

## POLITICAL COOPERATION AND PROCEDURAL (IN)JUSTICE: A STUDY OF THE INDIAN REORGANIZATION ACT

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In 1934 and 1935, thousands of Native Americans did something that they had never done before: they voted on federal Indian law.<sup>1</sup> More specifically, they voted on whether an existing congressional act should apply to their reservations and provide their local tribal governments with the legal authority to govern their people and manage their economies.<sup>2</sup> Although the Wheeler-Howard Act, also known as the Indian Reorganization Act (IRA), tempted reservations with numerous material incentives including cash grants and low-interest financial credit, more than thirty percent of voting reservations rejected the proposal.<sup>3</sup>

Scholars have attempted to explain this perplexing behavior for decades. Most scholars have taken a materialist approach and have claimed that economic incentives drove support patterns.<sup>4</sup> They argue that lower income tribes were more likely to pass the IRA because they needed the capital and credit more than their wealthier counterparts did.<sup>5</sup>

Although these scholars have provided valuable, anecdotal evidence to substantiate their claims, their conclusions are inconsistent with broader and more systematic findings. Contrary to what materialist

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<sup>1</sup> THEODORE H. HAAS, TEN YEARS OF TRIBAL GOVERNMENT UNDER I.R.A. (1947), *available at* <http://thorpe.ou.edu/IRA/IRAbook/tribalgovtp1-12.htm> (last visited Dec. 27, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> DAVID E. WILKIN & HEIDI KIIWETINEPINESIIK STARK, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM 64 (2011).

<sup>4</sup> *See also* THOMAS BIOLSI, ORGANIZING THE LAKOTA: POLITICAL ECONOMY OF THE NEW DEAL ON THE PINE RIDGE AND ROSEBUD RESERVATIONS 79 (1992) (suggesting that “[m]ost Lakota probably voted in favor of the IRA because of the *material benefits* they anticipated”); LAURENCE M. HAUPTMAN, THE IROQUOIS AND THE NEW DEAL 87 (1981) (concluding that because the Oneidas in Wisconsin were poorer than the Iroquois in New York they “had less to lose than their eastern brethren and were more willing to take the chance of accepting New Deal programs”).

<sup>5</sup> *Id.*

arguments would predict, accepting and rejecting reservations had similar economic profiles, as indicated by their nearly identical employment rates. The average employment rate for the reservations that endorsed the bill was sixty-six percent, while the average employment rate for the reservations that rejected the bill was 67 percent.<sup>6</sup> Similarly, the median employment rate for the reservations that supported the bill was 67 percent and the median employment rate for the reservations that declined the bill was 68 percent.<sup>7</sup>

The materialist argument falls short because it assumes that human behavior is motivated by projected financial outcomes. This “instrumentalist” assumption is questionable.<sup>8</sup> As Professor Tom Tyler first argued in his paradigm-shifting study of law compliance, people’s behavioral decisions often derive from normative—non-instrumentalist—assessments of their best options.<sup>9</sup> In an extensive study of more than fifteen thousand Chicago residents, Professor Tyler found that respondents’ belief in the law’s legitimacy more effectively predicted the likelihood of their legal compliance than their faith in beneficial outcomes did.<sup>10</sup> Furthermore, he discovered that respondents determined the law’s

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<sup>6</sup> These statistics include information from all 245 voting reservations, except for seven reservations located in states with small American Indian populations, such as Florida, Iowa, Louisiana, Mississippi, and Colorado. I did not incorporate these reservations into the study because the 1930 census, which provided this information, did not collect data in these states. Because there is no data available for employment rates on each reservation, I used average employment rate for Native Americans in each state as an indicator of the employment rate on each reservation. U.S. DEP’T OF COMMERCE, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, THE INDIAN POPULATION OF THE UNITED STATES AND ALASKA 200 (1937), available at <http://babel.hathitrust.org/cgi/pt?id=mdp.39015011818450;view=1up;seq=185> (last visited Dec. 26, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3 (1990)[hereinafter TYLER, WHY PEOPLE OBEY].

<sup>9</sup> Professor Tyler’s Chicago study of procedural justice and compliance concludes that normative issues matter. People obey the law because they believe that it is proper to do so, they react to their experiences by evaluating their justice or injustice, and in evaluating the justice of their experiences they consider factors unrelated to outcome, such as whether they have had a chance to state their case and have been treated with dignity and respect. *Id.* at 178.

<sup>10</sup> Tom R. Tyler, Stephen Schulhofer, & Aziz Z. Huq, *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 LAW & SOC’Y REV. 365, 367 (2010).

legitimacy by considering whether or not they were treated fairly or in a procedurally just way by representative authority figures, such as police officers or judges.<sup>11</sup>

Professor Tyler has recently used this normative framework to explain a wider range of human behavior.<sup>12</sup> In a 2010 co-authored article, Professor Tyler found that perceptions of procedural justice were strongly correlated with Muslim Americans' willingness to cooperate in the implementation of the policing of antiterrorism.<sup>13</sup> More specifically, Professor Tyler concluded that "[p]rocedural justice in policy formation significantly influences willingness to report terrorism-related concerns to the police."<sup>14</sup>

This paper draws upon and extends Professor Tyler's insights by showing that procedural justice in the creation of federal Indian Law strongly shaped reservations' desire to adopt the federal government's preferred legislation. Simply put, reservations were more likely to support the IRA, and thus, cooperate with the federal government's initiative, if they thought that the Bureau of Indian Affairs (BIA) had treated them fairly during the 1934 Indian Congresses—official meetings held between BIA representatives and hundreds of American Indian leaders. By studying the conduct of these meetings, which were created to build support for the Act, I find that the reservations whose delegates attended Indian Congresses, and so scored higher on a scale of procedural justice, were significantly more likely to accept the IRA than reservations whose delegates attended Congresses that scored lower on the same scale. I also find that delegates from reservations that rejected the proposal were much more likely to discuss unfair treatment in the actual Congresses. Thus, a model based on considerations of procedural justice proves more accurate in determining the ultimate decisions of the tribes with respect to accepting or rejecting IRA by ratification than the current accepted model, which argues that financial considerations motivated the accepting tribes.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 368.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 386.

Three sections structure this paper. First, I begin with a brief, historical background of the IRA. Second, I discuss my methods of sample selection and analysis. Third, I present and explore my case studies. Finally, I discuss the consequences of the findings and suggest grounds for further research with regard to procedural justice.

