**Comanche, Kiowa and Cheyenne: The Plains Indians**

Moderns are inclined to view more primitive societies as having followed the same pattern of life for century after century. If, after all, they were capable of change, surely they would have progressed, become more like us, ceased to be primitive. The plains Indians provide a striking counterexample. Their immemorial life style was a brand new invention when Europeans first came into substantial contact with them.

The reason it was a new invention is that hunting buffalo from horseback requires horses. There were no horses in America until the Spanish brought them and none available to North American Indians until enough time had passed for horses that had escaped the Spanish to multiply in the wild and spread north.

Faced with a sudden opportunity for progress, the chance to stop scratching in the earth as primitive agriculturalists and turn into noble savages hunting buffalo, living in tipis, and proving their manhood by making war on each other, the Indian tribes living on or near the Great Plains seized the opportunity. The result was the development in the 18th century of a common material culture shared by tribes with quite different origins. It depended on the horse but also made good use of the rifle, rifles having been initially provided by the English to tribes willing to fight tribes allied with the French and by the French to tribes willing to fight those allied with the English.

In this chapter I will discuss what is known about the legal systems of three of the tribes. My main sources are a chapter by Hoebel[[1]](#footnote-1) covering all three, two books on the Cheyenne, one by Llewellyn and Hoebel[[2]](#footnote-2) and one by Grinnell, [[3]](#footnote-3) and a book on the Comanche by Wallace and Hoebel.[[4]](#footnote-4)

Comanche

“Once there were a bunch of Comanche out looking for trouble”

(The usual start of an account by a Comanche informant, according to Hoebel)

I start with the Comanche; their government is the simplest of the three to describe, since they did not have one. A Comanche war chief was simply an entrepreneur, a warrior who announced his intent to go steal horses from the Mexicans, Americans, or some other tribe, and invited anyone interested to come along. Within the war party he had absolute rule but anyone unhappy with the situation was free to leave.[[5]](#footnote-5) Along similar lines, the Comanche peace chief was simply an individual who others were willing to follow. If he chose to go one direction and the rest of the band another, he was no longer a peace chief.

In addition to peace chiefs and war chiefs, there was also a council. As described by Wallace and Hoebel:

In theory, at least, the council was supreme, but its decisions were often indefinite. Generally the majority made little effort to impose its will on the minority, for, as in most Indian tribes, it was thought that agreement should be unanimous. The “council” “was composed of all the old men of the tribe who had shown exceptional ability as warriors, leaders, or guides. As in the selection of chiefs, there was no formal procedure for admission; one “just got that way” because of his achievement.[[6]](#footnote-6)

The Comanche, in other words, were anarchists, their social system including institutions for coordination at the level of the individual band but nothing we would recognize as a government over either the band or the entire tribe.[[7]](#footnote-7)

One of the problems that concerns modern anarchists is how to defend their society against adjacent states, given the difficulty of raising and funding an army without a draft, taxation, feudal obligations, or something along similar lines.[[8]](#footnote-8) The Comanche reversed the situation, raising the problem of defending adjacent states, and anyone else in the neighborhood, from them. They drove the Apache from the southern plains, raided the Mexicans for horses and slaves and, despite the disadvantage of lower technology and smaller population, blocked American expansion across Texas for decades, fairly earning the title of Spartans of the plains. Facing an overwhelmingly superior enemy they were eventually defeated, but only after making a very impressive fight of it.

Part of the reason, seen from an economist’s perspective, is that they made warfare into a private rather than a public good. For most of their history, the incentive to fight was not the welfare of the tribe but of the individual warrior. Successful raids produced valuable loot. Heroic and successful fighting produced status.

One way of getting status was to steal horses from outsiders. Another was to face down another Comanche warrior. The opportunity to do so was provided by the common practice of wife stealing.

The strongest bond within the tribe was between brothers who, among other things, shared their wives and had the power to marry off their sisters.[[9]](#footnote-9) From the standpoint of the brother, the ideal brother-in-law was a wealthy and successful warrior. The sister might prefer someone earlier in his career, younger and more handsome—and, given the opportunity, leave the husband chosen for her by her brothers to run away with one such. The incentive of the wife-stealer was less possession of the wife than the opportunity to outface the husband.

