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Sovereignty, Political Economy, and Economic Development
in Native American Nations

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Abstract

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The severe and chronic lag in the empirical indicators for Native American socio-economic development has created, in the words of President Obama, “a moral call to action.” Although collective statistics indicate substantial development problems among the 566 federally recognized tribes, these empirical indicators do not manifest uniformly across all Native American nations. This prompts a basic but crucial question: Why are some Native American nations developing more successfully than others? This dissertation examines the theoretical basis and practical applications of tribal sovereignty and presents a new methodology for analyzing the development conditions within Native American nations, utilizing a qualitative assessment of the relative state of a tribe’s formal institutional development and informal institutional dynamics. These foundational elements of the tribal political economy—rather than

any specific economic activities—are the prime determinants of a tribe’s development potential. Tribal governments that emphasize the advancement of their institutional structures and the strengthening of citizen cooperation within their communities are more likely to achieve their self-directed development goals, and this paper provides specific examples and recommendations for enhancing sustainable economic development within a tribal political economy.

TABLE OF CONTENTS

List of Figures	iii
List of Tables	iv
Chapter 1. Sovereignty, Economic Development, and Human Security in Native American Nations	1
1.1 Introduction.....	1
1.2 Study	8
1.3 Conclusion: Emergent Research Questions and Next Steps.....	25
1.4 Coda: Research Publication and Response	26
Chapter 2. Assessing Political Economy in Native American Nations	31
2.1 Introduction.....	31
2.2 Development Disparities Between Native American Nations.....	32
2.3 The Evolution of Native American Development Theory.....	34
2.4 Emerging Conceptions of Tribal Sovereignty	37
2.5 From Sovereignty to Governance: Formal and Informal Institutions.....	46
2.6 Assessing Political Economies: Institutions and Tribal Economic Development.....	54
2.7 Applying the Political Economy Assessment to Coast Salish Nations	66
2.8 From Assessment to Progress: Pathways for Strengthening Tribal Institutions and Citizen Cooperation	87
2.9 Conclusion	93

Chapter 3. Capital, Inequality, and Self-Determination: Creating a	
Sovereign Financial System for Native American Nations	95
3.1 Introduction.....	95
3.2 Challenges for Tribes in Accessing Capital.....	100
3.3 United States Senate Oversight Hearing on Access to Capital in Indian Country	109
3.4 A Sovereign Solution—The Tribally Chartered Bank	111
3.5 Policy Recommendations and Next Steps	128
Bibliography	132
Appendix A.....	141
Appendix B	144
Appendix C	145
Appendix D.....	148
Appendix E	151
Appendix F.....	154
Appendix G.....	157
Appendix H.....	161

LIST OF FIGURES

Figure 1.1 1995-2013 Gross Gaming Revenue Trends	10
Figure 1.2 Total Indian Gaming Contributions by Year and Political Affiliations	14
Figure 1.3 Congressional Appropriations for the Bureau of Indian Affairs 1997-2006...	15
Figure 2.1 United States Unemployment Rates	32
Figure 3.1 United States National Unemployment Rates	96
Figure 3.2 Online Gaming Revenue Base Case by 2020.....	114
Figure 3.3 U.S. Marijuana Sales Estimates 2013-2018	115
Figure 3.4 TCB Governance and Regulatory Structure.....	120
Figure 3.5 TCB Organizational and Chartering Process	125

LIST OF TABLES

Table 1.1 Multivariate Controls for Senators' Ethnic Bias and Senate Party Control	17
Table 1.2 Median and Total Tribal Gaming Contributions	17
Table 1.3 NIGC Region 1 Combined Annual Tribal Gaming Revenue, 2001-2010.....	20
Table 1.4 NIGC Region 1 Gaming Tribes: On Reservation Population and Poverty Statistics, 2000 & 2010	22

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DEDICATION

This work is dedicated to my wife Christina, who takes dreams and makes them come true; to our son Thomas, who brings joy and light to the world; and to everyone in our family for their constant inspiration, support, and love.

Chapter 1. SOVEREIGNTY, ECONOMIC DEVELOPMENT, AND HUMAN SECURITY IN NATIVE AMERICAN NATIONS

I want to build on our true government-to-government relationship...As we made clear in the Executive Order earlier this year that established the White House Council on Native American Affairs, we have a unique legal and political relationship, one that's been affirmed many times in treaties, in statutes and in the Constitution. That's the unique relationship we honor today. That's the relationship we're called upon to sustain for the progress of all of our peoples...let's keep our covenant strong by strengthening justice and Tribal sovereignty.

*—President Barack Obama
White House Tribal Nations Conference, November 2013*

1.1 INTRODUCTION

These powerful words from President Obama are encouraging for advocates of enhancing the sovereignty of Native American nations, but the President himself confirmed an equally important fact: “What matters far more than words—what matters far more than any resolution or declaration—are actions to match those words.”¹ This study explores elements of the sovereignty dynamic in the government-to-government relationship between the U.S. and Native American nations to assess 1) what benefits Tribal communities glean from this unique relationship, and 2) whether enhanced Tribal sovereignty can enhance overall quality of life for Native Americans. By examining empirical results from specific instances exertion of Tribal sovereignty, this study seeks to identify approaches for understanding economic development and human security conditions unique to Tribal communities. This study focuses on “Sovereignty Events”, wherein Tribal governments individually and/or collectively assert sovereignty through definable actions commencing at an identifiable point in time, to show how

¹ White House Tribal Nations Conference Progress Report, 2011. Accessed from <http://www.nativelegalupdate.com/2011/12/articles/white-house-Tribal-nations-conference-progress-report-released/> on 5/13/2016.

these events allow for growth, development, and increased security within the Tribes. Three case studies centered on the sovereign resource of Tribal gaming revenues are presented:

1. Increases and growth trends in Tribal gaming revenue following *California v. Cabazon*;
2. Allocation of Tribal gaming revenue for political contributions to increase Tribal influence in Washington, D.C.; and
3. Poverty outcomes in Tribal communities relative to Tribal gaming revenue.

There are presently 567 federally recognized Tribes within the United States, and the U.S. and Tribal nations share governmental control over policies and programs affecting Native Americans in a unique legal arrangement known as “domestic dependent sovereignty”.² It is a treaty-based, government-to-government relationship in which federally recognized Tribes are treated as separate nations whose sovereignty has in some areas been reduced from the traditional nation-state.³ This paradigm is the current manifestation of several centuries of evolution, wherein the organic societies and political organizations of the indigenous people of the Americas were forcibly undermined (and at times abolished) by European colonial powers and the U.S. government.⁴ Despite the fact that Native American nations are geographically located within the territorial boundaries of the United States, the U.S. and Tribal governments are engaged in an international relationship, which calls for analysis utilizing the methodologies and metrics of international development research.

² *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

³ Between 1776 and 1871, over 379 treaties were ratified between the U.S. government and Tribal nations, and these treaties continue to form a fundamental element of the present government-to-government relationship. See Corntassel, Jeff, *Forced Federalism: Contemporary Challenges to Indigenous Nationhood*. Norman: University of Oklahoma Press, 2008, 58.

⁴ Deloria & Wilkins. *Tribes, Treaties, and Constitutional Tribulations*. Austin: University of Texas Press, 1999, 3.

Within the field of International Studies, human security is viewed as a means of holistically “creating political, social, environmental, economic, military, and cultural systems that together give people the building blocks of survival, livelihood, and dignity.”⁵ For Native American nations, human security provides a broad description of the conditions that impact the quality of life in a given Tribal community: physical security, economic development, public health, cultural freedom, and others. The statistics for Native American communities have chronically registered unfavorably compared to the U.S. national average in most measurable areas of human security including having higher rates of preventable disease, lower employment, increased poverty, and higher levels of violent crime. Professor Kevin Bruyneel of Babson College has argued that the increased assertion of Tribal sovereignty “can open up realms of political maneuverability for indigenous people”, offering a new pathway for addressing human security conditions.⁶ For many Tribes, sovereignty appears to hold the potential to be a transformative political and socio-economic force to deploy in the effort to ameliorate chronic poverty, preventable disease, and social justice issues.

Working from the institution of national Tribal casino gaming at the end of the 1980s, the research described in this article analyzes Tribal policies and implementation approaches intended to result in measurable improvements in Native American human security indicators. Combining information from government and academic sources with new data and research analytics, this study seeks to provide some evidence-based answers to the question: “How does Tribal sovereignty impact human security in Native American nations, and does enhanced Tribal sovereignty lead to enhanced quality of life?”

⁵ Wellman, James K. Jr., and Clark Lombardi. *Religion and Human Security: A Global Perspective*. New York: Oxford University Press, 2012.

⁶ Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations*. Minneapolis: University of Minnesota Press, 2007.

With Tribal gaming revenue and its specific uses as the manifestations of Tribal assertion of sovereignty, this study presents three case studies with empirical outcomes of Sovereignty Events related to Tribal economic resource development, Tribal political influence on congressional funding for the U.S. Bureau of Indian Affairs, and poverty levels within Native American nations located in the northwestern United States.

1.1.1 *Overview of Native American Human Security Issues*

There are approximately 5.2 million Native American and Alaska Natives in the United States.⁷ 49% self-identify their race as Native only, and 51% identify as Native in combination with one or more other races.⁸ Empirical data on human security measures for Native Americans has chronically indicated sub-standard conditions compared with the population of the United States as a whole, and certain fundamental metrics on economic development, law enforcement, and public health indicate problems of crisis proportions.⁹ For example:

- 27% of Native Americans live in poverty, the highest rate for any racial group in the United States, and nearly double the national average. The median household income of Native Americans in 2012 was \$35,310—the national average was \$51,371.¹⁰
- Tribal communities experience rates of violent crime and domestic violence that substantially exceed national averages, but the percentage of successful prosecutions for on-reservation crime is significantly lower. Of the 566 federally-recognized Tribes in the

⁷ US Census: The American Indian and Alaska Native Population, issued January 2012.

⁸ US Census CB13FF.26, Oct. 31, 2013.

⁹ As U.S. policy makers and international academics place increasing emphasis on global wealth inequality, the disparity between Native American nations and the rest of the U.S. provides a stark case study. For example, the state of South Dakota is the corporate headquarters home to banks controlling assets in excess of \$2.76 trillion - the highest amount of capital of any state in the nation- while the state's residents living on the Oglala Sioux Pine Ridge Reservation have the lowest per-capita income in the country. The state currently has the third-lowest overall unemployment rate in the U.S. at 3.7%, yet unemployment on Pine Ridge typically exceeds 75%. See "South Dakota - Quietly Booming", *The Economist*, August 30, 2014, 27.

¹⁰ US Census Release CB13-29, February 2013.

U.S., only 178 have law enforcement agencies that employ at least one full-time sworn officer with general arrest powers. Of all federal criminal cases involving juveniles in 2008, nearly half involved Native American youth.¹¹

- Native Americans have the highest rate of suicide in the U.S., and a homicide rate three times higher than whites.¹²

Given that these perilous human security conditions exist within the borders of one of the most highly developed nations in the world, the extent and persistence of negative indicators for Native Americans calls for the analysis of root causes and viable modes of action toward improvement.

1.1.2 *Research Hypothesis*

For over 200 years, the United States government has held primary control over economic development and human security resources and programs impacting Native Americans.¹³ The empirical results of this balance of sovereignty for America's indigenous people have been chronically poor, and identifying more promising pathways for increasing Native American development indicators stands today as a political and moral imperative for both the U.S. and Tribal governments. The research discussed in this article examines the hypothesis that economic development and human security indicators for Native Americans can be improved by shifting more control over socio-economic programs and resources to Tribal governments, i.e. enhancing Tribal sovereignty. The underlying assumptions are that enhanced Tribal sovereignty allows economic and human security development programs to be tailored to specific local needs and

¹¹ Bureau of Justice Statistics, Census of State and Local Law Enforcement Agencies, 2008.

¹² CDC Health Disparities and Inequalities Report – United States, 2011.

¹³ See Deloria, id., 71-78.

conditions, be implemented more efficiently, and maintain consistency with indigenous culture and traditions.