## I. BACKGROUND

In the fall of 1933, Nathan Margold, the Solicitor of the Department of the Interior, hired Felix Cohen, a Harvard-trained legal philosopher with no background in Indian law, to be an Assistant Solicitor in the Department of the Interior.<sup>15</sup> Almost immediately, Cohen and John Collier, the Commissioner of the BIA, began planning a revolution in federal Indian law.<sup>16</sup> In order to repeal the Dawes Act,<sup>17</sup> to preserve Native American culture,<sup>18</sup> and to liberate Native American communities from the BIA's authoritarian control,<sup>19</sup> Collier and Cohen produced a fifty-five page bill that eventually became the IRA. Initially, the bill moved slowly through Congress because of its complexity and ambiguity.<sup>20</sup> Indeed, many legislators, including Senator Burton Wheeler, one of its sponsors,

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<sup>15</sup> Dalia Tsuk, *The New Deal Origins of American Legal Pluralism*, 29 FLA. ST. U. L. REV. 189, 206, 209 (2001).

<sup>16</sup> *Id.*

<sup>17</sup> ELMER R. RUSCO, *A FATEFUL TIME: THE BACKGROUND AND LEGISLATIVE HISTORY OF THE INDIAN REORGANIZATION ACT 291* (2000).

<sup>18</sup> Ward Shepard, a BIA official, told the National Conference of Social Work that the new policy does not seek to answer the problem of assimilation. Rather, it recognizes what is good in Indian culture, and seeks to preserve and to build on it, as something which, as the slow fruition of an imaginative and gifted race in close contact with nature for untold centuries, is inherently worth preserving, and shall not be deliberately destroyed. *Id.* at 196.

<sup>19</sup> Cohen and another BIA official wrote in a 1934 memorandum that "the 'ultimate goal' of the program to be outlined in a draft bill was said to be 'the removal of supervision in questions involved administrative discretion, leading to the 'the gradual emancipation of the Indian Communities.'" *Id.* at 200.

<sup>20</sup> Collier wrote C. Hart Merriam and said:

"You are right in saying that the bill is long, complicated, and technical. That is partly due to the fact that the situation itself is exceedingly complicated and we were confronted with the necessity of choosing between a few blanket formulas or setting up the bill procedures that would recognize widely variable circumstances that must be met. But the complexity is also in part due to the speed with which the bill had to be drawn." *Id.* at 208.

struggled to understand the bill's implications.<sup>21</sup> Fearing that their bill might never leave the House Committee on Indian Affairs, Collier and Cohen boldly attempted to build support for the bill by inviting Native Americans to participate in the legislative process.<sup>22</sup> The BIA planned ten Congresses throughout the country and asked hundreds of influential and non-influential Native Americans to share their thoughts on the proposed bill.<sup>23</sup> BIA officials, including Collier himself, extensively outlined the bill's provisions and listened to the participants' suggestions.<sup>24</sup> Although the Congresses did not significantly affect the bill's final structure, these meetings did increase Native American support for the law.<sup>25</sup>

After learning that President Franklin Roosevelt and most Native Americans supported the proposed measure, Senator Wheeler began to take the bill more seriously and agreed to meet with William Zimmerman, the Assistant Commissioner of the BIA, to amend the original bill.<sup>26</sup> Zimmerman and Senator Wheeler produced a streamlined, five-page act that moved quickly through Congress and became law on June 18, 1934.<sup>27</sup> According to the law's introduction, Congress passed the bill to develop Native American lands, empower their governments, support their businesses and educate their citizens.<sup>28</sup> More specifically, section 5 created a \$2,000,000 fund for land acquisition; section 10 provided a \$10,000,000 fund for development loans; and section 11 created a \$250,000 fund for education loans.<sup>29</sup> Most importantly, however, section 18 provided that the law should "not become operative until ratified at a special election by a majority vote of the Adult Indians living in the

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<sup>21</sup> At a hearing on April 28, Senator Wheeler said, "I have read the [original] bill and I will swear that it is impossible for me to understand some of the provisions of the bill." *Id.* at 234. Similarly, Sam Collins, a member of the House Committee on Indian Affairs, admitted, "[N]ot many of us do understand it, I think." *Id.* Representative Oscar Priest, also a member of the Committee on Indian Affairs, went further and stated, "there is no member of the committee that understands it." *Id.*

<sup>22</sup> *Id.* at 247.

<sup>23</sup> *Id.* at 246.

<sup>24</sup> See generally VINE DELORIA, JR., THE INDIAN REORGANIZATION ACT: CONGRESSES AND BILL (2002).

<sup>25</sup> RUSCO, *supra* note 17.

<sup>26</sup> *Id.* at 253-54.

<sup>27</sup> Wheeler-Howard Act, Pub. L. No. 73-383, 48 Stat. 984 (1934).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

reservation.”<sup>30</sup> This Act seemed especially radical at the time because it replaced many elements of the General Allotment Act, a law passed in 1887 to weaken tribal governments and extend the federal government’s power over American Indian tribes.<sup>31</sup>

## II. SURVEYING THE INDIAN CONGRESSES: METHODOLOGY AND ANALYSIS

To ensure that the IRA would be ratified at the reservation level, the BIA organized eleven Indian Congresses in seven states, including three in Arizona, three in Oklahoma, one in New Mexico, one in California, one in Wisconsin, one in South Dakota, and one in Oregon.<sup>32</sup> This article studies these last three Congresses for two reasons. First, by concentrating on the Oregon, South Dakota, and Wisconsin Congresses—Congresses that drew reservations with average employment rates of 61 percent, 60 percent, and 59 percent, respectively (see Table 1)—I use the crucial case selection method<sup>33</sup> and explain why some of the most needy reservations inexplicably rejected the generous IRA. Second, I chose not to study the Oklahoma Congresses because the final version of the law contained a proviso that exempted Oklahoma tribes from the Act.<sup>34</sup>

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<sup>30</sup> *Id.* at § 17.

<sup>31</sup> Indian General Allotment Act, 25 U.S.C.A. § 331 (repealed 2000).

<sup>32</sup> DELORIA, *supra* note 24, at vii.

<sup>33</sup> A crucial case selection method tests the validity of a hypothesis by studying the case that will most likely confirm a hypothesis. If the hypothesis cannot explain these crucial cases, one must conclude that it cannot adequately explain other, less clear, cases. CASE STUDY METHOD: KEY ISSUES, KEY TEXTS 148 (ROGER GOMM, MARTYN HAMMERSLEY, & PETER FOSTER, eds., 2000).

