band and shall take effect immediately.

ARTICLE IX – REMOVAL AND VACANCIES

Section 1. Removal of Council Members. The Council shall have the power to remove a Council Member by a vote of at least thirteen Members of the Council. A Council Member subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 2. Removal of a Chairperson or Vice Chairperson. The Council shall have the power to remove a Chairperson or Vice Chairperson by a vote of at least thirteen Members of the Council. A Chairperson or Vice Chairperson subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 3. Removal of a Judge or Justice. The Council shall have the power to remove a Judge or Justice by a vote of at least thirteen Members of the Council. A Judge or Justice subject to removal shall be provided with adequate notice, be informed of the charges in writing, be given an opportunity to address the Council in a public hearing, and be given an opportunity to prepare and present a defense including presenting witnesses and other evidence.

Section 4. Removal for Felony Conviction while in Office. Any person serving as Chairperson, Vice Chairperson, Council Member, or a Member of the Judiciary who is convicted of a felony while in office shall be removed from office.

Section 5. Vacancy in the Council. In the event that a Council Member cannot fulfill his or her term, the candidate from the respective District who received the next highest number of votes in the most recent General Election shall serve the remainder of the term.

Section 6. Vacancy in the Office of Chairperson. The Vice Chairperson shall assume the role of Chairperson in the event of death, incapacitation, removal, or resignation of the Chairperson.

Section 7. Vacancy in the Office of Vice Chairperson. A vacancy in the Office of Vice Chairperson shall be filled by appointment by the Chairperson subject to confirmation by the Council.

Section 8. Vacancies in the Judicial Branch. A vacancy in the Office of Chief Judge or Chief Justice shall be filled by he voters in an election. A vacancy in the Office of Associate Judge or Justice shall be filled by appointment by the Chairperson subject to confirmation by the Council.

ARTICLE X – RECALL

Section 1. Recall.

(a). The Chairperson and Vice Chairperson shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the most recent General Election. At least sixty percent of the number of voters in the last general election shall be required to vote in a Special Election to recall the Chairperson or Vice Chairperson. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Chairperson or Vice Chairperson. The Chairperson and Vice Chairperson shall not be subject to recall at the same time.

(b). Council Members elected by a District shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the respective District at the most recent General Election. At least sixty percent of the number of voters from the respective District in the last General Election shall be required to vote in a Special Election to recall the Council Member. At least fifty percent of the total votes cast in a Special Election must vote in favor of the recall in order to have a valid recall of the Council Member.

(c). Council Members elected at large shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast at the most recent General Election. At least sixty percent of the number of voters in the last general election shall be required to vote in a Special Election to recall the Council Member. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Council Member.

(d). The Chief Justice and Chief Judge shall be removable by recall vote in a Special Election called by petition of at least twenty percent of the number of votes cast in the most recent General Election. At least sixty percent of the number of voters in the last General Election shall be required to vote in a Special Election to recall the Chief Justice or Chief Judge. At least fifty percent of the total votes cast in the Special Election must vote in favor of the recall in order to have a valid recall of the Chief Justice or Chief Judge.

Section 2. Recall Procedures. A separate petition shall be required for each person subject to recall. The Election Board shall provide a list of the voters to the petitioners upon request. The petitioners shall have one hundred twenty days to collect the requisite number of signatures on a recall petition. The Election Board shall certify the signatures on a recall petition within thirty days of receipt of a recall petition. The Election Board shall hold a Special Election within ninety days of certification of a valid petition.

Section 3. Recall Limits. No more than two Council Members shall be removed by recall at the same time. No recall petition shall be initiated against any elected official until six months has elapsed from their inauguration into office.

ARTICLE XI – AMENDMENTS

Section 1. Request for an Election.

(a). The Council may call by law for a Special Election to amend the Constitution.

(b). The voters may call for an election to amend the Constitution by submitting a petition to the Election Board signed by at least twenty percent of the voters of the Band. The Election Board shall call a Special Election to amend the Constitution within ninety days of receipt of a valid petition.

Section 2. Requirements. The Constitution may be amended by a majority vote of the voters who vote in the Special Election, provided, that at least forty percent of the voters cast a vote in the Special Election. Amendments approved by the voters shall become effective immediately unless otherwise indicated in the amendment.

ARTICLE XII – SOVEREIGN IMMUNITY

Section 1. Sovereign Immunity. The Band shall possess Sovereign Immunity. The Sovereign Immunity of the Band shall include immunity against equitable relief such as mandamus and injunction.

Section 2. Immunity from Suit by Foreign Parties. The Band and its officials and employees acting within the scope of their duties shall be immune from suit brought by any foreign entity, government, or person except to the extent that the Council expressly waives Sovereign Immunity by law. Nothing in this Constitution shall be deemed to waive Sovereign Immunity from foreign suit.

Section 3. Immunity from Suit by Domestic Parties. The Band and its officials and employees acting within the scope of their duties shall be immune from suit brought by any public or private entity or individual within the Territory or subject to the Jurisdiction of the Band except to the extent that the Council expressly waives Sovereign Immunity by law.

Section 4. Suit Against Officials and Employees. Officials and employees of the Band who act beyond the scope of their duties or authority shall be subject to suit in equity in the Judicial Branch by persons subject to its jurisdiction for purposes of enforcing the rights and duties established by this Constitution or other applicable laws.

ARTICLE XIII – REAL PROPERTY

Section 1. Property Code. The Council shall enact a comprehensive Property Code establishing a Land Office and governing a system of property for all lands within the Territory. The Property Code shall include provisions governing the issuance of patents in fee or any lesser interest, the establishment of a Registry, eminent domain, the recordation of patents, deeds, wills, trusts, leases, gifts, mortgages, liens, and other writings used to memorialize transactions of property interests, and land use and zoning. All property interests within the Territory, by whomever held, shall be deemed to have originated in a patent issued pursuant to the sovereign authority of the Band and such interests shall be recorded in the Land Office.