The research will test whether increased control by a Tribal government over a specific resource or program results in a measurable increase in a related human security condition for the Tribal community. Following a Sovereignty Event as described below, the study expects to see measurable improvement in the related human security condition (e.g. an increase in the annual revenue of an economic activity that is taken over or created by Tribal governments).

1.1.3 *Assessing Native American Human Security—Independent and Dependent Variables*

The methodological approach in this research is to assess the impact of Tribal Sovereignty Events on selected human security data. A sovereignty event is a term I created to describe an act taken by a Tribe or Tribes that results in: a) the development of new resources for the Tribal community; b) increased control by Tribal government over programs and/or resources previously managed by the U.S. government connected to human security; and/or c) utilizing Tribal resources to impact U.S. policy toward Native American human security. A sovereignty event offers a clear point in time for comparing before-and-after performance of measurable economic development and human security indicators. Examples of sovereignty events include, but are not limited to, Tribes signing a treaty with the U.S. or a compact with state government, winning a lawsuit to confirm sovereignty rights, or creating a unique sovereign enterprise within Tribal lands.

For this study, three sovereignty events that serve as independent variables are:

- 1) The institution of national Tribal casino gaming via the outcome of the *California v. Cabazon* federal litigation in 1987 (Case Study 1);

- 2) The use by Tribes of gaming revenue dollars to make political contributions to U.S. Senators, 1997-2006 (Case Study 2); and
- 3) Collective gaming revenue obtained by Tribes in the Northwestern U.S. between 2001-2010 (Case Study 3).

This study will analyze the three sovereignty event case studies to assess their relationship to the corresponding dependent variables: measurable economic development and human security outcomes connected to the sovereignty events. The analysis will focus specifically on economic performance and related human security indicators. The three corresponding dependent variables for the study are:

- 1) Tribal economic resource development, in the form of new revenue realized from casino gaming operations, 1995-2005 (Case Study 1);
- 2) U.S. Congressional appropriations for the Bureau of Indian Affairs, 1997-2006 (Case Study 2); and
- 3) Poverty statistics for members of NIGC Region 1 Tribes between 2000-2010 (Case Study 3).

The three case studies offer before-and-after comparisons of measurable Native American economic development and human security indicators relative to sovereignty events designed to impact them. The goal of the research is to identify the extent to which the assertion of sovereignty by Tribal governments is associated with empirical increases in economic development and human security indicators in Tribal communities, i.e. whether quality of life within a Tribe can be measurably increased if Tribal governments take greater control over programs and resources for the benefit of their members.

1.2 STUDY

1.2.1 *Case Study 1: Tribal Gaming and Economic Resource Development*¹⁴

A chronic problem that has hampered the advancement of Tribal development and human security has been a lack of economic resources available to Tribes.¹⁵ There is no escaping the fact that fundamental elements of quality of life for individuals and communities—education, health care, infrastructure, public safety resources—all require significant capital to implement and maintain. Tribes have perennially struggled to raise development capital due to factors such as geographic isolation, lack of access to markets, and a lack of willingness of traditional financing sources to invest in Tribal communities.¹⁶ With the cost of essential human security components subject to continual inflation, it is imperative for Tribal governments to cultivate sustainable sources of capital that can be used to fund development programs.

One of the landmark sovereignty events for Native American nations in the second half of the 20th Century was the outcome of the federal litigation known as *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In the mid-1980s, two Tribes in Southern California were conducting small on-reservation card and bingo gaming operations which catered to both Tribal members and non-Tribal visitors. The State of California declared that such gaming operations were illegal under California law and demanded the Tribes cease the activity completely. The Tribes refused, citing Tribal sovereignty and asserting the state did not have regulatory jurisdiction over the Tribe's on-reservation economic activities. The State of California subsequently sued the Tribes in federal court, and the case proceeded through the appellate system for several years and was ultimately heard by the U.S. Supreme Court.

¹⁴ Data utilized for assessment: National Indian Gaming Commission Tribal Gaming Revenues, 1995 – 2013.

¹⁵ Guedel, W. Gregory. *Strategies and Methods for Tribal Economic Development*. Boston: Thomson-Reuters, 2013, 13.

¹⁶ *Id.*, 45.

In 1987, the Supreme Court ruled that state governments could not restrict Tribal gaming when other forms of gaming (e.g. a state lottery) were allowed within the state, even if full casino gaming was not allowed. The practical result of the decision was to open the way for Tribes to undertake Las Vegas-style casino gaming within the boundaries of their reservations. The economic potential of the legal victory was readily apparent to both Tribes and the U.S. government, and as Tribes began making plans for undertaking casino gaming, they conducted government-to-government talks with the U.S. to assess and manage future impacts. A new agency, the National Indian Gaming Commission (NIGC), was formed in 1988 as the national regulatory body and data repository for Tribal gaming.

The NIGC began collecting and publishing national and regional Tribal gaming revenue data in 1995. Presently, about 250 Tribes in 28 states are involved in Class III casino-style gaming.¹⁷ **Figure 1.1** illustrates the growth in the collective revenue realized by gaming Tribes nationally from 1995 through the current reporting year.

¹⁷ Robertson, Dwanna L.. “The Myth of Indian Casino Riches”. Indian Country Today, June 23, 2012.

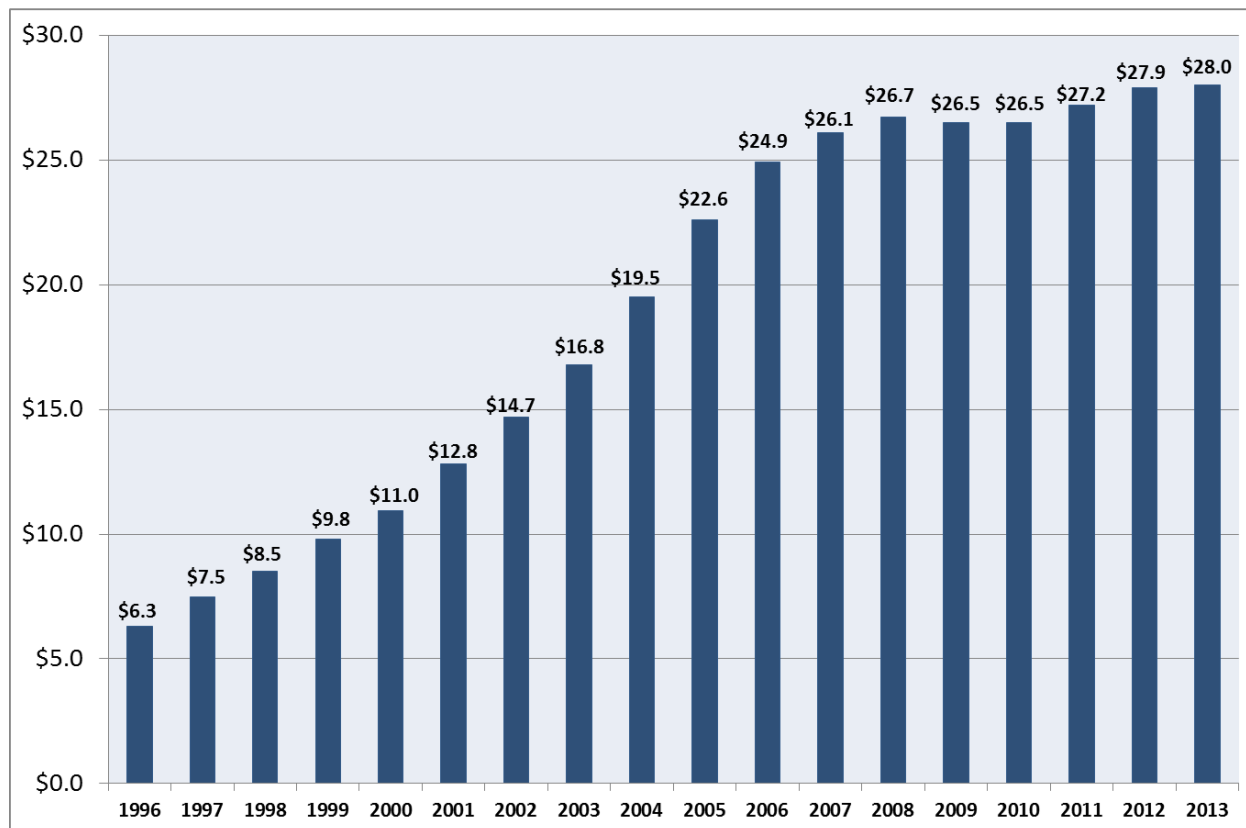


Figure 1.1 1995-2013 Gross Gaming Revenue Trends (in Billions)

The data indicates significant and continued growth in Tribal gaming revenue over the first reported decade, with collective revenue growth each year during the period. Between 1995 and 2013, gaming Tribes nationally collected a total of over \$293 billion in revenue from casino operations. These funds constitute a sovereign resource under the exclusive control of Tribal governments, which can be utilized for economic and human security development programs in accordance with the needs and priorities of the communities they represent.

Data-Based Associations—Case Study 1:

- Tribal casino gaming, instituted by the Sovereignty Event of Tribes prevailing in the United States Supreme Court's decision in the *California v. Cabazon* lawsuit, is associated with gaming Tribes collectively realizing tens of billions of dollars of

additional annual revenue that is presently available to support economic development and other human security programs for Tribal communities.

- Beginning in 2007, the collective revenue from Tribal casino operations has plateaued. The nearly 400% growth in annual gaming revenue from 1996 to 2006 has been followed by less than 7% total growth for the last seven years, including two consecutive years of negative or zero growth.

The data revealed in this case study has significant implications for Tribal governments in their strategic planning for using the sovereign economic resource of gaming revenue. While the raw revenue statistics for the full reporting period are impressive in terms of total dollars, the past seven years reflect a markedly reduced rate of growth for Tribal gaming income. Market saturation, increased competition, and a general reduction in U.S. household spending have created significant challenges for the Tribal gaming industry.¹⁸ The data suggests that Tribal gaming revenue may have reached a peak level with limited future growth potential, increasing the importance of effective resource management and investment practices by Tribal governments.

1.2.2 *Case Study 2: Tribal Gaming, Political Contributions, and US Policy Outcomes*¹⁹

As transformative as gaming revenue has been for the on-reservation socio-economic conditions of Tribes, it has also led to increased Tribal influence outside their borders. The Bureau of Indian Affairs (BIA) is an agency within the U.S. Department of Interior, and is the primary federal

¹⁸ In the past 10 years, numerous Tribes have closed gaming facilities and ceased operations, including the Apache Nation of Oklahoma, the Paskenta and San Ysabel in California, and the Spokane in Washington. The Foxwoods Casino operated by the Mashantucket Pequot Tribe, the largest gaming facility in the U.S., defaulted on \$2.3 billion in debt in 2009 and its year-on-year quarterly cash flow for Q2 2014 was down over 41%. See “Slow Recovery, More Competition Hurting Foxwoods”. Providence Journal, August 18, 2014.

¹⁹ Data utilized for assessment: Frederick J. Boehmke and Richard Witmer (2012): “Indian Nations as Interest Groups Tribal Motivations for Contributions to U.S. Senators.” *Political Research Quarterly* 65 (1): 179-191; U.S. funding appropriations for Bureau of Indian Affairs; Center for Responsive Politics: Tribal gaming political contribution data, 1996-2012.

agency with which all Tribes interact in their relationship with the federal government. The BIA is also the agency with primary responsibility for administering and funding Native American human security programs on behalf of the federal government. Tribal human security programs administered by the Bureau of Indian Affairs include:

- Education
- Social Services and Housing Improvement
- Natural Resources Management and Disaster Relief
- Economic Development
- Law Enforcement
- Infrastructure Development and Maintenance

The BIA's 2014 Green Book report states the agency's human security mission: "Through Indian Affairs programs, Tribes improve the quality of life for their members, their Tribal government infrastructure, community infrastructure, education, job training, and employment opportunities along with other components of long term, sustainable development."²⁰

Despite the BIA's stated mission of support for Tribal development, in 1996 Tribes faced a major external human security crisis in their relationship with the United States government. The U.S. Government Accountability Office and Congressional Budget Committees had both been investigating BIA operations for several years, and separately issued reports condemning program waste and operational inefficiencies and recommending the agency's budget be cut by up to \$250M beginning in FY 1998.²¹ Recognizing the impact of the proposed cuts for the BIA's budget, in April 1996 Assistant U.S. Secretary of Indian Affairs Ada Deer stated: "If the final

²⁰ The United States Department of Interior Budget Justifications and Performance Information, Fiscal Year 2014.