<sup>34</sup> Indian General Allotment Act, 25 U.S.C.A. § 331 (repealed 2000). Indian and non-Indian Oklahomans lobbied Congress to exempt Oklahoman tribes from the IRA because the law would “retard a well advanced movement toward assimilation.” GRAHAM D. TAYLOR, *THE NEW DEAL AND AMERICAN INDIAN TRIBALISM* 35 (1980). See also JON S. BLACKMAN, *OKLAHOMA’S INDIAN NEW DEAL* 4 (2013) (“Politicking of the Oklahoma congressional delegation exempted Oklahoma Indians from six significant provisions of the Indian Reorganization Act in 1934.”).

*Table 1*

Congress	Average Male Employment Rate of Attending Reservations
New Mexico	71 %
Arizona	69 %
California	67 %
Oregon	61 %
South Dakota	60 %
Wisconsin	59 %
Oklahoma	61 %

Ten indicators of procedural justice are used to give each Congress a procedural justice score.<sup>35</sup> As illustrated by Table 2, a “1” indicates that the element of procedural justice was present; a “0” indicates that it was absent; and a “-1” indicates the presence of its unjust counterpart. Because procedural justice develops at the intersection of reality and perception, a Congress’ level of procedural justice was determined by considering both the BIA’s actions and the participants’ reactions.

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<sup>35</sup> TOM R. TYLER, WHY PEOPLE COOPERATE: THE ROLE OF SOCIAL MOTIVATIONS 183 (2011).

Table 2

	Chemawa, Oregon	Rapid City, South Dakota	Hayward, Wisconsin
(Neutrality) Does the authority figure not act on BIAs?	0	0	1
(Explanation) Does the authority figure explain his or her actions?	1	0	1
(Voice) Does the authority figure give people the opportunity to be heard?	0	0	1
(Consideration) Does the authority figure consider others insights	0	1	1
(Equal Consideration) Does the authority figure consider others' insights equally?	0	1	1
(Trust) Does the authority figure inspire trust?	0	1	1
(Politeness) Does the authority figure treat people politely and with dignity?	0	1	1
(Accuracy) Does the authority figure use accurate information?	0	0	0
(Consistency) Does the authority figure apply rules consistently?	0	0	0
Total Score	1	4	7

The Congresses are ranked in order from least to most procedurally just by using the procedural justice score described in Table 2. The case studies varied in ranking from Hayward, which had the highest procedural justice score, to Chemawa, which had the lowest score out of all the Congresses. I then ranked the Congresses in order of their efficacy in garnering support for the IRA, as measured by the percentage of the represented reservations that eventually ratified the federal government's proposal.

As Table 3 indicates, I found that the Congresses' procedural justice rankings were highly correlated with their efficacy scores. All of the reservations that attended the most procedurally just Congress, Hayward, accepted the IRA. 68 percent of reservations that attended the second most procedurally just Congress, the Rapid City Congress, accepted the IRA. 47 percent of the reservations that attended the third most procedurally just Congress, Chemawa, accepted the IRA.<sup>36</sup> These general findings support the argument that procedural justice in the formation of policy promotes cooperation in its implementation.

*Table 3*

	Procedural Justice Score	Percentage of attending reservations that eventually approved the IRA
Hayward, Wisconsin	6	100%
Rapid City, South Dakota	4	68 %
Chemawa, Oregon	1	47 %

### III. CASE STUDIES: AN INVESTIGATION OF THE RELATIONSHIP BETWEEN PROCEDURAL JUSTICE AND COOPERATION

Although these data are instructive, they fail to capture fully the importance of these normative considerations in determining acceptance. In the case studies that follow, I investigate the relationship between

<sup>36</sup> HAAS, *supra* note 1.

procedural justice and cooperation on two different levels. First, I analyze this relationship at the macro-level by explaining each Congress' procedural justice ranking and by showing its correlation to the Congress' efficacy in promoting IRA acceptance. Second, I focus on this association at the micro-level and reference delegates' actual remarks to demonstrate how normative determinations affected the decisions of individual reservations. I begin with the Hayward Congress, the most procedurally just Congress.

### **A. *Hayward, Wisconsin Congress***

On April 23, 1934, four officials from the BIA stood in the middle of a high school gymnasium and greeted a crowd of more than 167 American Indian delegates.<sup>37</sup> William Zimmerman, Bob Marshall, Walker Woehlke, and Dr. Henry Roe Cloud traveled to this sleepy town in northern Wisconsin to drum up support for the IRA. Although Zimmerman, the Assistant to the Commissioner of the BIA, began the meeting by highlighting the bill's financial incentives,<sup>38</sup> he and the rest of his team consistently acted and explained their intentions to act in a procedurally just way. Seven elements of procedural justice figured especially prominently in their presentation: neutrality, explanation, voice, consideration, equality, trust, and politeness. In the sections that follow, I discuss each of these elements individually.

#### **1. *Indicators of Procedural Justice from BIA Officials***

##### **a. *Neutrality***

First, all of the officials, but Woehlke especially, repeatedly implied that BIA did not motivate their actions. They did this by stressing that Native Americans' abilities were equal, if not superior, to those of their white counterparts. For example, Woehlke began a flurry of compliments

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<sup>37</sup> Ronald N. Satz, "Tell Those Gray Haired What They Should Know": *The Hayward Indian Congress of 1934*, 77 WIS. MAG. HIST. 196, 205 (1994), available at <http://content.wisconsinhistory.org/cdm/ref/collection/wmh/id/39393> (last visited Dec. 27, 2013).

<sup>38</sup> Zimmerman: "Only organized groups have power in the white world." DELORIA, *supra* note 24, at 369.

in the Congress' opening session by claiming, "I am dead certain that once an Indian community is given the right to run its own affairs it will do so efficiently and far better than a lot whites are doing it now."<sup>39</sup> He continued by making the observation that Native American men "performed their work as efficiently if not more efficiently than their white brothers in the C.C.C. camps,"<sup>40</sup> and finished by noting that "we know then that the capacity for leadership is in the Indian race. It is there just as much and sometimes more than in other races."<sup>41</sup>

### **b. Explanation**

Second, the BIA representatives thoroughly explained their actions. They summarized the purpose and effect of each section of the Act.<sup>42</sup> They drew the delegates' attention to their actions by highlighting their interest in explaining the bill. Zimmerman began the meeting by emphasizing that "we are here to explain this bill as we understand it."<sup>43</sup> Woehlke added, just three sentences later, "We want to discuss this bill in great detail and make it as clear to you as possible."<sup>44</sup> Because the representatives explained and then reiterated their interest in explaining their actions to the delegates, Hayward received a 1 for explanation.