Wife stealing was done openly, so guilt was not an issue. Compensation was. The husband was expected to confront the wife stealer and demand generous compensation, with the amount an increasing function of the wealth of the stealer and the prowess of the husband, a decreasing function of the prowess of the stealer. There being no government to enforce the (unwritten) law, the threat that backed the demand was the private use of force. Pay or I will kill you.

Carrying out that threat was neither desired nor likely, since if the husband killed the stealer (or vice versa) the victim’s kin would take revenge by killing the killer.[[10]](#footnote-10) The intended result of the threat was to set off the game that economists call bilateral monopoly, a bargaining game in which the parties have a common interest in the resolution of their dispute but a conflict over the terms, in this case over how much will be given in compensation to the wronged husband.

What if the stealer was clearly the more dangerous man of the two—not unlikely, since a prudent man in search of status would prefer not to steal from too able a husband? The husband had the option of calling in his brothers or other kin to support his threats. The stealer, having set off the conflict in order to prove his status, had no such option—asking for help would be to admit that he had bitten off more than he could chew, and besides, he was on what everyone saw as the wrong side of the law. So at that point the stealer backs down and agrees to pay substantial damages, which damages are collected not by the husband but by his helpers.

What if the husband had no brothers? His option then was to find a champion, a brave, generous, well thought of warrior willing to take over the case and face down the stealer. This time the damage payment went to the husband. The champion’s payment was the status gained by his willingness to risk himself in defense of the right and his success in forcing another warrior to back down. Much the same pattern appears in some of the Icelandic sagas, where a bully who relies too heavily on his and his friends’ strength to let him violate the rights of weaker men is brought down by someone still more formidable out to establish his own status.[[11]](#footnote-11)

In addition to cases of wife stealing, there were also cases of adultery. The pattern there was the same, save that there might be a question of guilt. If the defendant denied it, the case ended unless there was proof of guilt available.

Cases of wife stealing and seduction seem to have been the nearest thing to legal disputes among the Comanche. So far as conflicts between husband and wife, most likely to occur when the husband suspected his wife of adultery, the husband had a free hand, up to killing his wife or torturing her to make her name her lover. One possible resolution was for the wife to swear by earth and sky that she was innocent, at which point the husband accepted the oath in the belief that if she was lying, then earth and sky would eventually kill her. The same approach was used to settle some other disputes, such as disagreements as to which member of a war party had counted coup on an enemy or captured a particular horse, and similarly in some cases where a man accused of seduction denied it. As far as minor theft was concerned, the Comanche, like the other two tribes I will discuss, regarded such matters as beneath the notice of a warrior. As a Cheyenne would have put it, “if you had asked, I would have given it to you.”

That attitude, as well as other features of plains Indian behavior that I will be discussing in the context of the Cheyenne, suggests one important feature of those societies—in their own terms, they were wealthy. Men frequently had more horses than they themselves had use for and so were free to use the surplus to prove their generosity by giving some away. In an uncertain environment, they were from time to time at risk of starving to death during the winter. But the most important form of portable, indeed self-portable on four legs, wealth was plentiful.[[12]](#footnote-12)

What about murder? As already mentioned, a first killing required a second, of the killer by the kin of his victim. At that point the matter ended. The second killing was justified by the first and so required no further vengeance.[[13]](#footnote-13) For these purposes, killing a favorite horse, thought of as having a soul, counted as murder and so justified the killing of the human responsible in revenge.

An exception to the rule of a life for a life occurred in the context of sorcery. Every Comanche male was expected at some point to go on a vision quest and end up with some sort of magical power, typically restricted by a tabu whose violation could cost his life. For the most part such power was used for the good of the tribe and the individual, but there were “mean medicine men,” individuals with a greater than usual share of magical power and an inclination to misuse it, sometimes lethally.

The first recourse, if someone was believed to be dying from sorcery, was to get a good medicine man to cure him. If that failed, the next step was to confront the sorcerer believed responsible and try to get him to stop what he was doing. If that failed, however, there was no obligation to kill the sorcerer, possibly because doing so was seen as too dangerous, possibly because in that case, unlike an ordinary murder followed by revenge, there might be a serious risk of blaming the wrong man.