²¹ U.S. GAO Report B-276713, "Bureau of Indian Affairs: Information on Potential Budgetary Reductions for Fiscal Year 1998", April 25, 1997.

decisions of Congress are in alignment with the Budget Committees, Indian Tribes will suffer yet another major setback.”²²

By traditional and internal committee structure, the U.S. Senate is the primary driver of federal policy and funding for Native American programs.²³ Key members sit on the Senate Committee on Indian Affairs, and their recommendations typically determine the level of annual BIA funding appropriation that is ultimately incorporated in the federal budget. In response to the BIA budget cut recommendations of the GAO and CBO, Tribal governments began increasing the use of gaming revenue for political contributions to U.S. Senators. This increase has led to more focus on native issues and legislation providing increased federal funding and technical assistance to Tribes for their economic and human security development programs. **Figure 1.2** illustrates the level of Tribal gaming revenue dedicated to U.S. Senate political contributions between 1988 and 2006.²⁴

²² U.S. Department of Interior News, “Assistant Secretary Deer Delivers Budget Cut Warning” May 16, 1996.

²³ The U.S. House of Representatives has a subcommittee for American Indian and Alaska Native Affairs, but it is one of five subcommittees to the larger House Committee on Natural Resources and does not appear to impact BIA funding appropriation levels to the extent of the stand-alone Senate Committee on Indian Affairs.

²⁴ Frederick J. Boehmke and Richard Witmer (2012): “Indian Nations as Interest Groups: Tribal Motivations for Contributions to U.S. Senators.” *Political Research Quarterly* 65 (1): 179-191.

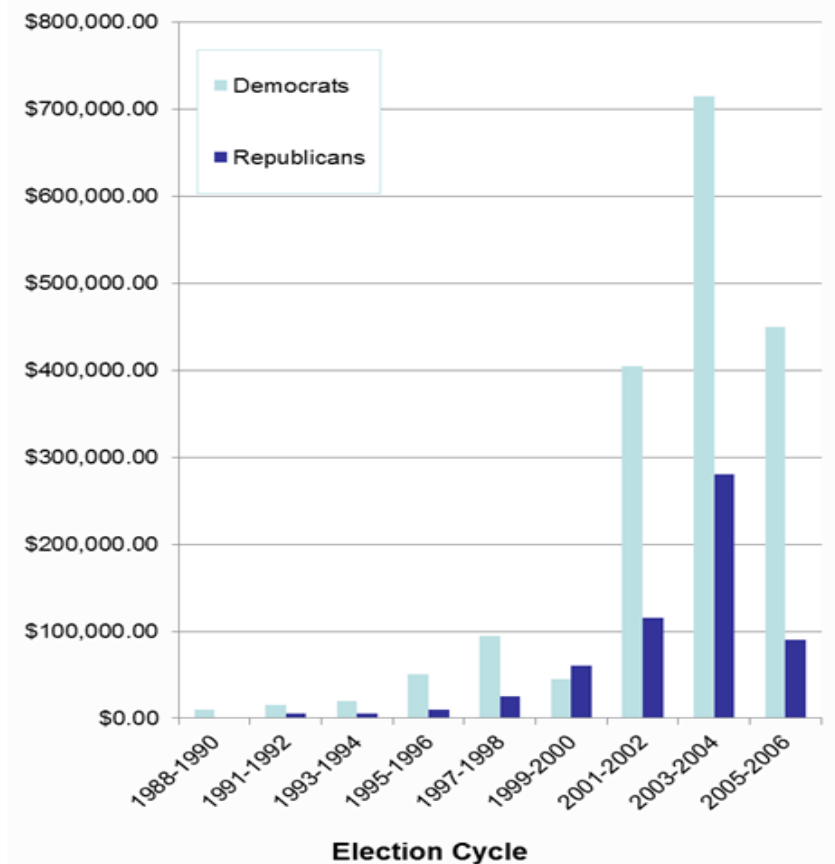


Figure 1.2 Total Indian Gaming Contributions by Year and Political Affiliations

Figure 1.3 illustrates the ultimate BIA funding appropriation levels approved by Congress and incorporated in the federal budget for the years 1997-2006. Of particular note is the year 1998, the year the GAO and CBO had recommended significant reductions to the BIA budget. Despite the auditors' recommendations for cuts up to \$250 million, the BIA budget was actually *increased* by approximately \$90 million. This Congressional action followed two election cycles (1995/96 and 1997/98) in which Tribes had significantly increased the amount of Tribal gaming revenue used for making political contributions to U.S. Senators.²⁵

²⁵ See Graph 2 above.

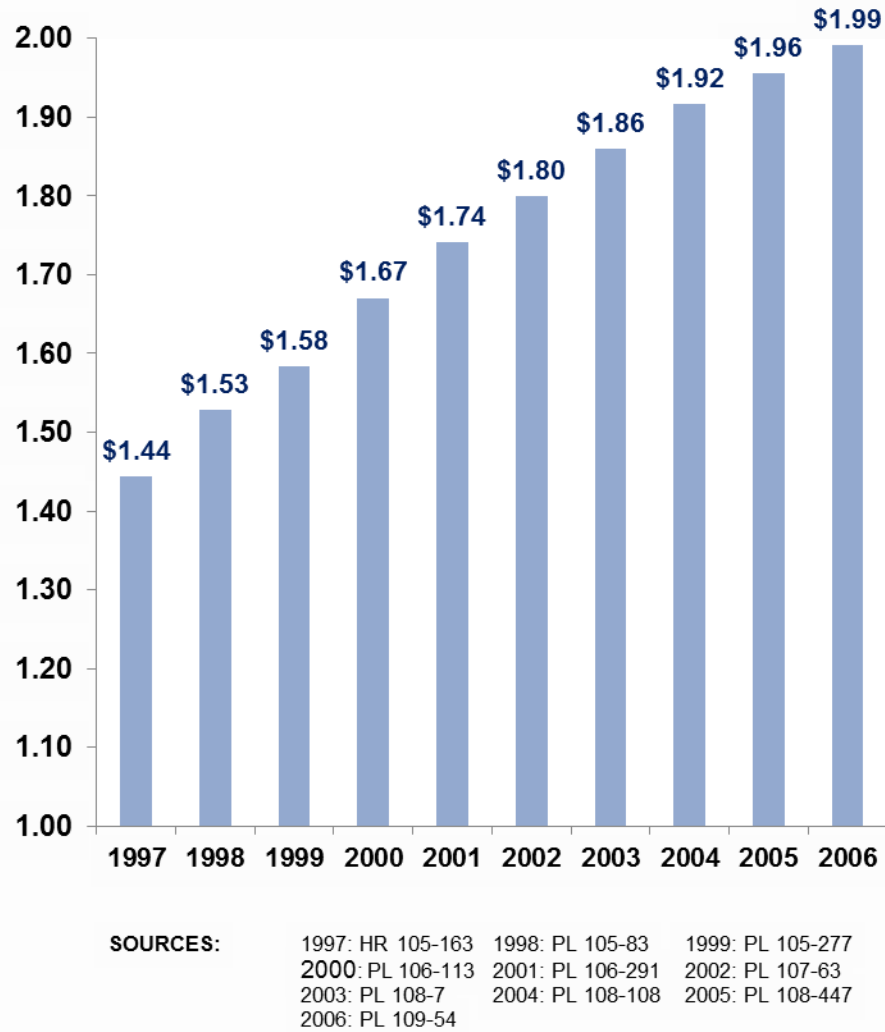


Figure 1.3 Congressional Appropriations for the Bureau of Indian Affairs 1997-2006 (dollar figures in billions)

To test the statistical association between Tribal political contributions and subsequent Congressional funding appropriations for the BIA, the yearly data was analyzed with a correlation matrix. Correlations run on a scale from -1 to +1. A value near -1 indicates an inverse correlation, wherein the movement of one factor is associated with an opposite movement of the correlating factor, whereas a value near +1 indicates a positive correlation suggesting a connected causality in factor movements. The statistical correlation between Tribal gaming political contributions and the BIA funding appropriation approved by Congress for the years

1997-2006 is 0.7849, a result that indicates a strong association between Tribal political contribution amounts and the pattern of increasing funding by Congress for BIA human security programs benefitting Native Americans.

Having found a statistically significant association between Tribal political contributions to U.S. Senators and the subsequent Congressional funding appropriations for the BIA, new “control” variables were introduced into the analytical model in an effort to detect if other factors might have been responsible for the apparent connection. Two control variables were selected for this study:

- 1) The number of Senators during the period who were of Native American ancestry, and who therefore might have possessed an ethnic bias favorable to increasing BIA funding independent of any political contributions by Tribes; and
- 2) The party majority status of the Senate was analyzed to determine if and for how long the Democratic Party was “in control” of the Senate by virtue of holding a majority of seats during the period. The Democratic Party has traditionally been viewed as more “pro-Tribal” than the Republican Party, which might influence its support for increasing BIA funding independent of any political contributions by Tribes.

Congressional membership data reveals that there was only one U.S. Senator of self-identified Native American ancestry in office during the period, Senator Ben Nighthorse Campbell of Colorado, which empirically rules out the theory that an increasing number of Native American Senators might have been working for BIA funding increases. Further, Sen. Campbell retired in 2004, leaving the Senate without any Native American members for the final

two years of the case study period—yet the pattern of BIA funding increases was unaffected. Similarly, the Senate majority party for most of the period was actually the Republican Party, and the “control party” changed three times during this period. Regardless of which party held the majority of seats in the Senate, the pattern of BIA funding increases was unaffected. **Table 1** provides a regression analysis that includes the multivariate controls for potential ethnic bias and Senate party majority:

Table 1.1 Multivariate Controls for Senators’ Ethnic Bias and Senate Party Control

biafunding	Coef.	Std. Err.	t	P> t 	[95% Conf. Interval]	
contributions	985.2932	206.9152	4.78	0.003	481.4369	1489.149
num_natam	-2.05e+08	1.02e+08	-2.01	0.091	-4.53e+08	4.40e+07
major_dem	1.09e+08	7.59e+07	1.43	0.201	-7.69e+07	2.95e+08
_cons	1.73e+09	1.09e+08	15.90	0.000	1.46e+09	1.99e+09

The P-values and Confidence Intervals for the three variables indicate that neither potential ethnic bias of Native American Senators nor the party in control of the Senate had a statistically significant impact on the association between Tribal gaming political contributions and the subsequent Congressional funding allocations for the BIA.

The median and total dollar figures for Tribal gaming political contributions demonstrate a substantial rate of return for Tribes, measured by the BIA funding increases during the case study period:

Table 1.2 Median and Total Tribal Gaming Contributions

Total Tribal Gaming Political Contributions, 1997-2006:	\$2,300,000
Total Increase in Annual Funding for BIA, 1997-2006:	\$547,988,000
Median Annual Tribal Gaming Political Contributions, 1997-2006:	\$255,555
Median Annual Increase of BIA Funding, 1997-2006:	\$60,887,555

Subsequent to the time period for Case Study #2, it appears that Tribal governments have recognized the value of this form of diplomatic advocacy for their human security programs and have continued to utilize it in earnest. In the state and federal election campaign cycles of 2007 and 2008, four of the top-10 largest political donors in the U.S. were Native American-controlled groups.²⁶ These four donor organizations spent a combined total of \$129.8 million on state and federal political campaigns; together they donated more than double that of the top national donor (the National Education Association), which spent \$56.3 million during the cycle.²⁷ The continuing funding pattern for Tribal human security programs within the BIA by the United States government certainly validates this approach:

- FY 2012 Congressional Appropriation for Bureau of Indian Affairs: \$2,746,178,000
- Total Increase in Annual BIA Appropriation Since FY 1997: \$1,302,676,000
- There has been a 90.2% increase in annual Congressional funding of BIA Native American human security programs since the start of political contributions financed by Tribal gaming.²⁸

Data-Based Associations—Case Study #2:

The availability of gaming revenue provided new resources for Tribal political advocacy regarding US policies affecting Native American human security. The threat of significant reductions in U.S. government funding for Tribal human security programs was followed closely in time by the Sovereignty Event of Tribes' markedly increased use of gaming funds for political contributions to members of the U.S. Senate. The increased use of Tribal gaming revenue for this

²⁶ See Indian Gaming data from The Center for Responsive Politics, accessed from <https://www.opensecrets.org/industries/indus.php?ind=G6550> on 5/13/2016.