### **c. Voice**

Third, the BIA officials emphasized their interest in giving the Native American delegates an opportunity to voice their opinions about the bill. Woehlke, for instance, began his portion of the presentation by warning the crowd, "We . . . will ask you to do most of the talking."<sup>45</sup> The rest of the delegates kept Woehlke's promise and, unlike in the other Congresses, they never silenced a single delegate.<sup>46</sup> Dr. Roe Cloud sincerely expressed his interest in hearing delegates' opinions of the bill when he

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<sup>39</sup> *Id.* at 373.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 370-375.

<sup>43</sup> *Id.* at 370.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See generally *id.*

stated, “It will be very interesting to hear some of these views.”<sup>47</sup> Because the representatives repeatedly indicated their interest in hearing the delegates’ opinions, Hayward received a 1 for voice.

#### ***d. Equality***

Fourth, The BIA officials considered everyone’s opinions equally. They even went as far as to allow two unofficial delegates to address the crowd on two different occasions.<sup>48</sup> Possibly conscious of the Congress’ time constraints and fearing that the second unofficial delegate might indirectly cut into another delegate’s time, Dr. Cloud asked the crowd, “Shall we hear him?”<sup>49</sup> Dr. Cloud, who was responsible for managing the debate, even encouraged people to express tangentially related opinions. After listening to an unofficial delegate’s meandering yet argumentative speech, which referenced Shakespeare, Emerson, Cicero, and Daniel Webster, Dr. Cloud patiently responded, “We are here to hear all sides of this question, and we are certainly glad to get that side of it indeed.”<sup>50</sup> Because the representatives encouraged a wide range of people to express a diverse set of opinions, the Hayward Congress received a 1 for equality.

#### ***e. Consideration***

Fifth, despite the fact that the BIA had already submitted their final amendments to the Indian Reorganization Act,<sup>51</sup> Zimmerman implied that the Bureau would consider the Native American delegates’ comments in its future decisions to amend the bill. In fact, he said, “We are not here to sell you anything, nor are we trying to ram anything down your throats. We realize that this bill is not perfect by any means. Many changes have been made as a result of suggestions derived at previous Congresses like this one.”<sup>52</sup> Consideration in the Congress demonstrated to Native American

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<sup>47</sup> *Id.* at 390.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 391.

<sup>50</sup> *Id.*

<sup>51</sup> Satz, *supra* note 37, at 200.

<sup>52</sup> DELORIA, *supra* note 24, at 370.

delegates that they could have an active role in the bill, rather than a passive role.

**f. Trust**

Sixth, the officials attempted to inspire honesty by vowing to keep their promises. Woehlke, for example, explained that “I can guarantee that whatever promises are made to you by this administration will be kept by this administration.”<sup>53</sup>

**g. Politeness**

Seventh, the BIA officials treated the delegates with respect and dignity which was shown through their politeness. In a surprising turn of events, the BIA officials were so effective in making the delegates feel comfortable that both officials and delegates began to light-heartedly brag to each other. Dr. Cloud, who was a Winnebago, responded to a Chippewa’s boasts by saying, “I think it is true that the Chippewa is a very great and kind person. I married one—I ought to know. But I still contend that the Winnebago is the bravest Indian on this continent.”<sup>54</sup> Later in the Congress, Paul Abraham, a delegate from the Pipestone Sioux, picked up where Roe left off and paused before his speech to say:

Before I start in, I would like to finish a statement made by Dr. Roe Cloud and correct a statement made by Mr. St. Germaine. Dr. Roe Cloud says that Chippewas are the smartest Indians and the Winnebagos are the bravest, but he forgot to add that the Sioux are the best looking.<sup>55</sup>

William Skenadore, an Oneida delegate, delivered his speech directly after Abraham, and continued with the same good-natured boasting:

I assure you it is a great pleasure to stand before this grand body of Indians although I feel I wish to say this—that if the Winnebago Indians are the bravest and the Sioux are the

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<sup>53</sup> *Id.* at 377.

<sup>54</sup> *Id.* at 391.

<sup>55</sup> *Id.* at 396.

best looking, we have overlooked the fact that the Oneidas have got the most money.<sup>56</sup>

Consistent with the normative framework's predictions, all of the reservations that were represented at the Congress eventually accepted the IRA. Unlike in most of the other Congresses, delegates began promising to cooperate with the BIA before the meeting even ended. Charles Picard, from the L'Anse delegation, stated, "[o]ur delegation has pledged themselves to use their influence in persuading our members of our tribe to stand back of the bill."<sup>57</sup> Similarly, Reverend Aaron, a member of the Stockbridge delegation, turned to his fellow delegates and said, "I would like to suggest that after you go home today or tomorrow from this gathering, please remember what he has said and by pen or by tongue do what you can to make this bill go through."<sup>58</sup> This outpouring of support and cooperation emerged—not because of the bill's outcomes—but because of, in Aaron's words, "this grand and glorious meeting."<sup>59</sup>

## ***2. Indicators of Procedural Justice From How the Tribal Delegates Perceived the BIA Officials***

As predicted by this paper's normative framework, the Congress' most vocal delegates focused on issues of procedural justice. In particular, the delegates spoke enthusiastically about two elements of procedural justice: explanation and trust.

First, the delegates noted the BIA's thorough explanations. George Garvin of the Winnebago delegation explained, "I feel that we have been enlightened by this meeting."<sup>60</sup> Similarly, Mike La Fernier from the Red Cliff delegation said, "I wish to thank the Commissioner for explaining this bill to us."<sup>61</sup> Most significantly, Henry Wakemeup from the St. Croix delegation declared that the BIA's thorough explanation of the bill actually influenced his previously unsupportive position when he stated, "When we

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<sup>56</sup> *Id.* at 397.

<sup>57</sup> *Id.* at 395.

<sup>58</sup> *Id.* at 398-99.

<sup>59</sup> *Id.* at 396.

<sup>60</sup> *Id.* at 389.