“The sorcerer who maintained his innocence, when threatened with force, in each recorded case immediately forestalled further legal steps by throwing the whole affair over to supernatural judgment. He swore his innocence with a conditional curse. If he was guilty he was killed by power of the Sun and the Earth. If he survived, his innocence was accepted as proved.” (Wallace and Hoebel p. 239)

What if it was believed that a particular bad medicine man was responsible for multiple deaths? At that point, the Comanche made use of the nearest thing their society had to criminal law. The rest of the tribe met together, concluded that the guilty individual must die, and either killed him or tricked him into violating his own tabu and so dying.

The Kiowa

The Kiowa, while in some ways similar to the Comanche, had something a little closer to a government and much closer to a well defined class/rank system. The latter consisted of four classes. The Onde were the high status warriors, sufficiently high that they had no need to further demonstrate their courage or prowess; they are estimated to have been at most ten percent of the men. The Ondegupta were the would-be Onde, the pushy up and coming warriors trying to establish their claim to the top category. Not surprisingly, the Ondegupta were the chief source of conflict within the tribe as they, like their Comanche equivalent, tried to gain status. Below them were the common men and below those the Dapom, the dregs of society, functioning as hangers-on of the more important Kiowa and tolerated petty thieves.

Kiowa bands had recognized headmen, almost all of Onde rank, who in practice made important decisions for the band. Kiowa war chiefs, like Comanche war chiefs, were the leaders of war parties.

In addition to these, there were ten keepers of medicine bundles, tribal fetishes with magical power, and one keeper of the Sun Dance fetish, as such the nominal grand chief of the tribe, all of whom played an important role in settling disputes. An Ondegupta who claimed to have been wronged by another made a great show of threatening a violent response, while letting himself be restrained by the bystanders from actually doing anything until one of the ten medicine bundle bearers showed up with his pipe, asking him to accept a peaceful settlement with suitable compensation. Usually the offer was accepted. If not, a second medicine bundle bearer would appear and, if necessary, a third and a fourth. It was believed that refusal of the fourth meant death by supernatural agency.

Both men were trying to demonstrate their courage and determination, with the risk that the bluff might became reality. If someone was killed, the killer might be killed in retaliation by his victim’s kin or they might accept compensation, the equivalent to the Icelandic wergeld or the payments that atoned for killing under Islamic law or among the Somali. The man who had killed was believed to become unlucky as a result, as a murderer was in ancient Athens, but his presence did not, as with the Cheyenne, pollute the tribe.

In addition to the keepers of the medicine bundles, the Kiowa had military fraternities, roughly similar to those of the Cheyenne.

The Cheyenne

Of the three tribes, perhaps of all the plains Indians, the Cheyenne came closest to having a government—part of the year. The entire tribe, possibly as many as four thousand of them, gathered together in a single camp in summer when food was plentiful. During the winter the tribe separated into much smaller bands and dispersed in search of game.

The summer encampment was the site of the council of forty four, the government, or perhaps nascent government, of the tribe. It was a self-perpetuating body; how the original members were chosen is not known. Every tenth year the council was renewed. Each existing member chose a successor, usually from his own band.[[14]](#footnote-14) A chief could not succeed himself but could be kept in the council if another chief was willing to name him as his successor.

There were four priest chiefs among the forty-four, each associated with a supernatural power, plus one keeper of the sweet-medicine, the most important of the tribal fetishes. When the council was renewed, each priest chief chose his successor.[[15]](#footnote-15) If a priest chief died, his successor was chosen by the others. The remaining forty chiefs, according to Grinnell, consisted of four from each of the ten bands into which the tribe was divided. It is unclear how authority was divided between the four priest chiefs and the forty ordinary chiefs, possibly because there was no clearly defined rule.[[16]](#footnote-16)

In addition to the Council, there were also soldier societies, six of them, military fraternities existing initially as social groups but over time taking on some governmental responsibilities. One of the societies, the dog soldiers, constituted its own band and so existed as a single unit through the entire year. Each of the others had members dispersed among the bands, together only during the summer encampment. Each of the soldier societies had two chiefs, functioning as war chiefs, and two “servants,” lower level chiefs responsible for a particularly dangerous part of the defense against attackers. A war party could however, as in the other two tribes, be formed and led by any brave who could get others to follow him.