²⁷ Id.

²⁸ See BIA budget and funding data in the Bureau's 2014 Green Book, accessed from <http://bia.gov/cs/groups/xocfo/documents/text/idc1-021730.pdf> on 5/13/2016.

form of diplomatic advocacy was followed by favorable outcomes in US congressional appropriations for Native American human security development programs within the Bureau of Indian Affairs, which provided a positive fiscal investment in Tribal programs by the U.S. that significantly exceeded the total capital investment by Tribal governments.²⁹

1.2.3 *Case Study 3: Tribal Gaming and Native American Poverty Level Outcomes*³⁰

This case study analyzes the internal human security condition of poverty within Native American nations, and is designed to examine whether casino revenue received by gaming Tribes has a measurable impact on the rate of poverty for their members. As a threshold matter, it is important to note that not all Native American nations are involved in gaming. Of the 566 federally recognized Tribes within the U.S., less than half have IGRA Class III casino-style gaming operations.³¹ Due to geographic and economic factors, particularly travel distances from reservations to major population centers, gaming is not a viable economic activity for many Native American nations.³²

The National Indian Gaming Commission (NIGC) is the oversight agency for all Tribal gaming nationwide, and the NIGC issues annual reports detailing Tribal gaming revenue statistics. NIGC gaming revenue data is aggregated and reported on a national and regional basis; the agency does not provide revenue statistics for the gaming operations of individual Tribes, as that information is considered sovereign property and confidential. For this case study, the selected sample data for gaming revenue is for NIGC Region 1, which is comprised of the

²⁹ Each year, the specific allocations of federal funding for Native American development programs are detailed in the annual “Green Book” issued by the BIA, which can be accessed through the bia.gov website.

³⁰ Data Utilized for Assessment: National Indian Gaming Commission Regional Gaming Revenue Data, 2001-2010; 2000 US Census, American Indian and Alaska Native Summary Files; 2010 US Census, American Community Survey: American Indian and Alaska Native Tables.

³¹ The Indian Gaming Regulatory Act (IGRA) classifies bingo-style games as Class II; Class III includes dice, roulette, slot machine, and card table games. 25 U.S.C. 2710.

³² Native American Rights Fund: “Dispelling the Myths About Indian Gaming”. Accessed from <http://www.narf.org/pubs/misc/gaming.html> on 5/12/2016.

gaming Tribes located in the state of Washington, Oregon, Idaho, and Alaska. The collective gaming revenue for Region 1 Tribes for the ten-year period between 2001 and 2010 is reflected in **Table 1.3**:

Table 1.3 NIGC Region 1 Combined Annual Tribal Gaming Revenue, 2001-2010³³

YEAR	REVENUE
2001	1,013,470,000
2002	1,196,178,000
2003	1,439,516,000
2004	1,601,346,000
2005	1,829,195,000
2006	2,080,369,000
2007	2,263,950,000
2008	2,376,025,000
2009	2,520,908,000
2010	2,665,096,000
TOTAL—	
2001-2010:	18,986,053,000

The NIGC data reflects a steady and significant growth in gaming revenue for Region 1 Tribes during the period. At the start of the decade, the annual collective revenue among the Tribes was approximately \$1 billion.³⁴ By the end of the decade, their collective annual revenue had increased over 2.5 times to \$2.6 billion, and the revenue increased significantly each year during this period. In total, Region 1 Tribes collected nearly \$19 billion in revenue from their gaming activities between 2001-2010.

These particular years were selected for this case study to coincide with the poverty data reported by the 2000 US Census and the 2010 US Census, allowing for a before-and-after comparison of poverty levels within Region 1 Tribes relative to the Tribal governments' collective receipt of the \$19 billion in gaming revenue over the decade. Using NIGC reports, the specific gaming Tribes within Region 1 were identified. Then, the population and poverty

³³ National Indian Gaming Commission, Gross Gaming Revenues by Region. Accessed from <http://www.nigc.gov/commission/gaming-revenue-reports> on 5/12/2016.

³⁴ Id.

statistics for each Region 1 gaming Tribe were gathered from US Census for the year 2000 and 2010. Mean poverty rates were calculated for the Region 1 Tribes for 2000 and 2010, and compared with the national average poverty rate for all Tribes in the U.S. for those years as reported by the US Census. Using Tribal and state government information resources, it was also possible to identify which of the Region 1 gaming Tribes issued per-capita payments to their members as a means of providing direct personal income support from gaming revenue.

The results of the NIGC Region 1 gaming revenue and Tribal poverty percentage case study are listed in the following table:

Table 1.4 NIGC Region 1 Gaming Tribes: On Reservation Population and Poverty Statistics, 2000 & 2010

Tribe	2000 Population	2000 <Poverty	2000 Poverty %	2010 Population	2010 <Poverty	2010 Poverty %	Per Capita Payments
Coeur d'Alene	1476	350	23.7	1726	425	24	Yes
Colville	8212	1944	23.7	8324	2443	29.3	Yes
Coquille	362	59	16.3	475	58	12.2	No
Jamestown S'Klallam	24	0	0	19	0	0	No
Klamath	2620	729	27.8	2431	604	24.8	Yes
Lower Elwha	369	98	26.6	825	388	47	Yes
Muckleshoot	3586	573	16	4204	924	22	Yes
Nez Perce	3981	926	23.3	3320	719	21.6	Yes
Nisqually	442	158	35.7	524	114	21.7	Yes
Nooksack	727	248	34.1	1159	379	32.7	No
Port Gamble	509	82	16.1	788	176	22.3	No
Puyallup	1510	398	26.4	2346	532	22.6	Yes
Quinault	2157	618	28.7	2005	574	28.6	No
Siletz	1718	362	21.1	2452	928	37.8	Yes
Skokomish	681	207	30.4	485	99	20.4	No
Spokane	2370	722	30.5	2261	613	27.1	Yes
Squaxin Island	440	138	31.4	461	57	12.4	Yes
Suquamish	3482	297	8.5	4025	398	9.8	Yes
Swinomish	581	196	33.7	907	488	53.8	No
Tulalip	2381	604	25.4	2645	648	24.5	Yes
Umatilla	1562	279	17.9	1605	373	23.2	Yes
Upper Skagit	362	115	31.8	1030	352	34.1	Yes
Warm Springs	3143	1043	33.2	3531	1918	54.3	Yes
Yakama	7887	2520	32	8882	3156	35	Yes
TOTALS	50582	12666		56430	16366		
MEAN POVERTY RATE OF REGION I TRIBES			2000: 25%	SD=8.76 SE=1.78		2010: 29%	SD=12.84 SE=2.62
NATIONAL AVERAGE FOR ALL TRIBES IN U.S.			25.7%			27%	
Number of Tribes with Increased Poverty Rate, 2000-2010: 12			Number of Tribes Issuing Per Capita Payments to Members: 17				
Number of Tribes with Decreased Poverty Rate, 2000-2010: 12			Number of Tribes with No Per Capita Payments to Members: 7				
			Per Capita Tribes with Increased Poverty 2000-2010: 58.8% (10 out of 17)				
			Non-Per Capita Tribes with Increased Poverty 2000-2010: 28.5% (2 out of 7)				
Notes							
2000 Data: 2000 Census, American Indian and Alaska Native Summary File							
2010 Data: 2010 Census, American Community Survey, American Indian and Alaska Native Tables							
2000 and/or 2010 Census data not available for the following NIGC Region I Gaming Tribes:							
Coos, Chehalis, Grand Ronde, Cow Creek, Kalispel, Klawock, Kootenai, Lummi, Metlakatla, Shoalwater, Shoshone-Bannock, Snoqualmie, and Stillaguamish.							

The results from this case study were unexpectedly complex. From an economic perspective, it would be reasonable to expect the infusion of new capital provided by Tribal gaming to be a catalyst for poverty reduction, and likewise expect to see the individual and collective poverty percentages for Tribes decrease. On a collective basis, the actual results for Region 1 Tribes demonstrated the opposite. In 2000, the median poverty rate for gaming Tribes in NIGC Region 1 was 25%, slightly below the rate for all Tribes in the U.S., which stood at 25.7%. Ten years and \$19 billion later, the median poverty rate for these same gaming Tribes in NIGC Region 1 *increased* to 29% - an increase of four percentage points from the beginning of the decade, which also placed the Region 1 Tribes two percentage points higher than the 2010 national average for all Tribes of 27%. The combined total population of the Region 1 Tribes in the case study increased by 5848 people during the decade. The combined total population below the poverty level during the period increased by 3700, nearly two-thirds of the total population increase.

Per capita payments are a controversial issue within and across Tribal nations. Every Tribe has a sovereign right to determine whether, when, and in what amounts it will issue per capita payments to its members, and the institution, conditions, and management of a per capita regime are matters of individual Tribal discretion. In Tribes with high unemployment and poverty, per capita payments are often viewed as a means of collective support by and for Tribal members, with each member eligible for an equal share of Tribal wealth. However, questions have arisen regarding the effectiveness of per capita payments for poverty reduction in Native communities; some have likened them to a welfare-type system that provides a disincentive for work and dissipates Tribal economic resources that could be better used to finance strategic initiatives such

as scholarships for higher education.³⁵ For the gaming Tribes in NIGC Region 1, the statistical results of Case Study #3 indicate an inverse correlation between per capita payments and poverty reduction. Of the 24 Tribes studied, 17 issue per capita payments to members, 7 do not. Of the per capita Tribes, 58.8% (10 out of 17) experienced an increased poverty rate from 2000-2010. In contrast, of the Tribes that do not issue per capita payments, only 28.8% (2 out of 7) experienced increased poverty during the period.

Data-Based Associations- Case Study #3:

- Tribal gaming activity is associated with sustained annual revenue increases for NIGC Region 1 Gaming Tribes from 2000-2010.
- Tribal gaming revenue is not associated with an overall reduction in poverty for NIGC Region 1 Gaming Tribes during this period.
- From 2000-2010, the mean poverty rate of NIGC Region 1 Gaming Tribes increased from slightly below the national average for all Tribes in 2000 to two percentage points higher than the national average in 2010.
- Poverty outcomes varied widely among NIGC Region 1 Gaming Tribes during this period, with some experiencing a 50%+ reduction and others experiencing a 100%+ increase.
- The standard deviation and standard error of individual Tribal poverty rates from the mean increased by 32%, indicating that the differences in poverty outcomes between Tribes grew notably during the period, with a greater gap between Tribes experiencing increased poverty and those that were successful in reducing poverty.

³⁵ See “Greed, Corruption, and Indian Country’s New Welfare States”. Indian Country Today, June 27, 2013.

- Certain Tribes with very similar population size, geography, and economic resources experienced starkly different poverty outcomes over the decade. For example, the Squaxin Island Tribe reduced its poverty rate from 31.4% to 12.4% during this period, while the Swinomish Tribe's poverty rate increased from 33.7% to 53.8%.
- There was an inverse correlation between per capita payments and poverty reduction, with per capita Tribes significantly less likely to have achieved poverty reduction during this period than Tribes that did not issue per capita payments to members.

1.3 CONCLUSION: EMERGENT RESEARCH QUESTIONS AND NEXT STEPS

A macro-level analysis of the results of these case studies confirms some fundamental facts that are crucial for the study of economic and human security development in Native American nations. While Tribes have theoretical equality in their level of sovereignty from a legal perspective, Tribes are very diverse in how their sovereignty is actually exercised, and there is significant disparity in the results that follow from their management of sovereign resources and policies. While there are some clear correlations between Sovereignty Events and improved human security outcomes, e.g. the increase in BIA program funding following Tribal political contributions, the research also revealed some puzzling results. The dramatic differences in poverty outcomes between the Region 1 gaming Tribes, despite these Tribes having similar structural conditions and sharing in nearly \$19 billion in gaming revenue over a decade, indicates that equal sovereignty does not produce equal development results for Tribal communities.