<sup>61</sup> *Id.* at 394.

heard they were going to present this bill, we said it was no good and we had many objections to it, but since hearing the deliberation of the different delegates and the explanations by the commission, I have changed my opinion of it.”<sup>62</sup>

Second, the delegates expressed surprisingly high levels of trust for the BIA officials despite their limited interactions. These expressions of trust manifested themselves in a number of ways. Some delegates evidenced their trust for the BIA by emphasizing their faith in the BIA’s deliberation and efforts. Mitchell Red Cloud, a Winnebago delegate, noted, “In some respects this bill is too good to be true, but we know that it is the outcome of long and deep thought and that the Indians will receive the benefits of justice.”<sup>63</sup> Charles Picard, a L’Anse delegate, illustrated the potentially transformative impact of procedural justice when he explained how his trust in the BIA’s sincerity appeased his initial fears about the bill:

We came to this notable gathering armed with pockets full of objections to the bill we were to consider . . . [but] we have had the benefit of a private conference with some of the experts of this commission representing the Commissioner. . . We are satisfied that this commission will put forth its best effort to assist us in solving our own local difficulties.<sup>64</sup>

Other delegates expressed their trust in the BIA by referring to the BIA officials as friends.<sup>65</sup> Skenadore, a delegate from the Oneida reservation, submitted a resolution to the Congress in which he wrote: “[W]e will forever be thankful to you as the New Commissioner of Indian Affairs, as the tried and true friend of Indians.”<sup>66</sup> Henry Ritchie from the Pottawatomie delegation also implied that his trust for the BIA explained his support for the bill when he said, “As far as I am concerned, individually, I think it is a good thing. The bill is being drafted by friends of the Indians.”<sup>67</sup> Reverend Aaron from the Stockbridge reservation went

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<sup>62</sup> *Id.* at 395.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 394.

<sup>65</sup> *Id.* at 397.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 395.

further than just describing Collier as a friend. Instead, he playfully suggested that Collier was, in fact, a Native American: “My common sense tells me that John Collier is a member of the White Race, but my heart tells me John Collier is an Indian: Yes, indeed, John Collier is an Indian with a heart as big and broad as the day is long.”<sup>68</sup> The highest praise, however, came from Edwin Wilson, the Grand Portage delegate who described Collier as the “perfect gentlemen.”<sup>69</sup> Thus, the Hayward Congress’ accepting delegates focused on the BIA’s fair treatment. The same is true for the following case study.

### **B. Rapid City, South Dakota**

The BIA held its longest Congress in Rapid City, South Dakota. On March 2, 1934, delegates from more than twenty reservations clamored into the Rapid City Indian School in the hopes of meeting Collier, the man primarily responsible for managing their relationship with the United States government.<sup>70</sup>

The Rapid City Congress displayed a relatively high level of procedural justice, but it ultimately fell short of the standard set by Hayward. Four elements of procedural justice were especially evident: consideration, equality, trust, and politeness. One was noticeably absent: voice. I begin by discussing the elements of procedural justice that were present.

#### **1. Indicators of Procedural Justice From BIA Officials**

##### **a. Consideration**

First, the BIA officials claimed that Congress wished to consider the delegates’ opinions. In the following statement Collier explained that the event’s overriding purpose was to enable Congress to consider the opinions of Native Americans in the shaping of federal Indian law:

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<sup>68</sup> *Id.* at 396.

<sup>69</sup> *Id.* at 390.

<sup>70</sup> *Id.* at 24.

It also is true that within the last four or five years the members of the House Committee on Indian Affairs have taken the view that they are representatives of the Indians in Indian matters and that they want to know the views and wishes of the Indians. Hence, it is in behalf of these Committees and their Members, as well as the Administration that we have now come to meet with you.<sup>71</sup>

Similarly, the BIA emphasized their interest in considering the delegates' perspectives by framing the legislative process as a cooperative endeavor. In his opening statements Collier summarized the BIA's policy of collaborative law-making and announced, "We intend to act in partnership with the Indians and we are not going to act unless the Indians are willing to go with us."<sup>72</sup> Similarly, on the third day of the Congress, Collier rehashed the same point and indicated, "We are meeting with you in order that you and we may think out this question and improve the Bill in any way that it can be improved, or change it in any way it ought to be changed."<sup>73</sup>

The BIA repeatedly put this cooperative ethos into practice by asking the delegates, throughout the Congress, to participate in the planning of the meeting. Collier, for example, opened up the meeting by asking the crowd, "[w]hether you would like to have an Indian chairman or have one of the government men preside as chairman."<sup>74</sup> The BIA officials used this democratic planning technique throughout the Congress and polled the delegates on a number of issues, including where the BIA should hold the meetings,<sup>75</sup> what the BIA officials should discuss,<sup>76</sup> whether the BIA should host a dance party for the delegates,<sup>77</sup> and whether the BIA should organize future congresses.<sup>78</sup> The BIA not only adhered to the results of these impromptu elections but also granted

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<sup>71</sup> *Id.* at 26.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 70.

<sup>74</sup> *Id.* at 25.

<sup>75</sup> *Id.* at 32.

<sup>76</sup> *Id.* at 47, 61-62, 92.

<sup>77</sup> *Id.* at 93.

<sup>78</sup> *Id.* at 88.

other, more specific requests. After hearing rumors of an interest in non-English presentations, the BIA gave delegates an opportunity to deliver speeches in their native language.<sup>79</sup> On a similar note, Collier and another BIA official promised to amend the bill in response to the suggestions of two different delegations.<sup>80</sup>

### ***b. Equality***

Second, the BIA officials considered people's opinions equally. Most importantly, they did not privilege their own voices over the voices of the delegates. Collier introduced the Congress by notifying the delegates that "[i]t will be necessary for me and for others on the platform to do a good deal of talking, but please understand that it is just as important for you to talk as for us to talk."<sup>81</sup>

In the same vein, the BIA officials explicitly structured the Congress' format in a way to prevent the unequal distribution of voice. Woehlke questioned a request to remove interpreters because he feared that some delegates might not be able to participate in the discussion without the aid of a translator.<sup>82</sup> Analogously, Dr. Cloud rejected his own tribe's request to speak for more than their allotted time.<sup>83</sup> Furthermore, the BIA emphasized the Congress' openness in order to ensure that they were considering the voices of official and unofficial delegates equally.<sup>84</sup> One BIA official even provided a heartfelt apology to an unofficial delegate who he had silenced the day before:

Yesterday afternoon I was sorry I had to be a little harsh with a gentleman who spoke out of turn and I believe that this gentleman who was out of turn yesterday should be given an opportunity to speak his mind. Therefore, if that gentleman, who was out of order yesterday afternoon, is in the house, I

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<sup>79</sup> *Id.* at 79.

<sup>80</sup> *Id.* at 79-80, 82.

<sup>81</sup> *Id.* at 26.

<sup>82</sup> *Id.* at 49.

<sup>83</sup> *Id.* at 74.