The council was responsible for making decisions about war or peace with other tribes, deciding cases of homicide or whether to permit the readmission of an exiled killer, and deciding the movements of the tribe in search of game. It seems, in practice, to have been a consensus process. One chief might decide that the tribe should move in some direction. He would take council with several others, they would eventually call together all of the council chiefs, confer, and have the conclusion announced to the tribe. In some contexts, such as deciding on a peace treaty with another tribe, the process would involve a good deal of back and forth between the Council and one or more of the soldier societies. The Council had the right to make the decision. But in practice it had to be made in consultation with others, most obviously theose who would actually implement it.

A further responsibility of the Council was to control the buffalo hunt, a mass effort by the entire tribe conducted under the authority of one of the soldier societies selected for the purpose. The basic rule was that nobody was to attack a buffalo until the word was given, at which point the line of hunters would charge the herd, with the ends of the line wrapping around to entirely enclose it.

The rule was not uncommonly violated, perhaps typically by young warriors out to prove that they could get away with it. The following account is from one of the informants quoted by Hoebel and Llewellyn:

All the hunters went out in a line with the Shield Soldiers in front to hold them back. Just as they were coming up over a long ridge down wind from where the scouts had reported the herd they saw two men down in the valley riding in among the buffalo. A Shield Soldier chief gave the signal to his men. They paid no attention to the buffalo, but charged in a long line on the two violators of the rules. Little Old Man shouted out for everyone to whip them: “Those who fail or hesitate shall get a good beating themselves.”

The first men to reach the spot shot and killed the horses from under the hunters. As each soldier reached the miscreants he slashed them with his riding whip. Then some seized the guns of the two and smashed them.

When the punishment was done, the father of these two boys rode up. It was Two Forks, a member of the Dakota tribe, who had been living with the Cheyennes for some time. He looked at his sons before talking. “Now you have done wrong. You failed to obey the law of this tribe. You went out alone and you did not give the other people a chance. This is what has happened to you.”

Then the Shield Soldier chiefs took up the talk. “Now you know what we do when anyone disobeys our orders,” they declared. “Now you know we mean what we say.” The boys did not say anything.

After that the chiefs relented. This was not alone because of the fact that the culprits were Dakotas. They called their men to gather around. “Look how these two boys are here in our midst. Now they have no horses and no weapons. What do you men want to do about it?”

One of the soldiers spoke up. “Well, I have some extra horses. I will give one of them to them.” Then another soldier did the same thing.

Bear Standing On a Ridge was the third to speak out. “Well,” he announced, “we broke those guns they had. I have two guns. I will give them one.”

All the others said, “*Ipewa*, good.”

The account has several interesting features, consistent with other such accounts. To begin with, the punishment of offenders consisted of whipping them and destroying their property. On the face of it, the latter seems a wasteful form of punishment. Why not replace the destruction by a fine, seizing the property and using it for the good of the tribe or perhaps the soldier society that, in this case, was enforcing the rules.

One possible answer is that making punishment profitable invites excessive or unwarranted punishment[[17]](#footnote-17)—the same problem that Athenian law attempted to solve by combining a profitable punishment, a share of the fine, with a penalty for unsuccessful prosecution. It might be a particularly serious risk in a system as unstructured as the Cheyenne. Hunting too early violated a well understood rule, but exactly what the consequences were, in that case and most others, was up to the particular people, often the members of one of the soldier societies, who detected the offense and punished the offender. Customs that permit the enforcers to shoot horses but not to confiscate them are one way of eliminating the risk.

The second interesting, and to us odd, feature of the story is the replacement of the killed horses and one of the destroyed guns by the enforcers. By not trying to evade capture, offer arguments in their defense, or resist the destruction of their property, the two boys were implicitly conceding the authority of the tribal rule they had violated. Once they had done that they were, in effect, readmitted to respectability—and since young men obviously couldn’t be left on the prairie, just before the hunt started, without horses or guns, horses and at least one gun were generously donated by members of the same group that had imposed the punishment. It is unclear to what degree the rules controlling the buffalo hunt were designed to kill buffalo as effectively as possible, to what degree to establish the authority of tribal rules.

