Kennard, Edward (Anthropologist), 1939, Background for Interpretation of the Hopi Constitution. Copy from Indian Law Resource Center website, Hopi Report, Exhibit 18. (http://www.indianlaw.org/en/hopi_report

BACKGROUND FOR INTERPRETATION OF THE HOPI CONSTITUTION

by

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Realizing that every interpretation of a statute in the United States is made with full knowledge of the social milieu, and the conditions under which it is to operate, the following information is offered in explanation of the interpretations of the Hopi Constitution which are appended.

The Hopi, in contrast to most of the tribes in the United States, have never been moved from their original territory, nor has their way of life been broken. Despite compulsory schooling, Government supervision for about forty years, and certain changes in the material side of their life, the fundamental organization, the value, the processes of thought, and the most important activities have remained unchanged. Because they have a sound economy based on agriculture and sheep and are for the most part self supporting and because their interests did not conflict with the policy of the U. S. Government, the government still plays a minor role in their lives. Their primary interests and activities are in the religious and ceremonial sphere, not in the political.

Each Hopi village is a completely autonomous unit, but it is not a political unit, such as a town, county, or state. Its only village organization is a ceremonial one, headed by the village chief, the Kikmongwi. Assisting him are other chiefs, the leaders of specific religious societies, who perform their ceremonies at specific times during the year, and who are in a sense his "advisers". Their power is not a power over persons, but a power over the supernatural. And this power is never exercised individually, but as the leader of a cooperative group.

Each village has its own land, a small part of it divided into clan holdings, the rest free for the use of anyone in that village either for agriculture or for grazing. In native theory, the Kikmongwi has control over part of the land, but this is a power which is never exercised. It must be realized that there are no Tribal lands, referred to in Article VII, as now worded. It makes the terms clan lands and village lands mutually exclusive, applying the former to land east of the Oraibi wash, and the latter west of the Oraibi wash. Actually, they are complementary terms, and take in all the land now used by the Hopi. What the Hopi referred to when inserting the term "tribal lands" was an area outside of any now occupied or any ever occupied by them according to their migration traditions.

EXHIBIT 18c

The expression, "beyond the clan and village holdings," meant to the majority of the Hopi, lands beyond the San Francisco Peaks to the west, Navajo Mountain to the North, the Buttes South of Holbrook, and an indefinite point to the east somewhere east of Canado.

Therefore, the Tribal Council has no control over these lands, and the conservation and development program will have to be taken up with the villages. And since this is outside of the Kikmongwi's sphere, it will be taken up with whatever individuals or groups are utilizing the land at the present time.

It must be realized that the intention of the Hopi in reserving powers to the village and to the Kikmongwi, was to protect their ceremonial life, not to endow the office with power it does not possess according to tradition and past usage. The Hopi as a people, the Kikmongwis, and the delegates to the Council are more concerned with preventing acting than in taking action.

Within the village, social and economic obligations are based upon kinship, and the primary kin group is the matrilineal clan. These important relations are settled by birth, and nothing ever changes them. This automatically takes care of such problems as the custody of children in a divorce case, inheritance of property, and many other matters that are settled by law in our society.

But more important than the factors of village organization is understanding the application of the provisions of the Hopi Constitution is the psychology of the people. The real policing medium of the village is gossip. The Hopi have been conditioned since childhood to be extremely sensitive to criticism and they are. They fear being talked about more than anything else. Furthermore, all criticism is of a derogatory character. It is for this reason, that a Kikmongwi will not make any decision about his village, that delegates to the Council will not take positive action, for then they are in a vulnerable position. They are held responsible for whatever consequences follow in the eyes of the people.

It is for this reason that people who are opposed to measures do not vote against them, but do nothing. The Hopi as far as all secular matters are concerned will not agree to abide by the decisions of the majority. They are not accustomed to binding upon anyone but himself, not even a Kikmongwi. In the past whenever a program was to taken up with the Hopi, it was explained at a village meeting. Those who wanted to cooperate did so, and those who did not, did not. As long as no one has to make any formal commitment he is safe in taking whatever action seems best to him.

EXHIBIT 18d

It is with all those factors in mind, that the interpretations have been made permitting the village or part of it to act for its own interest. This is nothing more than a legal recognition of an existing practice, and one that has been followed by Superintendents and other Government officials for many years in the past.

As far as the provisions concerning Law and Order are concerned, there is no apparent need for them at the present time. Most cases are settled by the parties to a dispute in their own way in the village. Many times they are not settled at all, but it does not interfere with anything, for bickering and quarreling is the rule rather than the exception. Sometimes a dispute is brought to the Agency for settlement, with the Superintendent acting as referee. Most of the people would prefer to continue this system, for the system of laws, courts, and judges is far beyond their comprehension.

The custom of trade among the Hopi is of long standing. There seems to be no need of regulations governing this activity of the Hopi. If there are to be regulations these should be carefully worked out with the council and Indian storekeepers. The regulations should only apply to non-members of the tribe.

EXHIBIT 18e