<sup>84</sup> *Id.* at 40, 61.

would be glad to have him come to the platform here and, with your consent, speak five minutes.<sup>85</sup>

***c. Trust***

Third, as in Hayward, the BIA officials made a concerted effort to project honesty. They did this in a number of ways. Some explicitly highlighted their attempts to tell the truth. Collier, for example, said, “I think it is the duty of the Commissioner to tell the truth and the truth is what I said and everyone in this hall knows that it is the truth.”<sup>86</sup> Others proved their honesty by explicitly referencing their interest in keeping promises made earlier in the Congress. In one instance, Woehlke noted, “[A] large number of questions . . . have so far remained unanswered. We said that we would answer them and we do not want to speak with two tongues. Therefore, I am asking the Commissioner to . . . answer some more questions now.”<sup>87</sup> Collier, at the very end of the Congress once again tried to project honesty by giving a short soliloquy on his interest in the delegates’ confidence:

We want the Indians to continue to believe that we have been truthful and faithful. Should we, at some future date, appear to have misinformed you, to have told you things that were not true, as we understood the truth, then we should consider that we had failed and lost the most precious thing that we possess, which is your confidence.... I am merely trying to convey to you that we have a stake of our own, just as much as you have, in making good, in playing fair, and in telling the truth.<sup>88</sup>

***d. Politeness***

Fourth, as in Hayward, the BIA treated the delegates politely, and with such dignity and respect that the mood turned sufficiently collegial and officials and delegates alike began to tell jokes. The BIA officials,

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<sup>85</sup> *Id.* at 79.

<sup>86</sup> *Id.* at 35.

<sup>87</sup> *Id.* at 79.

<sup>88</sup> *Id.* at 95.

including Dr. Cloud,<sup>89</sup> Stewart,<sup>90</sup> Woehlke,<sup>91</sup> Marshall,<sup>92</sup> and even some of the delegates<sup>93</sup> made comments that, according to the transcript, sent rolls of laughter through the crowd.

#### e. Voice

While the Rapid City Congress displayed these four elements of procedural justice, it lacked one particularly important factor: voice. Although there were moments, like in Hayward, when the BIA stressed the importance of the delegate's participation<sup>94</sup> and attempted to let the delegates lead the conversation,<sup>95</sup> there were instances in which the officials silenced the delegates' voices. For example, some officials, such as Collier himself, explicitly expressed their aversion to hearing the delegates' speeches. After hearing only half of the older delegates react to the bill, Collier attempted to prevent the remaining delegates from speaking and explained, "I don't want to take any more time from the old men."<sup>96</sup>

Other officials limited the delegates' voice by strictly structuring the conversation and by discouraging the delegates from speaking about anything except for the session's particular topic. In response to the Rosebud delegation's request to present their questions publicly, Woehlke asked, "Do they refer to the three preceding sections or deal with the land division?"<sup>97</sup> After learning that the questions did not concern the explicitly prohibited topics and were not related to those previously discussed, Woehlke granted the delegation's request, albeit begrudgingly: "You may

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<sup>89</sup> *Id.* at 45.

<sup>90</sup> *Id.* at 57.

<sup>91</sup> *Id.* at 53, 58.

<sup>92</sup> *Id.* at 55-56.

<sup>93</sup> *Id.* at 88.

<sup>94</sup> *Id.* at 26 ("Collier: 'It is important that your views are expressed and put into the record.'"); *Id.* at 98 ("Woehlke: '[The Commissioner] and his representatives want to listen to what you have to say concerning the reorganization of your reservations.'").

<sup>95</sup> *Id.* at 58 ("James McGregor: '[g]et up right now and ask the Commissioner some things, anything, or the thing that you are most worried about this question.'"); *id.* at 89 ("Collier: 'We do want all views to have the fullest expression whether we agree with them or not . . . .'").

<sup>96</sup> *Id.* at 85.

<sup>97</sup> *Id.* at 46.

proceed, but make it quick.”<sup>98</sup> Because BIA officials encouraged, but also prevented the delegates from expressing their opinions, the Rapid City Congress received a zero for this element of procedural justice.

***f. Indicators of Procedural Justice From How the Tribal Delegates Perceived the BIA Officials***

Not surprisingly, and consistent with this paper’s normative argument, 68 percent of reservations represented at the Rapid City Congress would eventually endorse the bill, making the second most procedurally just Congress also the second most effective Congress in garnering support for the bill.<sup>99</sup>

At the micro-level, the experience of procedural justice was also correlated with cooperation. Delegates who represented reservations that rejected the IRA voiced their concerns about the absence of procedural justice, and delegates who represented reservations that accepted the IRA spoke mostly about the presence of procedural justice.<sup>100</sup> I begin by discussing the rejecting reservations and then finish with reference to the accepting ones.

The majority of rejecting delegations focused on at least one of four elements of procedural justice during their speeches. First, Harry White Man, a representative from the Crow reservation, referenced the BIA’s impolite comments, before explaining his reluctance to support the bill.<sup>101</sup> He began his speech to the Congress by noting, “Once an Assistant Commissioner of Indian Affairs called me the most ungrateful Indian in the United States.”<sup>102</sup> Second, Charles Blackbird, a delegate from the rejecting Fort Totten reservation, implied that he did not trust the BIA when he asked the “Government” to “guarantee us in some way that it will live up to its obligations.”<sup>103</sup> Third, delegations from the rejecting Shoshone

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<sup>98</sup> *Id.*

<sup>99</sup> HAAS, *supra* note 1.

<sup>100</sup> DELORIA, *supra* note 24, at 69.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 68.

<sup>103</sup> *Id.* at 73.

Arapahoe<sup>104</sup> and the Turtle Mountain Chippewa<sup>105</sup> reservations protested that the BIA officials had forgotten to give their appointed delegates an opportunity to deliver their speeches.

Reservations that had endorsed the bill, on the other hand, focused on four elements of procedural justice: trust, voice, explanation, and politeness. First, some focused on their trust in Collier. The Lower Brule<sup>106</sup> and the Fort Belknap<sup>107</sup> delegations expressed this sentiment by describing Collier as a “friend.” Fort Berthold’s Chief Drags Wolf indirectly indicated his trust in the BIA by contrasting the current administration’s behavior with the actions of prior administrations: “The past administrations did not fulfill their promises . . . . Since then, the Government and the Indian Bureau are trying to rectify the evils of the past.”<sup>108</sup>

Second, other delegations that supported the IRA expressed their appreciation for having received an opportunity to voice their opinions. Jesse White Man, a member of the Flandreau delegation, explicitly articulated the relationship between his support for the proposal and his voice in the process: “The program indicates that Indians will have a voice in their property or anything that concerns them. Therefore, I believe I am very much in favor of the new system, especially education.”<sup>109</sup>

Third, other delegates, who represented supportive reservations, communicated their appreciation for the BIA’s thorough explanation of the law. Felix White from the Ponca reservation turned to Collier and stated, “I want to express appreciation that the Commissioner brought this ball of light out here. . . . We are thankful that we came up here.”<sup>110</sup> Similarly, a Fort Berthold delegate noted, “We are enjoying, however, the talks and the discussion that we have had in this convention. The more we learn

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<sup>104</sup> *Id.* at 86.