In this case the Shield Soldiers were acting to enforce the rule against premature hunting, having been appointed to that task by the Council of forty-four, although the details of the enforcement were of their own invention. In addition to monitoring the actual hunt, the members of the selected soldier societies could also investigate charges of premature hunting by insisting on searching the tipi of the accused. If fresh buffalo meat was found, a likely punishment (as for some other offenses) was to destroy the tipi.

In other cases described by the informants, members of the soldier societies acted to enforce other rules, in some cases engaging in de facto legislation, solving a particular problem and proclaiming a general rule to cover such situations in the future. Thus, for example:

“While Wolf Lies Down was away, a friend took one of his horses to ride to war. This man had brought his bow and arrow and left them in the lodge of the horse’s owner. When Wolf Lies Down returned, he knew by this token security who had his horse, so he said nothing.

A year passed without the horse’s return, and then Wolf lies down invited the Elk Soldier chiefs to his lodge, because he was in their society. [*He asks what he should do. The chiefs agree to send someone to bring back the borrower or word from him. Eventually the messenger returns with the borrower, leading two horses. He confirms that he borrowed the horse, but was gone longer than he planned to be, and offers to both return the horse he borrowed and give Wolf Lies Down two other horses and his bow and arrow.* ]

Then up spoke Wolf Lies Down. “I am glad to hear my friend say these things. Now I feel better. I shall take one of those horses, but I am giving him that one he borrowed to keep. From now on we shall be bosom friends.”

The chiefs declared ….

“Now we shall make a new rule. There shall be no more borrowing of horses without asking. If any man takes another’s goods without asking, we will go over and get them back for him. More than that, if the taker tries to keep them, we will give him a whipping.”

When the tribe was broken up into separate bands, neither the council nor the full soldier societies (except for the dog soldiers, who were their own band) was available to deal with matters. Council chiefs functioned as peace chiefs in their individual bands, leaders with imprecisely defined powers. To some degree members of the soldier societies acted to enforce group decisions, for instance by preventing a minority of the band who disagreed with a decision on which way to go from openly splitting off. At all times, the Council chiefs were expected to be exemplars of moderation and good behavior, even when wronged, and paragons of generosity—if someone asked to borrow something, the proper chief’s response was to give it to him. A Cheyenne who did not think he could live up to the standard expected of a council chief might decline the office on that account. As Sun Road put it:

“When a dog is running after a bitch in heat—if my wife is chased by another man, I might weaken and open my mouth. Then it would be well if another had the medicine and not I.”

In a warrior society where it is common for semi-official enforcers to punish those they regard as rules violators by whipping them or shooting their horses, there is an obvious risk that someone will go too far and either enforcer or enforcee end up dead. The Cheyenne had a simple and elegant solution to that problem. Beating up another Cheyenne was between you and him. Killing another Cheyenne meant exile from the tribe.

The reason, as they saw it, was not punishment but hygiene. Killing a fellow Cheyenne polluted the medicine arrows that were one of the tribal fetishes; blood would mysteriously appear on their feathers. It also polluted the killer; he smelled of death and the pollution was contagious. Until the arrows had been ceremonially renewed and the killer exiled, no luck could be expected in hunting or warfare.

Exile was not lethal; there were other friendly tribes on the plains. Exile was nominally for either five or ten years, sometimes in practice less.[[18]](#footnote-18) At some point the exiled man could petition to be readmitted to the tribe, possibly bringing with him a horse loaded with tobacco to demonstrate his repentance. If the kin of his victim were willing he might be readmitted subject to conditions that they imposed. But for the rest of his life, nobody would share his pipe or eat from his bowl. The smell of death might be weakened enough by time to permit his presence in the tribe, but the pollution was still contagious.

As in Athens.

While exile was the usual result of a killing, there were exceptions. The clearest case is a woman who killed her father in the process of defending herself from being raped by him. The arrows had to be renewed but she was not exiled. A number of other cases are mentioned where the killer was not or may not have been exiled but the arrows had to be renewed.[[19]](#footnote-19)

Llewellyn and Hoebel see the combination of temporary exile and permanent pollution as successfully replacing feud, evidence of the superiority of the Cheyenne institutions to those of other primitive societies. But from Grinnell’s account it appears to have been at most a partial replacement.