From this research, key questions have emerged for further examination:

- What explains the differences in economic and human security development outcomes between similarly situated Tribes?

- What policies and actions are most effective for improving Native American economic and human security indicators?

To answer these questions, next steps in the research process include continued data collection on key human security indicators such as economic development, public health, social justice; interviews with Tribal leaders regarding effective/ineffective human security policies and programs; and development of data-supported theoretical approaches to assessing and implementing Tribal human security initiatives.

The research is being facilitated by a public event that was hosted in Seattle on May 28-29, 2015 at the University of Washington. With funding support from the Andrew W. Mellon Foundation, a two-day program entitled **Sovereignty, Development, and Human Security: A Colloquium On U.S./Native American Relations** was conducted at the University's new Intellectual House “wəɬəbɔaltxw”, a facility dedicated to the study and strengthening of indigenous ways of life. The Colloquium brought together leaders from Native American nations and U.S. government agencies for presentations and dialogue on effective programs and practices for economic and human security development. A copy of the Colloquium agenda is attached at Tab A. The presentations were filmed for podcast downloading, over 400 pages of original research source material was compiled, and key information and policy recommendations from the Tribal leaders will be published in future articles.

1.4 CODA: RESEARCH PUBLICATION AND RESPONSE

In November 2014, the foregoing research was published in the Fall 2014 edition of the American Indian Law Journal (AILJ), an academic publication of the Seattle University School of Law. Following the publication of this research in the AILJ, I was contacted in December 2014 by Lauren Schuker Blum, a financial writer for global business publications such as The

Wall Street Journal and The Economist. Ms. Blum was writing for The Economist, and expressed interest in writing an article on socio-economic conditions within Tribal communities based on the research published in the AILJ.

Over the next several weeks in January 2015, I was interviewed by Ms. Blum four times by telephone, with additional questions and clarifications discussed via email. While the interview discussions were wide-ranging regarding the historical and current economic conditions of Native American nations, the specific focus of The Economist article was identified by Ms. Blum to be the issue of per capita payments to Tribal members and the statistical correlation with Tribal poverty percentages.

Ms. Blum requested referrals to other subject matter experts she might interview for the article. I suggested she contact Professor Ron Whitener (Squaxin Island) of the University of Washington School of Law, a nationally renowned legal scholar and researcher on Native American human security issues, and also W. Ron Allen (Jamestown S'Klallam), the Chairman of the Jamestown S'Klallam Tribe and former President of the National Congress of American Indians. Both Professor Whitener and Chairman Allen have been directly involved in policy issues relating to Tribal per capita payments, and have extensive contacts with Tribes on the national level that help inform a broad-based perspective on such issues. Chairman Allen also particularly came to mind for me because his Tribe is the only one of the Region I gaming Tribes to have completely eliminated on-reservation poverty and sustained the zero-rate for the entire 2000-10 decade, and did so without issuing per capita payments to its members. Ms. Blum subsequently conducted interviews with Professor Whitener and Chairman Allen; I was not involved in these discussions and did not receive any substantive information about what was discussed.

During the interviews, Ms. Blum expressed a desire to visit a Tribal reservation and asked for recommendations. I recommended she visit the Jamestown S’Klallam Tribe, for reasons including the Tribe’s record of economic development achievements, its distinctive status as the only Region I Tribe to have eliminated poverty, and its highly advanced and nationally-respected political leadership. My unspoken goal was to present *The Economist* with a “success story” that would serve as a positive model for further Tribal development study. Recognizing that time and convenience would be factors for writing the article within *The Economist*’s publication deadline, I alternatively suggested Ms. Blum visit the Tulalip, Puyallup, or Muckleshoot Tribes, each of which have high-performing economies and are located in relatively close proximity to Sea-Tac Airport.

After receiving my suggestions, Ms. Blum indicated a preference to visit the Siletz Tribe in Oregon. Siletz is a Region I gambling Tribe included in this research study whose on-reservation poverty percentage increased from 21.1% to 37.8% during 2000-10. The Siletz Tribe issues per capita payments to its members. I informed Ms. Blum that I did not have any personal contacts at the Siletz Tribe, but I felt any in-person experience on a reservation would be a valuable learning endeavor.

Ms. Blum’s article entitled “Of Slots and Sloth: How Cash From Casinos Makes Native Americans Poorer” was published in the January 17, 2015 edition of *The Economist*. The article takes a strong point of view that per capita payments have a negative socio-economic impact in Native American communities, and cites anecdotal information and interview quotes suggesting the payments exacerbate poverty by disincentivizing gainful employment among Tribal members. The article quotes the aggregate statistics on poverty/per capita correlations for Region I gaming Tribes discussed above, but the insert box in which they are presented in the article

does not make clear that the statistics are limited to those Region I Tribes. The way the data is presented in the article, it could easily be misinterpreted as applying to the national aggregate of 250+ gaming Tribes, which would be inaccurate.

The electronic version of articles posted on The Economist website allows readers to post feedback and engage in written exchanges with each other. Numerous comments regarding the per capita article were posted shortly after the article went live, and reflected a wide range of views, including:

“Giving handouts has hurt more than helped over the past few decades.”

“This story is extremely irresponsible . . . and plays into discriminatory stereotypes about Native Americans.”

“This bears some resemblance to the ‘resource curse’ problem.”

The posted comments for the article remain available at The Economist website as of this writing.

During the May 2015 UW Tribal Development Colloquium, one of the featured speakers was Chairman Allen of the Jamestown S’Klallam Tribe, who spoke on a range of topics regarding the strengthening of the sovereignty of Native American nations. Near the end of his presentation, he made some unexpected (at least by me) comments regarding per capita payments. As noted earlier, Jamestown S’Klallam is the only Tribe in Region I to have a sustained zero-poverty rate for the 2000-10 decade, and the Tribe does not issue per capita payments to members. Chairman Allen stated:

“The issue of per capita has caused a great deal of concern for me and many of my colleagues. Now some people will say: ‘Don’t touch that...don’t talk about that -- per capita is what we are entitled to.’

I'm not against per capita, but what I'm asking is where does it fit in (a Tribal nation's) priorities? If that becomes the priority, then your ability to take care of future generations . . . is curtailed.”

The debate regarding the efficacy of per capita payments as a means of combatting poverty in Tribal communities is likely to continue provoking strong opinions both in support and opposition. This uncertainty itself calls for the continuation of the research undertaken in this Jackson School study, which hopefully will provide a framework for placing specific economic inputs such as per capita payments into a larger context of human security outcomes for Native Americans.

Chapter 2. ASSESSING POLITICAL ECONOMY IN NATIVE AMERICAN NATIONS

2.1 INTRODUCTION

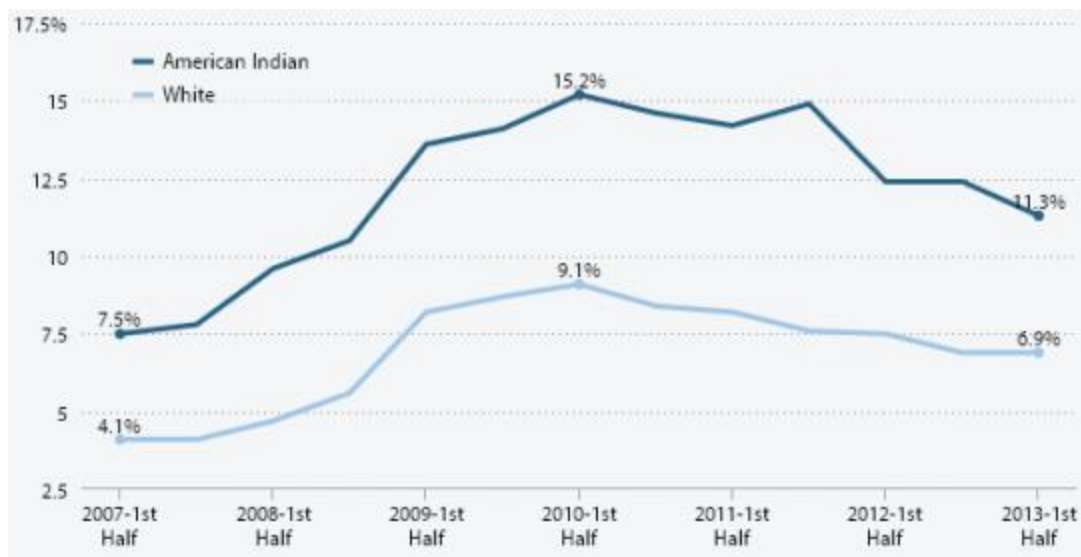
The need for broad-based advancement in the development of tribal political economies is evident from aggregate statistics regarding the quality of life for Native Americans. Native Americans lag substantially behind the averages for the US population as a whole for most empirical indicators of basic economic well-being. The median household income of Native Americans in 2012 was \$35,310; the U.S. national average was \$51,371.³⁶ Nearly one-third of Native Americans live in poverty, the highest rate for any racial group in the United States, and nearly double the national average.³⁷ The percentage of Native Americans living in overcrowded housing, defined as more than one occupant per room in the household, has been twice as high as the U.S. average since 1990—and for some tribes such as the Navajo Nation, the percentage is chronically 10 times as high.³⁸ The percentage of Native American households without a complete kitchen and/or plumbing is multiple times higher than the national average; for some tribes the percentage is 20 times higher.³⁹ The significant and chronic disparity in economic advancement between the Native American population and the US average is illustrated by the following graph of unemployment rates, reflecting the progression prior to, during, and after the recent “Great Recession”:

³⁶ US Census Release CB13-29, February 2013.

³⁷ US Census Release CB13-29, February 2013.

³⁸ Akee, Randall K.Q. and Taylor, Jonathan B. *Social and Economic Change on American Indian Reservations*. Sarasota: The Taylor Policy Group, 2014, 51.

³⁹ *Id.*, 53-54.



Note: "American Indian" refers to individuals identifying as American Indian or Alaska Native alone or in combination with another racial category.

Source: EPI analysis of basic monthly Current Population Survey micro data.⁴⁰

Figure 2.1 United States Unemployment Rates

While the need to address the aggregate lag in tribal development indicators is clear, seeking solutions mandates an understanding of the individualized circumstances of Native American nations. Although the collective national statistics indicate substantial socio-economic development problems among the 567 federally recognized tribes, these empirical indicators do not manifest uniformly within all Native American nations.

2.2 DEVELOPMENT DISPARITIES BETWEEN NATIVE AMERICAN NATIONS

While certain tribes experience rates of poverty and unemployment several times higher than the US average, other tribes have substantially reduced or eliminated these deleterious conditions. Even among tribes located in the same region and participating in similar primary economic

⁴⁰ Austin, Algernon. "High Unemployment Means Native Americans are Still Waiting for an Economic Recovery". Economic Policy Institute, Issue Brief #372, December 17, 2013.

activities, the socio-economic development outcomes they experience can vary tremendously. A prime example is found among the tribes located in the coastal region of the Pacific Northwest. A recent study examined the amount of revenue certain tribes earned from casino gaming in comparison with the tribes' poverty rates for the period of 2000 to 2010.⁴¹

Collectively, the tribes in the study earned \$19 billion in revenue from their gaming operations during 2000-10. From an economic perspective, the infusion of new capital provided by tribal gaming would be expected to produce broad-based poverty reduction, and likewise expect to see the individual and collective poverty percentages for tribes decrease. On a collective basis, the actual results for the study tribes demonstrated the opposite:

- In 2000, the median poverty rate for the study tribes was 25%, slightly below the 25.7% rate for all tribes in the U.S. Ten years and \$19 billion later, the median poverty rate for the study tribes had increased to 29% - four percentage points higher than the beginning of the decade, placing the study tribes two percentage points higher than the 2010 U.S. national average for all tribes of 27%.
- The combined total population of the study tribes increased by 5848 people during the decade. The combined total population below the poverty level during the period increased by 3700 - nearly two-thirds of the total population increase.
- Poverty outcomes varied widely among the study tribes, with some experiencing a 50%+ reduction and others experiencing a 100%+ increase. Certain tribes with very similar population size, geography, and economic resources experienced starkly different poverty outcomes over the decade—one tribe in the study reduced its poverty rate from 31.4% to 12.4% during this period, while another saw poverty increase from 33.7% to 53.8%.