<sup>105</sup> *Id.* at 87.

<sup>106</sup> *Id.* at 73.

<sup>107</sup> *Id.* at 86.

<sup>108</sup> *Id.* at 85.

<sup>109</sup> *Id.* at 71.

<sup>110</sup> *Id.* at 77.

from you and the more instructions we get from our Government officials, the more we believe we are getting the very best information . . . .”<sup>111</sup>

Fourth, some accepting delegates highlighted the BIA’s polite and respectful treatment as a whole. Brown, a representative from the Blackfeet delegation, announced, “I want to take this opportunity to express publicly our sincere and heartfelt sympathy for the way our new Commissioner and those of his staff have treated us. . . .”<sup>112</sup>

These references to delegates’ actual remarks highlight the fact that delegations were thinking deeply about how they interacted with the BIA. Furthermore, and more explicitly in support of this paper’s normative framework, the delegates’ comments demonstrate how elements of procedural justice influenced behavior on the individual level. Indeed, as illustrated above, delegates from rejecting reservations noted the BIA’s unfair treatment, while delegates from accepting reservations expressed their appreciation for the BIA’s procedural justice.

### **C. Chemawa in Salem, Oregon**

Immediately after the Rapid City Congress, BIA officials traveled west to Salem, Oregon to hold a Congress at the Chemawa Indian School. Collier, exhausted from his performance in Rapid City, did not attend.<sup>113</sup> Unlike in Hayward and Rapid City, delegates and BIA officials did not develop a friendly rapport because the BIA officials did not conduct the meeting in a manner as procedurally just as they did in the two Congresses described above.<sup>114</sup> Only one of the seven elements of procedural justice present at Hayward, explanation, was clearly evident in Chemawa. Two others, consideration and voice, were only marginally present. As a result, Chemawa, the least procedurally just Congress, received a score of 1.

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<sup>111</sup> *Id.* at 71.

<sup>112</sup> *Id.* at 69.

<sup>113</sup> *Id.* at 104.

<sup>114</sup> *Id.*

## 1. *Indicators of Procedural Justice From BIA Officials*

### a. *Explanation*

First, as in Hayward, the BIA thoroughly explained their actions and encouraged participants to ask questions. Ward Shepard, a specialist in land policies for the Indian office, explained to the crowd, “I am going to try to be simple and straight-forward and if anything that I say is not clear, please do not hesitate to interrupt me.”<sup>115</sup> Similarly, Marshall, another BIA official, told the delegates, “So what we want at this meeting and tomorrow is for all of you to ask us questions regarding anything which you don’t fully understand.”<sup>116</sup> Others made the same point by emphasizing the fact that BIA held the conferences in order to explain their actions.<sup>117</sup> Woehlke stated, “Mr. Collier called this Congress . . . for a very definite purpose. He called you together because he wanted to tell you, either through his own words or through the members of his staff, of the Wheeler-Howard Bill— what this bill is going to accomplish.”<sup>118</sup> Because of the BIA’s repeated emphasis on the importance of explaining their actions, the Chemawa Congress received a 1 for this element of procedural justice.

### b. *Consideration*

Second, even though the BIA officials repeatedly attempted to convince the delegates that they were seriously considering their opinions,<sup>119</sup> there were moments in which BIA officials thoughtlessly and stubbornly dismissed delegates’ suggestions. For example, in a room full of more than twenty translators each speaking a different language, the Spokane delegate voiced his concern that the participants could not understand key elements of the BIA’s presentation.<sup>120</sup> Instead of addressing the delegate’s reasonable concerns, Marshall initially responded, “At Rapid City, where there were 16 tongues . . . it was done

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<sup>115</sup> *Id.* at 112.

<sup>116</sup> *Id.* at 104.

<sup>117</sup> *Id.* at 108.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 103 (“Marshall: ‘Your criticisms and your suggestions are to be listened to and accepted and the bill is to be changed where necessary in order to make it what Indians want.’”).

<sup>120</sup> *Id.* at 103.

[this] way and there wasn't much confusion. We will see how it works."<sup>121</sup> Because the BIA officials did not fully consider the delegates' views, the Chemawa congress received a zero for this factor of procedural justice.

### **c. Voice**

Third, like consideration, voice was only marginally present at Chemawa. Although the BIA officials highlighted their interest in giving the delegates an opportunity to express their opinions,<sup>122</sup> they often failed to keep their promises.<sup>123</sup> For example, a commotion ensued after Dr. Cloud initially refused to grant an audience member's request for a question and answer session.<sup>124</sup> The unidentified voice from the crowd repeatedly shouted at Dr. Cloud, "You're out of order. You are out of order. We understood this morning that this afternoon was to be spent in answering questions that were presented on the table."<sup>125</sup> Less dramatically, Shepard declined to answer a delegate's question because he could not "see that this question pertains to the Indian Government at all."<sup>126</sup> Dr. Cloud realized Shepard's misstep and interjected, "Let's give the speaker a chance now."<sup>127</sup> In the most explicit example of limiting a delegate's voice, Woehlke announced:

In order to get through and cover the ground thoroughly, we must proceed in an orderly manner. We cannot transform this congress into a mob; therefore I hope you will understand if I am compelled, in order to preserve the orderly proceedings, to shut off someone or refuse to recognize someone.<sup>128</sup>

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 106, 108, 121.

<sup>123</sup> *Id.* at 116.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 113.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 108.

## **2. Indicators of Procedural Justice From How the Tribal Delegates Perceived the BIA Officials**

In accord with the procedural justice argument, after repeatedly being denied an opportunity to voice their concerns, only 53 percent of the reservations that were represented at the Congress eventually accepted the IRA. In other words, nearly half the represented reservations rejected the IRA.

As was true in my previous case studies, focusing purely on the BIA's actions, fails to capture the significance of procedural justice. In fact, issues of procedural justice played prominent roles in the delegates' individual responses to the BIA presentation.

Indeed, the Congress left many of the delegations so insecure about the importance of their voices in the legislative process that they encouraged the BIA to consider their perspectives in the future. Robert Smith from the Warm Springs reservation reminded the BIA, "[W]hen you get back to Washington, I want you to tell them not to forget Warm Spring's [sic] talk here today. I want you to listen to what I say today."<sup>129</sup> Other tribes made more explicit assessments of the BIA's treatment of their members. Consistent with this paper's normative argument, the rejecting reservations focused on the absence of procedural justice and the accepting reservations concentrated on its presence. A majority of the rejecting reservations pointed to one of three missing elements of procedural justice.