“If a man killed a tribe fellow, he was often obliged to flee, at least for a time, for he was likely to be killed by some near relative of the dead man. If he saved himself by flight, the council considered the case, and the chief called in the relatives of the dead man and from them learned how much it would take to satisfy them for their loss. The relatives of the slayer were then called together and the penalty stated to them. When they had paid over this fine to the dead man’s relatives, the slayer might return to the camp. Whether the matter was thus settled or not, the man who had done the killing was ostracized by his fellows, temporarily expelled from the camp, and lost all standing in the tribe, which he never recovered. He was obliged for a time to camp away from the main tribe, and often he went away from their camp and spent a year or more with some other tribe.

That looks like a combination of the conventional feud pattern—threatened retaliation prevented by compensation—with what Llewellyn and Hoebel regarded as the new and improved system.[[20]](#footnote-20) By their account, in contrast, compensation was offered, if at all, at the point when an exile petitioned for readmission and went to the tribe in general—in at least one case with the kin of the victim refusing a share. The kin’s permission seems to have been required for the killer to be readmitted to the tribe, but not purchased.

A Note on Sources

One problem, in this chapter and others, is figuring out to what extent my sources can be relied on. It is made more difficult by the fact that three of them are authored or coauthored by the same person, Hoebel, and so can be expected to share whatever biases he brought to his study of the Plains Indians. I have tried to deal with that problem in part by supplementing those books with earlier and more nearly first hand reports, in part by trying to allow for biases revealed by internal evidence in the sources.

Consider the contrast between two books on the Cheyenne, Grinnell 1923 and Llewellyn and Hoebel 1941. Grinnell first visited the Cheyenne in 1890 and visited with them regularly thereafter, both the north and south bands, at least until 1923, when his book was published. Llewellyn and Hoebel’s book is based on two summers’ of investigation, mainly interviewing members of the northern band on reservation, in 1935 and 1936, as well as secondary sources, including Grinnell. They focus on the legal and political institutions, which occupy only one chapter of twenty-two pages in Grinnell.

Both books are partisan. But while Llewellyn and Hoebel are mainly arguing the virtues of Cheyenne legal institutions and the way in which they were employed, Grinnell’s is a broader partisanship. He is defending people he knew well, some of whom were close friends, and he wants his readers to end up sharing his high opinion of them. Hence when I find an element of their system that a modern reader will strongly disapprove of, the very rare practice of “putting a woman on the prairie,” gang rape as a punishment, described only in the later book (pp. 202-210), I suspect that its omission by Grinnell was deliberate.

But where the two sources disagree on details of the legal and political system I am inclined to trust Grinnell. Llewellyn and Hoebel are working from accounts of the traditional Cheyenne system collected almost sixty years after the Cheyenne surrendered to the U.S., Grinnell’s from a point much closer to the traditional system.

Dorsey, a third and less informative source, based his account on interviews with a single Cheyenne informant conducted about 1901.

Similar issues arise in the case of the Comanche. Their traditional system was ended by treaty in 1868, after which they were restricted to a reservation representing a tiny fraction of the area previously under their control. The interviews on which Wallace and Hoebel relied were conducted from 1933 to 1945, by which time a Comanche who had been a young adult at the time of the surrender would have been well over eighty.

In addition to interviews conducted by themselves and contemporary scholars, they made use of surviving written material from much earlier, but there remains a problem. The Comanche that Wallace and Hoebel interacted with were the survivors of a defeated nation whose culture had largely been destroyed, natural objects of sympathy. The Comanche whose institutions I am trying to understand were an arrogant and powerful people who, for a hundred and fifty years, successfully waged war against Spanish, Mexicans, Texans, Americans, and other Indian tribes. While the authors can and do report the facts of the earlier period, their reporting is colored by their observation of the later state of the tribe.

As in the case of Grinnell and the Cheyenne, the clearest evidence is what they do not say. It is reasonably clear from the earlier sources that the Comanche routinely killed most adult male captives, often torturing them to death, frequently mutilating their corpses. Adult female captives were subject to gang rape, followed by slavery, followed by forced marriage in a society where wives had very limited rights.[[21]](#footnote-21) That picture comes through in only a muted form in Wallace and Hoebel’s account—the sole index reference to “rape” points at the sentence “Rape, except upon captives, occurred infrequently and was not part of the general pattern.” Their references to torture imply that it was uncommon.[[22]](#footnote-22)

Of course, there may also be biases in the earlier sources. Lee’s account includes a description of impressive ruins showed to him by his captors[[23]](#footnote-23) that I suspect was either entirely fictitious or greatly exaggerated.