⁴¹ Guedel, W. Gregory; "Sovereignty, Economic Development, and Human Security in Native American Nations." *American Indian Law Journal*, Volume III, Issue I, Fall 2014.

- The standard deviation and standard error of tribal poverty rates from the mean increased by 32%, indicating that the differences in poverty outcomes between the study tribes grew notably during the period, i.e. the performance gap between the successful and struggling tribes became significantly greater.
- There was an inverse correlation between per capita payments and poverty reduction, with per capita tribes significantly less likely to have achieved poverty reduction during this period than tribes that did not issue per capita payments to members.

When examining such disparities in development performance between similarly-situated tribes, a fundamental question arises: *Why are some Native American nations developing more successfully than others?*

2.3 THE EVOLUTION OF NATIVE AMERICAN DEVELOPMENT THEORY

The development paradigm for Native American nations is inextricably linked to and impacted by the hegemonic power of the United States government, and over the past 250 years the conception of national development for Native American tribes can be viewed as having come full-circle. The British colonial government recognized and engaged with tribes as nations, a practice initially continued by the subsequent U.S. government.⁴² The character and status of tribes as nations was implicitly recognized by the U.S. in federal laws such as the Commerce Clause in the United States Constitution, and explicitly recognized through the practice of establishing formal relations with tribes through treaties—a form of agreement reserved for

⁴² “Since the English had been substantially dependent upon the Indians, particularly the Iroquois Confederacy, in defeating the French, they wisely recognized the national status of the major Indian tribes of the interior...” Deloria, V. and Wilkins, D.. *Tribes, Treaties, and Constitutional Tribulations*. Austin: University of Texas Press, 1999, 5.

dealings with the governments of other nations.⁴³ This early conception embodied a vision of peaceful coexistence, wherein Native American nations would be free to pursue self-determined development pathways for their political economies.

The inexorable westward expansion of American settlements through the 19th Century altered the dynamic of the U.S./tribal relationship. By the time the United States had imposed its legal jurisdiction out to the Pacific coast territories, the nominal concept of coexistence had been replaced by a new *realpolitik*, wherein Native American nations were geographically and politically subsumed within U.S. governance. What followed was an exceptionally brutal U.S. policy of “termination” toward Native American nations, with their sovereignty and nationhood being rejected entirely. As American governmental policy sought to create, in the words of President Theodore Roosevelt, “a mighty pulverizing engine to break up the tribal mass”,⁴⁴ federally-funded education institutions and boarding schools pursued a culturally genocidal philosophy toward Native American youth: “all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.”⁴⁵

Under the comprehensive socio-political assault of what was rapidly becoming the most powerful nation in the world, the imperative dynamic for Native American tribes shifted from development to sheer survival. The forcible taking of their land base, the uncompensated appropriation of their natural resources, and the resulting curtailment of their traditional economic activities made the advancement of a tribal political economy virtually impossible, and

⁴³ The Commerce Clause refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

⁴⁴ Indigenous Knowledge Commons: “Teddy Roosevelt”. Accessed from <http://indigenousknowledge.org/discussion/native-conversations/big-question-1-does-tribalism-have-a-valid-role-in-modern-life/post/teddy-roosevelt/> on 5/12/2016.

⁴⁵ Official Report of the Nineteenth Annual Conference of Charities and Correction (1892), 46–59. Reprinted in Richard H. Pratt, “The Advantages of Mingling Indians with Whites,” *Americanizing the American Indians: Writings by the “Friends of the Indian” 1880–1900*. Cambridge, Mass.: Harvard University Press, 1973, 260–271.

indigenous nations within the U.S. worked desperately to maintain even a basic sense of unity for over a century.⁴⁶

By the 1970s, a paradigm shift began in U.S. policy that brought the conception of tribes as nations back to the fore. President Nixon heralded the new approach by stating: “In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency.” This re-acknowledgement of tribal sovereignty culminated in the passage of the Indian Self-Determination and Education Assistance Act of 1975, which recognized that “prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities” and sought to provide tribes “the full opportunity to develop leadership skills crucial to the realization of self-government...responsive to the true needs of Indian communities.”⁴⁷ In 2003, the U.S. Commission on Civil Rights concluded that “[s]elf-determination ultimately requires that Indian nations govern their own resources. To the extent possible, programs for Native Americans should be managed and controlled by Native Americans.”

Recent advocacy has advanced the indigenous sovereignty agenda in international dialogue as well. The 2008 UN Declaration on the Rights of Indigenous Peoples posits “that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs”. Although initially resistant, the U.S. became a signatory to the Declaration in 2012 and thereby officially endorsed its tenets. This philosophy has been further strengthened in recent years by the Obama

⁴⁶ See Wilkinson, Charles F., *Blood Struggle: The Rise of Modern Indian Nations*. New York: W.W. Norton & Co., 2006.

⁴⁷ 25 USC 450, implementing regulations codified at 25 CFR Part 900.

administration's annual Tribal Nations Conference, which emphasizes the government-to-government relationship between the United States and Native American nations.⁴⁸

2.4 EMERGING CONCEPTIONS OF TRIBAL SOVEREIGNTY

While the return of U.S. policy to recognition of tribal sovereignty restores the opportunity for self-directed development among Native American nations, centuries of externally-imposed stagnation raise the question of how tribes should conceive and pursue sovereignty in furtherance of their economic and community development goals. One particular challenge within this endeavor is dealing with the amorphous nature of the term “sovereignty” itself. As University of Colorado Law Professor and former Native American Rights Fund attorney Charles Wilkinson has noted, “sovereignty carries with it an aura that transcends technical considerations of political science and law. Designation as a sovereign . . . implies a kind of dignity and respectability beyond its literal meaning.”⁴⁹ In pursuit of some basic definitions, University of Minnesota Professor David Wilkins identifies the practical powers of a tribal sovereign as including:

. . . the power to adopt its own form of government; to define the conditions of citizenship/membership in the nation; to regulate the domestic relations of the nations' citizens/members; to prescribe rules of inheritance with respect to all personal property and all interest in real property; to levy dues, fees, or taxes upon citizen/members and noncitizens/nonmembers; to remove or to exclude nonmembers of the tribe; to administer justice; and to prescribe the duties and regulate the conduct of federal employees.⁵⁰

⁴⁸ The White House Fact Sheet: The 7th Annual White House Tribal Nations Conference. Accessed from <https://www.whitehouse.gov/the-press-office/2015/11/05/fact-sheet-7th-annual-white-house-tribal-nations-conference> on 5/12/2016.

⁴⁹ Wilkinson, Charles. *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy*. New Haven: Yale University Press, 1987, 55.

⁵⁰ Wilkins, David E.. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. Austin: University of Texas Press, 1997, 20.

Yet beyond the practical activities of governance, sovereignty is also imbued with significant cultural connotations. Government and culture are not separate ideas; each is manifested in and reflective of the other.⁵¹ In the context of Native American nations, Wilkinson posits that “[s]overeigns—and perhaps only sovereigns—can perpetuate the unique communal cultures of land-based aboriginal people.”⁵² Similarly, Wilkins has stated that tribal sovereignty “can be said to consist more of continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty.”⁵³

With both practical governance and cultural imperatives at stake, what then is the “proper” conception of sovereignty for Native American nations—or does such a conception even exist? Emerging from the political disembodiment of the termination era, indigenous scholars and thought leaders have advocated a wide array of approaches in pursuit of a new vision of Native American sovereignty. The theories of Vine Deloria, Jr., Taiaiake Alfred, and Kevin Bruyneeel highlight the range of varying (and sometimes competing) philosophies of sovereignty in contemporary tribal communities.

2.4.1 *Reclaiming the Mantle—Vine Deloria, Jr.*

Vine Deloria, Jr. is credited with having popularized the term “tribal sovereignty” in his 1969 book *Custer Died for Your Sins*, and his work advances a core theoretical basis for the sovereignty of Native American nations: “Tribes are preexisting sovereigns whose existence is

⁵¹ Cobb, Amanda J. “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations.” *Indigenous Studies Today*, Fall 2005/Spring 2006.

⁵² Wilkinson, *id.*, 239.

⁵³ Wilkins, *id.*, 21.

not beholden to the (US/state) Constitutions or to the federal or state governments.”⁵⁴ In his view, tribal sovereignty should therefore be on par with the sovereignty of other internationally recognized nation-states, with the same practical scope of powers and protections for governance. Deloria saw the formal possession and exercise of national sovereignty as essential for tribal communities, arguing that “[i]t is absolutely vital to the continuance of any semblance of society for the recognition of groups as groups to be acknowledged.”⁵⁵ Sovereignty was not only crucial for the sake of effective governance within Native American nations, but also to “assuage the needs of a spiritual tradition that remains very strong within most tribes and that needs to express itself in ways familiar to the people”.⁵⁶ Deloria also viewed the assertion of sovereignty by tribal governments as a means of strengthening the local institutions that serve tribal citizens, although he acknowledged this could lead to tribal institutions imitating outside structures and thereby becoming less “distinctively Indian”.⁵⁷

Many indigenous scholars have been inspired by Deloria’s approaches and theorized sovereignty in terms he established. Osage scholar Robert Warrior has written expansively on Deloria’s conceptualization of sovereignty:

The path of sovereignty, [Deloria] says, is the path to freedom. That freedom, though, is not one that can be immediately defined and lived. Rather, the challenge is to articulate what sort of freedom as it emerges through the experience of the group to exercise the sovereignty which they recognize in themselves . . . Through this process-centered definition of sovereignty, Deloria is able to avoid making a declaration as to what contemporary American Indian communities are or are not. Instead, Deloria recognizes that American Indians have to go through a process of building community and that that process will define the future.⁵⁸

⁵⁴ Deloria, Vine Jr. and Wilkins, David E.. *Tribes, Treaties, & Constitutional Tribulations*. Austin: University of Texas Press, 1999, 26.

⁵⁵ Quoted in Lyons, Scott. "Rhetorical Sovereignty: What Do American Indians Want from Writing?" CCC 51, 2000, 456.

⁵⁶ Deloria, Vine Jr. and Lytle, Clifford M. *The Nations Within: The Past and Future of American Indian Sovereignty*. Austin: University of Texas Press, 1984.

⁵⁷ *Id.*

⁵⁸ Warrior, Robert Allen. *Tribal Secrets: Recovering American Indian Intellectual Traditions*. Minneapolis: University of Minnesota Press, 1995, 91.

Interestingly, Deloria himself seemed to become increasingly disillusioned with the discussion of tribal sovereignty during the course of his work—perhaps from sensing that more was being discussed than accomplished. In his later writings, he perceived that “the definition of *sovereignty* covers a multitude of sins, having lost its political moorings, and now is adrift on the currents of individual fancy.” In reference to tribal leaders and fellow scholars, he argued that “this generation is doing nothing for the people that come. They keep themselves in a little intellectual ghetto and throw around big words like ‘sovereignty’ and think they are doing something. Not likely.”⁵⁹ Ultimately, Deloria’s concepts embody and advocate for a pragmatic approach in the assertion of tribal sovereignty within the hegemonic construct of relations with United States: “In effect the tribes are pressing for complete independence from federal domination while retaining the maximum federal protection of the land base and services. With that goal, tribes shift back and forth to take advantage of every opportunity.”⁶⁰

2.4.2 *Rejecting the Premise - Taiaiake Alfred*

In stark contrast to Deloria’s push for tribes to reestablish full political and cultural sovereignty, Mohawk scholar Taiaiake Alfred has declared the sovereignty concept itself to be anathema to the self-actualization of indigenous peoples. Alfred argues that “sovereignty is an exclusionary concept rooted in an adversarial and coercive Western notion of power,” and is therefore counter to the cultural roots of Native American societies.⁶¹ He has asserted that “as long as sovereignty

⁵⁹ Deloria, Vine Jr., “No More Free Rides.” *Native American Literatures: Boundaries and Sovereignities*. Ed. Kathryn Shanley. Vashon Island: Paradoxa, 2001, 287.