First, some of the rejecting delegates protested the lack of a stronger Indian voice at the meeting. Before discouraging the other delegates from blindly accepting the IRA, Clayton Kirk, a delegate from the Klamath reservation, lamented the Congress' representational inequity and stated, "[T]his bill is on trial today. On the one side you have the best that is in the Indian office . . . [but] I would like to have seen the Indian side represented by a lawyer . . . ."<sup>130</sup>

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<sup>129</sup> *Id.* at 131.

<sup>130</sup> *Id.* at 135.

Second, other rejecting reservations questioned the federal government's institutional legitimacy by referring to its long history of broken promises. Chief Peter Mocktum, for example, a member of the Coeur D'Alene delegation, recounted stories of prior dishonesty and, interestingly, did not differentiate between the contemporary and previous administrations:

You surveyed and allotted my reservation by force. The government promised me at the time of allotment that this was to be my own individual allotment forever. Very few years after the allotments were made some delegation of yours informed me that the young people, the competent Indians could have their [land]. . . . Again the treaty was broken.<sup>131</sup>

Although the Siletz<sup>132</sup> and Yakima<sup>133</sup> delegations also spoke of broken treaties, John Wilson, a member of the Nez Perce delegation, explicitly explained his reservation's eventual rejection of the IRA with a reference to the BIA's dishonesty and inconsistent adherence to its rules.<sup>134</sup> Wilson said:

My personal opinion is that [my reservation is] inclined to oppose the Bill. There is one big objection to the Bill: the reason is the Nez Perce claim 18,000,000 dollars in lieu of ceding the Montana hunting grounds to the government. The promises were extended as part of the Indian interests into the treaties with the government in 1855 and the promises that the mountains and rivers would be ours have never been kept.<sup>135</sup>

For the most part, accepting reservations described the BIA in glowing terms. They focused on two elements of procedural justice: consideration and trust. First, some expressed appreciation for the BIA's

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<sup>131</sup> *Id.* at 127.

<sup>132</sup> *Id.* at 130.

<sup>133</sup> *Id.* at 131.

<sup>134</sup> *Id.* at 129.

<sup>135</sup> *Id.*

visit and the BIA's attempts to consider their opinions. An interpreter relayed a message from Eaneas Conso, an elder from the Flathead reservation, telling the BIA that "he says he is very glad you came over and visited us, the red men."<sup>136</sup> John Ballard, a member of the Fort Hall delegation, made an analogous statement and said, "we were glad to have you come here to talk to us."<sup>137</sup>

Second, other accepting delegations expressed their trust in the BIA officials themselves. They did so in a number of ways. Jack George, a member of the Taholah delegation, indicated his trust for the BIA by complimenting their characters: "I think these are good people from the Indian Office . . . ."<sup>138</sup> Others expressed their trust in the BIA more directly. John Ballard from the Fort Hall delegation turned to the BIA officials and said, "I believe you are telling me the truth."<sup>139</sup> Steve Knight, a member of the Sacramento delegation, trusted the BIA so much that he could comfortably claim, "I have enough faith and confidence in that man that I would support any proposal that he might put up for the welfare of the Indians of America."<sup>140</sup> Thus, delegates' considerations of procedural justice played important roles in their decisions to reject or accept the IRA.

### CONCLUSION

In support of the procedural justice theory of cooperation, there is strong evidence that Native American reservations accepted or rejected the IRA because of how the BIA treated their members during consultative congresses. These findings have at least three broader implications.

First, this research demonstrates the influence of procedural justice beyond the settings in which it has been examined thus far. On some views, Native American communities during the 1930s would be thought especially unlikely to have made judgments based upon normative—non-materialistic—considerations. Indeed, Native Americans severely lacked financial resources during this period compared to the general population.

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<sup>136</sup> *Id.* at 127.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 137.

<sup>139</sup> *Id.* at 127-128.

<sup>140</sup> *Id.* at 136.

In fact, at the time, Native American unemployment rates were more than four times higher than the national average.<sup>141</sup> Regardless of these abysmal employment rates, the Native American delegates who attended the Indian Congresses focused on procedure instead of on outcomes and chose respect and dignity over capital and credit.

Similarly unexpected, this research also expands our understanding of what sort of actor is affected by procedural justice concerns. Scholars such as Professor Justice Tankabe have previously argued that procedural justice is less influential in formerly colonized societies.<sup>142</sup> This paper complicates those findings because, despite the fact that these delegates had spent most of their lives as colonized subjects, unable to vote, they made normative democratic decisions and cooperated with those who acted in a way consistent with the delegates' moral expectations.<sup>143</sup>

Second, this paper further attempts to push procedural justice theory beyond its origins in law compliance and into the study of cooperation more generally. Indeed, unlike the examples found within the classical procedural justice literature,<sup>144</sup> this study of the Indian Congresses suggests that procedural justice plays an important role in how people implement, and even make, laws. Further research in this vein could shed light on one of America's most pressing problems and possibly find a solution to the hopelessly gridlocked legislature.

Third, and along the same lines, this research could provide a valuable tool for Native American governments. If procedural justice could effectively encourage Native American communities to cooperate with a once completely authoritarian and illegitimate BIA, current tribal officials should certainly be able to use the model highlighted above to more effectively and efficiently govern their polities. Reservations could increase

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<sup>141</sup> Christina Romer, *Spurious Volatility in Historical Unemployment Data*, 94 JOURNAL POL. ECON. 1, 31 (1986).

<sup>142</sup> See generally, Justice Tankebe, *Cooperation with Police in Ghana: Does Procedural Fairness Matter?*, 47 CRIMINOLOGY 4 (2009).

<sup>143</sup> An Act To authorize the Secretary of the Interior to issue certificates of citizenship to Indians, Pub. L. No. 68-175, 43 stat. 253 (1924).

<sup>144</sup> TYLER, WHY PEOPLE OBEY, *supra* note 8.

their efforts to make their institutions more procedurally just by continuing to experiment with procedurally focused forms of alternative dispute resolution. On reservations with high crime rates and empty coffers, this cost effective method of governance, based on friendly, public deliberation, seems especially useful.

Because of this study's limited methodological resources and its inability to draw upon survey data, these conclusions are merely tentative. Despite these caveats, these conclusions do suggest, however, that the adoption of the IRA was about much more than just money. Indeed, it appears that a search for justice—not just riches—drove the reservations' support for the Indian Reorganization Act.