In addition to wanting to make a good story of his ordeal, Lee also had two other objectives—to persuade his readers that the U.S. army ought to invade Comanche territory in order to discourage Comanche attacks and that the government should have a policy of ransoming captives back from the Comanche. Both would tend to bias his account in the opposite direction from the bias I think I see in Wallace and Hoebel. But his picture of the treatment of captives is supported by Neighbors, who writes “Men are never taken prisoners by them in battle, but killed and scalped in all cases. The women are sometimes made prisoners, in which case their chastity is uniformly not respected.” (Neighbors, P. 132).

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1. E. Adamson Hoebel, *The Law of Primitive Man*, Harvard University Press, 1967. [↑](#footnote-ref-1)
2. K.N. Llewellyn and E. Adamson Hoebel, The Cheyenne Way, U of Oklahoma Press 1941. [↑](#footnote-ref-2)
3. George Bird Grinnell, *Cheyenne Indians Vol. I* (1922). [↑](#footnote-ref-3)
4. Wallace and Hoebel 1952. I also looked at two much earlier accounts of the Comanche, Lee 1859 and Neighbors 1853. [↑](#footnote-ref-4)
5. Wallace and Hoebel also use the term “war chief” for the individual within each band recognized as the “leading war chief.” P. 216. [↑](#footnote-ref-5)
6. Wallace and Hoebel, p. 213. [↑](#footnote-ref-6)
7. “No Individual action is considered as a crime, but every man acts for himself according to his own judgment, unless some superior power, for instance, that of a popular chief, should exercise authority over him.” Neighbors p. 131.

   “The man whose advice was most consistently followed was a peace chief for his group.” As one Comanche informant put it, in response to the question of how peace chiefs were chosen, “No one made him such; he just got that way.” Wallace and Hoebel p. 211.

   Lee, who was a captive for three years, describes a somewhat more organized system, writing about his first owner: “He was the civil chief as distinguished from the war chief, and consequently the head of the tribe. This dignity carried with it the privilege of possessing four wives, a common Indian being allowed to have but one, subordinate officers two, and the war chief three.” Lee 1859. But Neighbors writes that “Polygamy is practiced to a great extent, some chiefs having more than ten wives, …” Presumably Lee was generalizing from his observations of one or more of the bands he was in. It is unclear if he ever learned the Comanche language; he may have communicated with his captors in Spanish, which some of them would probably have known. [↑](#footnote-ref-7)
8. The problem is discussed, in the modern context, in Friedman 2014, Chapters 34 and 56. [↑](#footnote-ref-8)
9. According to Hoebel, but Neighbors writes, “The parents exercise full control in giving their daughters in marriage, …” p. 132. [↑](#footnote-ref-9)
10. “The ties of consanguity are very strong, not only with regard to their blood relations, but extends itself to relations by marriage, &c., who are considered as, and generally called "brothers"—all offences committed against any member, are avenged by all, or any member connected with the family.” Neighbors p. 131. [↑](#footnote-ref-10)
11. Hrafnkel’s Saga provides an example. “Many people were pleased, even though Hrafnkel had ended up being humiliated. They remembered that Hrafnkel had treated many people unfairly.” Complete Sagas Volume V p. 272. [↑](#footnote-ref-11)
12. “From the liberality with which they dispose of their effects on all occasions of the kind, it would induce the belief that they acquire property merely for the purpose of giving it to others." Neighbors p. 134. [↑](#footnote-ref-12)
13. Wallace and Hoebel p. 233. [↑](#footnote-ref-13)
14. According to Llewellyn and Hoebel, he would usually not choose his son as a successor (p. 78). According to Grinnell, on the other hand, “Any one of the four principal chiefs of the tribe might, at the end of the ten-year period, choose his own successor, and so might name his own son to follow him at the end of his ten years of office. … . Thus in a sense the office of principal chief was hereditary.” [↑](#footnote-ref-14)
15. According to Llewellyn and Hoebel, the successor was selected from the retiring chiefs of the council (p. 75). Yet they also write “But a soldier chief was never permitted to be a tribal chief at the same time. When a soldier chief was selected by the tribal Council to fill the place of a deceased head chief …”, which implies that someone not one of the forty could be selected to be one of the four head chiefs. According to Grinnell, “If, as often happened, a principal chief died or resigned and failed to nominate anyone to take his place, his successor might be chosen from among the forty-four head men, but was quite as likely to be selected from among the braves of the tribe who did not belong to this council.” He does not say whether a principal chief who chose his own successor was restricted to choosing among the existing chiefs.