⁶⁰ Deloria, Vine Jr. *We Talk, You Listen; New Tribes, New Turf*. New York: Macmillan, 1970.

⁶¹ Alfred, Taiaiake. *Peace, Power, Righteousness: An Indigenous Manifesto*. New York: Oxford University Press, 1999, 59.

remains the goal of indigenous politics . . . native communities will occupy a dependent and reactionary position relative to the state.”⁶² Speaking to tribal conceptions of self-determination, he states that “a paradigm bounded by the vocabulary, logic, and institutions of ‘sovereignty’ will be blind to the reality of a persistent intent to maintain the colonial oppression of indigenous nations.”⁶³ He in turn has advocated for tribal leaders and scholars to “transcend the mentality that supports the colonization of indigenous nations, beginning with the rejection of the term and notion of indigenous ‘sovereignty.’”⁶⁴

One of Alfred’s fundamental concerns is that “[s]overeignty today . . . is conceived as a wholly political-legal concept”, which does not account for the cultural heritage and priorities of indigenous communities.⁶⁵ A core problem is that Western sovereignty embodies a sense of inherent tension and conflict between nations, notably with regard to the demarcation of physical and legal borders, which Alfred views as elements of an exclusively European discourse.⁶⁶ He puts forward a distinct world view that highlights the contradiction he perceives between Western conflict-orientation and the original nature of indigenous life: “Before their near destruction by Europeans, many indigenous societies achieved sovereignty-free regimes of conscience and justice that allowed for the harmonious coexistence of humans and nature for hundreds of generations.”⁶⁷

Alfred suggests that for tribes, the “focus is not on opposing external power, but instead on actualizing (their) own power and preserving intellectual independence”.⁶⁸ In his view, the

⁶² *Id.*

⁶³ Taiaiake Alfred, “Sovereignty”. *A Companion to American Indian History*, Ed. Philip Deloria and Neal Salisbury. New York: Blackwell, 2002, 466.

⁶⁴ Alfred, *id.*

⁶⁵ Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 67.

⁶⁶ Alfred, Taiaiake. “Sovereignty”. *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*. Ed. Joanne Barker. Lincoln: University of Nebraska Press, 2006.

⁶⁷ *Id.*

⁶⁸ *Id.*

conception of sovereignty has limited the ways people are able to think, suggesting always a conceptual and definitional problem centered on the accommodation of indigenous peoples within a “legitimate” framework of governance by the settler state. He sees the inherent conflict in this framework as irreconcilable, and condemns the entire conceptual debate by asserting that “sovereignty can only exist in the fabrication of a truth that excludes the indigenous voice”.⁶⁹

2.4.3 *Seeking a “Third Space”—Kevin Bruyneel*

The fact that Native American nations exist within the territory and legal sovereignty of the United States complicates the conception of tribal sovereignty, as the prospect of achieving complete nation-state sovereignty (i.e. with exclusionary powers such as border controls) is inherently limited. Tribes and their peoples may be seen as living simultaneously in two worlds: the established hegemonic political realm of the United States, and their own socio-political realm as surviving antecedents of the hegemon. Within this construct, scholar Kevin Bruyneel envisions a trans-temporal “Third Space” of conceptual sovereignty for tribes that “can open up realms of political maneuverability for indigenous people”.⁷⁰

According to University of Oregon Professor Alexander Murphy, by constituting and accepting “sovereignty as a territorial ideal ... the modern territorial state has co-opted our spatial imaginations.”⁷¹ Bruyneel views this co-optation as a false choice, and advocates for a decolonization of spatial imaginations to reveal forms of political space that cannot simply be mapped onto the boundary lines of the international state system. He writes: “It is in this regard

⁶⁹ *Id.*

⁷⁰ Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.–Indigenous Relations*. Minneapolis: University of Minnesota Press, 1997.

⁷¹ Murphy, Alexander B. “The Sovereign State System as Political-Territorial Ideal: Historical and Contemporary Considerations”. *State Sovereignty as Social Construct*. Ed. Alexander Murphy. Cambridge: Cambridge University Press, 1996, 87; 107.

that indigenous politics can inform and be informed by the reconsiderations of sovereignty occurring more generally because they refuse to say simply Yes or No to state sovereignty, but instead imagine a postcolonial supplemental remapping of sovereign relationships that can include but will not be dictated to or contained by state boundaries.”⁷² Bruyneel suggests that the third space also provides a conceptualization of anti-statist autonomy that can be an alternative to the diametrically opposed positions that either see state sovereignty as the exclusive source of legitimate political space or seek a political world that has somehow moved beyond state sovereignty altogether.

Bruyneel observes indigenous politics in its many forms as refusing to be contained by the limits of the boundaries of the settler-state. These refusals demonstrate that “indigenous political identity, agency, and autonomy reside in postcolonial time and space, always already across the temporal and spatial boundaries marked out by the settler-state and the colonialist political culture.”⁷³ Through this postcolonial vision, indigenous political actors and institutions can recognize that settler-state boundaries are just one way to map a people’s relationship to time and space in North America, and they can seek out a third space of sovereignty as a politically and discursively locatable alternative.

Bruyneel’s analysis identifies a “colonial ambivalence” expressed by the United States in its relationship with indigenous people, manifested in a lack of uniform and consistent governmental policies toward tribes. Within this ambivalence and lack of consistency, Bruyneel sees space for political maneuverability for indigenous people to pursue increased self-determination in the hegemonic U.S./tribal relationship. This maneuverability is possible because the hegemon’s ambivalence is also directed inward toward itself, manifested in things such as

⁷² *Id.*, 222.

⁷³ *Id.*, 221.

governmental apologies for historical actions and the extension of federal legal protections to tribal trust lands. Tribal leaders can capitalize on this ambivalence by conceiving and advocating for U.S. policies that will provide increased political autonomy for tribes. “In this regard, one thing that indigenous politics tends to do—possibly more than any other form of political resistance—is challenge American presumptions about the coherence of the collective bonds and sense of temporal and spatial belonging that purport to confer legitimacy on U.S. colonial rule or sovereignty.”⁷⁴ For Bruyneel, tribal sovereignty has less to do with establishing territorial spaces than with establishing spaces of consciousness that allow for the full expression of an indigenous nation’s socio-political philosophies and traditions.

2.4.4 *Synthesizing Sovereignty Conceptions—Process and Innovation*

With hundreds of Native American nations experiencing their own unique historical and structural conditions, it is not surprising to find diverse philosophies on the nature and role of sovereignty across these societies. Rather than attempting to identify a single definition of Native American sovereignty that could attain universal applicability, indigenous scholars are increasingly seeking to describe guiding principles through which individual nations can express their own culturally-appropriate visions. Robert Warrior gives particular attention to sovereignty as an active process of building community, not an end-state in itself. In his view, sovereignty is “a decision we make in our minds, in our hearts, and in our bodies—to be sovereign and to find out what that means in the process.”⁷⁵ University of Michigan Professor Scott Lyons has further described tribal sovereignty as a process within a particular narrative structure:

⁷⁴ *Id.*, 229.

⁷⁵ Warrior, *Tribal Secrets*, supra.

“Sovereignty is the guiding story in our pursuit of self-determination, the general strategy by which we aim to best recover our losses from the ravages of colonization: our lands, our languages, our cultures, our self-respect. For indigenous people everywhere, sovereignty is an ideal principle, the beacon by which we seek the paths to agency and power and community renewal. Attacks on sovereignty are attacks on what it enables us to pursue; the pursuit of sovereignty is an attempt to revive not our past, but our possibilities.”⁷⁶

Even fierce critics of the tribal sovereignty “project” have acknowledged the transformational power of this conceptual reimagining, with Taiaiake Alfred himself observing that “[i]n the political sphere, Native societies are abandoning institutions and values which were imposed on them by force or through the insidious operation of assimilation programs . . . [and] Native political thinkers have been as innovative as the most creative artists in re-orienting traditional forms to suit a new political reality.”⁷⁷ Warrior identifies this as part of an extended process of establishing “intellectual sovereignty”, and asserts that “it is now critical for American Indian intellectuals committed to sovereignty to realize that we too must struggle for sovereignty, intellectual sovereignty, and allow the definition and articulation of what that means to emerge as we critically reflect on that struggle.”⁷⁸ These definitions and articulations will necessarily vary as they emerge within different nations, which may be seen as a natural outcome of each nation’s own pursuit of its right to self-determination.

Emerging conceptions of tribal sovereignty are being combined with new approaches to development within Native American nations. The two concepts are closely connected and synergistic, and Stephen Cornell and Joseph Kalt (1990) argue that increasing access to

⁷⁶ Lyons, Scott. "Rhetorical Sovereignty: What Do American Indians Want from Writing?" CCC 51- 13, 2000, 450.

⁷⁷ Alfred, Taiaiake. *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. New York: Oxford University Press, 1995, 7.

⁷⁸ Warrior, *Tribal Secrets*, 93-94.

development capital for Native communities is most often facilitated by successful political development by tribal governments. Diane Duffy and Jerry Stubben (1998) propose a model that emphasizes the self-direction of tribal development projects and elevates “communal or tribal concerns above efficiency, routinization, secularity, and if need be, over profits”; and Cornell and Miriam Jorgenson (2007) emphasize the need for tribal governments to “establish priorities, set goals, and address the economic and cultural needs of their citizens” in their development programs. Operationalizing this potential for tribal nations requires reformulation of the concepts on the tribes’ own terms, identifying pathways to implement them to meet their own community needs, and vigorously asserting their powers to facilitate change consistent with community values—an approach that is adopted in this paper.

2.5 FROM SOVEREIGNTY TO GOVERNANCE: FORMAL AND INFORMAL INSTITUTIONS

If sovereignty is viewed as an intangible right to govern, institutions are the practical means for actually doing so. In the formation of tribal governance systems, it is natural that leaders and policy analysts endeavor to design optimal rules to govern and manage economic resources for the nation by prioritizing top-down direction from formal institutions. Formal institutions such as a constitution, legal codes, and corresponding departments of delegated authority are fundamental to providing an efficient structure for economic development, by stating official procedures and requirements for undertaking activities and resolving uncertainties. In the Native American context, formal institutions are crucial for tribal governments to access capital and move forward with imperative development initiatives. For example, the federal HUD Title VI Loan Guarantee Program offers millions of dollars of financing support for tribes to develop on-

reservation housing for their members—but only to those tribes that have an established Tribal Housing Authority and Indian Housing Plan.⁷⁹ Formal institutions are thus crucial both for the governance of tribal activities and resources and for engaging with outside partners to facilitate tribal development programs.

Political theory historically treated formal institutions as determining, ordering, or modifying individual motives, and as acting autonomously in terms of institutional needs. In contrast, contemporary theorists increasingly argue that political activity within a nation may be best understood as the aggregate consequences of behavior comprehensible at the individual or group level.⁸⁰ Research led by political economist Elinor Ostrom has highlighted limitations in the reliance upon formal institutions for governance, and revealed that national governmental agencies are frequently unsuccessful in their efforts to design effective rules to regulate important common-pool resources.⁸¹ The effectiveness of formal institutions⁸¹ is undermined when citizens are implicitly told or otherwise believe that they will not receive the benefits of adopting a long-term, community oriented view toward economic resources. When resource control policies instituted by national governments are viewed by citizens as less effective and efficient than control by those directly affected, a competitive dynamic arises that can be destabilizing (and in some cases disastrous) for the nation's development potential.⁸²

This dynamic reflects the fact that every nation embodies two institutional paradigms: formal and informal. While formal institutions for governing such as a Constitution or court are readily evident to any observer, there are often many self-organized governance systems people

⁷⁹ Guedel, *supra*, 87-88.

⁸⁰ March, James G. and Olsen, Johan P.. "The New Institutionalism: Organization Factors in Political Life". *The American Political Science Review*, Vol. 78, No. 3, September 1984, 734-749.

⁸¹ Ostrom, Elinor. "Coping with Tragedies of the Commons". *Annual Review of Political Science* 1999. 2:493-535.