    Dorsey writes: “After this, one of the four medicine-men, the old-time prophet, addresses the newly appointed forty chiefs. He says something like this: “Now, you who are here have been appointed as chiefs to look after the welfare of all men, women, and children, but in order to carry yourselves in an orderly manner, you, new chiefs, must select four men from among these old-time chiefs to be your counselors and leaders. These four ex-chiefs that you will appoint will be your advisers.” His “four medicine men” or “four ex-chiefs” are what my other sources call the four priest chiefs, “ex-chiefs” because they have been selected from the retiring forty. Dorsey p. 14. He is the earliest of the three sources, [↑](#footnote-ref-15)
16. “The four principal chiefs of the tribe were equal in authority, and the others of the forty-four chiefs were really counselors, whose authority as chiefs extended no further than over their own immediate following. However, their positions as counselors commanded respect, and led the people to listen to the advice which they gave.” (Grinnell 1923 p. 340). But also :The four head chiefs … possessed, in weighty matters, little more actual authority than other members of the council, … .” (Grinnell 1923, p. 337). [↑](#footnote-ref-16)
17. For a discussion of the same issue in a modern context, see ["Why Not Hang Them All: The Virtues of Inefficient Punishment,"](https://www.researchgate.net/publication/24104113_Why_Not_Hang_Them_All_The_Virtues_of_Inefficient_Punishment) *Journal of Political Economy*, vol. 107, no. 6 1999 pp. S259-269. [↑](#footnote-ref-17)
18. On one occasion a man was readmitted after two years, on one after three. Llewellyn and Hoebel p. 12, pp. 80-1. The willingness to readmit seems to have depended in part on how excusable the killing was seen to have been. [↑](#footnote-ref-18)
19. Walking Coyote killed White Horse, who had stolen his wife, and does not seem to have been exiled as a result. He was later himself killed by Winnebago, who is not described as being exiled but next appears in the account eight years later, at which point he kills another man, this time in self defense. Exile is not mentioned, but when he is mentioned again he is living with another tribe. He ends up being killed by Rising Fire, who again is not described as suffering exile. Each killing seems to have been followed by a ceremony to renew the arrows, however. [↑](#footnote-ref-19)
20. Llewellyn and Hoebel summarize their view of the legal rule for homicide in pages 166-8. [↑](#footnote-ref-20)
21. Captive children, on the other hand, seem to have been raised as Comanches, and adopted into the tribe. [↑](#footnote-ref-21)
22. “Although it was not their custom to torture unfortunate enemies, at times when the Comanches became unusually angered, they resorted to extreme forms of barbarism in seeking revenge.” Wallace and Hoebel p. 259. Compare that to Lee’s account. He was part of a group whose members were killed or captured in a surprise attack by Comanches, without killing or injuring any of the attackers. Of the four captives, two were tortured to death in his presence, one was taken elsewhere, Lee suspected to be tortured to death, and Lee himself survived as a slave by taking advantage of his captors’ awe at the noises made by an alarm watch he was carrying. [↑](#footnote-ref-22)
23. “I saw, with infinite astonishment and surprise, the dilapidated ruins of a large town. In the midst of the falling walls of a great number of buildings, which, in some remote age, beyond doubt, had lined spacious streets, was what appeared to have been a church or cathedral. Its walls of cut stone, two feet thick, and in some places fifteen feet high, included a space measuring two hundred feet in length, and, perhaps, one hundred in width. The inner surface of the walls in many places was adorned with elaborate carved work, evidently the labor of a master hand, and at the eastern end was a massive stone platform which seemed to have been used as a stage or pulpit.” Lee 1859, p. 141. Lee was captured at a location that he describes as about 350 miles northwest of Eagle Pass, which would put him at about the southeast corner of what is now New Mexico. [↑](#footnote-ref-23)