⁸² Ostrom, *id.*

adhere to within a nation that are “invisible” - even to their own national officials.⁸³ These “informal” institutions manifest in socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels. An exclusive focus on official formal rules is therefore insufficient, as informal institutions ranging from bureaucratic and legislative norms to clientelism and patrimonialism often have a profound and systematic effect on political outcomes.⁸⁴ Neglecting to analyze informal institutions within a political economy risks missing many of the prime incentives and constraints that underlie political behavior.⁸⁵

Informal institutions emerge independently of (and frequently predate) formal institutional structures. Although they generally coexist and interact with formal rules, informal institutions are created in response to incentives that are unrelated to those rules.⁸⁶ Many social groups seek to counter perceived threats to their socio-economic resources by developing and maintaining self-governing institutions that operate outside of or as a supplement to the official national government. The development of informal institutions is catalyzed by the practical reality that human beings are adept at devising ways of evading governance rules, and differentials in power within national groups can allow some to ignore the rules of formal institutions or to reshape the rules in their own interest.⁸⁷ Informal institutions are often the primary rule makers in nations with weak formal governance and economic institutions. In these instances, “traditional” institutions such as customs and kinship-based norms restricted to members of the same ethnicity or religion offer more reliable mechanisms than formal institutions for allocating resources and

⁸³ Ostrom, id.

⁸⁴ Helmke, Gretchen and Levitsky, Steven. “Informal Institutions and Comparative Politics: A Research Agenda”. Kellogg Institute Working Paper #307, September 2003.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Dietz, Thomas, Ostrom, Elinor, and Stern, Paul C.. “The Struggle to Govern the Commons”. *Science - New Series*, Vol. 302, No. 5652, December 12, 2003, 1907-1912.

enforcing agreements.⁸⁸ In contrast to the explicit requirements and processes stated by formal institutions, informal institutions often use strategies for achieving compliance that rely on participants' commitment to unwritten rules and subtle social sanctions.⁸⁹

Ostrom's work confirms that every form of institutional decision making has limits, and no single formal or informal structure will be capable of addressing every issue and need of the citizenry. This in turn highlights the importance of understanding the "polycentric" governance systems within a nation that overlap to regulate conflict resolution, knowledge acquisition, systems monitoring, and the management and allocation of common-pool resources.⁹⁰

Polycentric governance systems are not directed by a single center, but are more global in scope and reflect an evolutionary process where people make selections among combinations of institutional attributes, retaining the combinations that are successful in a particular environment.⁹¹ Polycentric governance typically manifests as a complex adaptive system composed of a large number of active elements, whose interactions produce outcomes that are not easy to predict by analyzing the separate parts of the system in isolation. The pioneer of genetic algorithms John Henry Holland described complex adaptive systems as "systems composed of interacting agents described in terms of rules. These agents adapt by changing their rules as experience accumulates."⁹² Complex adaptive systems "exhibit coherence under change, via conditional action and anticipation, and they do so without central direction".⁹³ It is therefore necessary for national leaders and policy analysts to understand both the historical and currently prevailing relation dynamics between formal and informal institutions within a governance

⁸⁸ Nicholas, Stephen and Maitland, Elizabeth. "Informal Institutions: How Social Norms Help or Hinder Development". OECD Report, 2007.

⁸⁹ Dietz, et al, id.

⁹⁰ Ostrom, id.

⁹¹ Ostrom, id.

⁹² Holland, John Henry. "Can There Be A Unified Theory of Complex Adaptive Systems?" *The Mind, The Brain, and Complex Adaptive Systems*. Ed. Harold J. Morowitz, Jerome L. Singer, Boston: Addison-Wesley, 1995.

⁹³ Holland at 38-39.

system, in order to adapt to emerging changes in citizen views of institutional legitimacy and cope more effectively with issues of resource allocation within a nation.

2.5.1 *Informal Institutions: Cooperation and Competition*

Beyond recognizing the existence of informal institutions within a nation, leaders and policy makers must correctly assess how those institutions operate relative to each other and to the formal institutions of governance. Citizens of a nation regularly face choices in which the maximization of their own short-term interests will produce outcomes that leave groups of their fellow citizens and/or the nation as a whole worse off than other feasible alternatives.⁹⁴ What choices are actually made in such situations is typically impacted by the nature and strength of the informal institutions to which citizens respond, and the relative level of cooperation and competition embodied therein.

A key element in the cooperation/competition dynamic is the level of trust among citizens. Trust is the expectation of one person about the actions of others that affects the first person's choice, when an action must be taken before the actions of others are known.⁹⁵ In the context of socio-political interactions or the allocation of economic resources, trust affects whether an individual is willing to initiate cooperation in the expectation that it will be reciprocated.⁹⁶ If initial levels of cooperation within the citizenry are moderately high, individuals tend to develop trust in one another and adopt reciprocity norms that are mutually beneficial—when one person is helped by another, that person feels motivated to respond in kind and return the support in the

⁹⁴ Ostrom, Elinor. "A Behavioral Approach to the Rational Choice Theory of Collective Action". *The American Political Science Review*, Vo. 92, No. 1, March 1998, 1-22.

⁹⁵ Dasgupta, Partha S., Mäler., K. G., and Vercelli, A.. *The Economics of Transnational Commons*. Oxford: Clarendon Press, 1997, 5.

⁹⁶ Ostrom, id.

future. As more individuals use reciprocity norms, gaining a reputation for being trustworthy is viewed as a worthwhile personal “investment”, and levels of trust, reciprocity, and reputations for being trustworthy within the nation become positively reinforcing.⁹⁷ Conversely, a decrease in any one of these elements can lead to a downward spiral where trust evaporates and the citizenry experience an increasing dynamic of competitive self-interest. This analysis helps illuminate the unseen but crucial link between informal institutions and a triangle of trust, reciprocity, and reputation.⁹⁸ These elements in turn affect levels of cooperation and competitiveness within a nation, and the resulting net benefits realized by citizens.

2.5.2 *Institutional Dynamics in Native American Nations*

Informal institutions are of great prevalence and significance within Native American nations, and are manifested in many forms. Some reflect social groupings such as family and clan affiliations that are antecedents of the current formal government of the tribe. In some instances there are even tribes-within-a-tribe, created by the historical amalgamation of indigenous peoples within a given locality during the treaty process with the United States.⁹⁹ Other informal institutions reflect cultural heritage and customs, such as the roles of elders, healers, spiritual leaders, and peacemakers in guiding community behaviors. Although “informal” in the sense that they are not officially integrated into the formal governance structure of the nation, such institutions often possess universal recognition among the citizens and command profound respect and allegiance from their adherents.

⁹⁷ Ostrom, id.

⁹⁸ Ostrom, id.

⁹⁹ For example, the Tulalip Tribes in western Washington were created by the Treaty of Point Elliott in 1855, which combined the previously distinct Snohomish, Skykomish, and Snoqualmie tribes. Although members of the Tulalip Tribes identify themselves as Tulalip officially and for external purposes, internally there is also broad understanding of the original heritage tribes from which individual members and their families are descended.

Stephen Cornell and fellow researchers at the Harvard Project for American Indian Economic Development have applied institutional analysis to the unique socio-political constructs of Native American nations, in an effort to identify positive dynamics that can produce improved economic development outcomes. The broad conclusion from their work is that connecting formal and informal institutions in an appropriate “cultural match” is essential for creating legitimate governance systems. The crucial issue is the degree of match or mismatch between formal governing institutions and the prevailing community ideas regarding the appropriate form and organization of political power.¹⁰⁰ These “Indigenous ideas” may stem from ancestral traditions and/or arise from the nation’s more contemporary experience, and are the philosophical underpinnings of the informal institutions within the community. The Harvard Project scholars have described correlations between the relational status of formal and informal institutions and the economic performance of Native American nations. Where cultural match is high, economic development tends to be more successful. Where cultural match is low, the legitimacy of tribal government also tends to be low, governing institutions consequently are less effective, and economic development falters (Cornell and Kalt 1992, 1995, 2000).

The crucial element of cultural match is that formal governance institutions must be viewed by citizens as *their* institutions, not someone else’s.¹⁰¹ If citizens view the organization of authority as somehow violating their values or the principles of governance, those formal institutions will likely be ignored or undermined by the people they are intended to govern. Where governance departs from the community’s ideas of what is politically appropriate, people

¹⁰⁰ Cornell, Stephen and Kalt, Joseph P.. “Two Approaches to the Development of Native Indians - One Works, the Other Doesn’t”. *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007, 1-33.

¹⁰¹ Begay, Manley A. Jr., Cornell, Stephen, Jorgenson, Miriam and Kalt, Joseph P.. “Development, Governance, Culture: What Are They and What Do They Have to Do with Rebuilding Native Nations?” *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007, 34-55.

are unlikely to support or respect that government and its decisions. They will not try to protect the system, and if they lose in disputes resolved by their formal authorities they will more likely feel unfairly treated. If citizens think governmental authority is illegitimate and is being used only for the benefit of those in power, they are more likely to act in self-interest and try to use the government for their own or their faction's private purposes. This lack of trust creates a competitive environment within the tribe, the likely consequences of which include instability in policies and programs, abuse of power, and recurrent internal conflict.¹⁰²

An important aspect of attaining cultural match and fostering cooperation within the citizenry is consistency in the governance actions of the formal institutions. A government that allows political factionalism to stall needed changes will lose citizen confidence. A government in which the basic rules for how things are done change every time a new administration takes office will lose opportunities, as potential development partners and skilled citizens decide to invest their energies elsewhere.¹⁰³ A close and clear connection between a formal institution and a community priority or social value can help diminish incentives for unproductive political intervention. If the stated purpose for a formal institution is to accomplish an important community priority or advance a significant societal value, it is more difficult for elected leaders and citizens alike to undermine the management of the entity through self-interest, as doing so would compromise progress toward the communal priority or value.¹⁰⁴ Leaders should thus seek to bring the respective duties, norms, and rules of the nation's formal and informal institutions into alignment, thereby enhancing cooperation through cultural match.¹⁰⁵

¹⁰² Begay, Cornell, et al, id.

¹⁰³ Cornell, Stephen. "Remaking the Tools of Governance: Colonial Legacies, Indigenous Solutions". *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007, 57-78.

¹⁰⁴ Grant, Kenneth and Taylor, Jonathan. "Managing the Boundary between Business and Politics: Strategies for Improving the Chances for Success in Tribally Owned Enterprises". *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007.

¹⁰⁵ Cornell, id.

The world of diverse Native communities will naturally contain diverse structures, strategies, and outcomes for the relationships between formal and informal institutions. With 566 federally recognized Native American nations and their plethora of differing structural conditions, it is impossible to identify one particular “right” model for achieving cooperative and productive institutional dynamics.¹⁰⁶ The evidence gathered from research undertaken by the Harvard Project and others demonstrates that no single pathway will work for every nation, but rather there are multiple pathways to institutional stability and positive community development. Indeed, even within individual tribes there needs to be a flexibility and responsiveness built into the concepts and operations of formal governance. Institutions must be designed to adapt to changing community standards, scale, and social systems. Fixed rules based on static conceptions of the current state of knowledge are likely to lose effectiveness over time, compared with institutions that expect and plan for potentially high consequence future developments and allow for change.¹⁰⁷

2.6 ASSESSING POLITICAL ECONOMIES: INSTITUTIONS AND TRIBAL ECONOMIC DEVELOPMENT

Before launching new development initiatives, tribal leaders need to assess the institutional balance within their nations and gauge the readiness of the people to support the effort. Development programs that are beyond the functional capabilities of the tribe’s formal institutions, and/or are inconsistent with the priorities of the informal institutions to which a critical mass of the citizenry adhere, are unlikely to realize the desired progress and outcomes. This paper builds upon the previous institutional analysis summarized above and presents a new

¹⁰⁶ Id.

¹⁰⁷ Dietz, et al, *supra*.

approach to assessing tribal political economy, focused on institutional balance as the key dynamic for a tribe's economic development. This approach immediately prompts a basic question of definition: what does "economic development" mean? The question is particularly apropos in the context of Native American nations, which do not quantify their economic activity with traditional metrics such as national income or GDP, nor publish detailed statistics regarding their economic performance.

2.6.1 *Defining "Economic Development" in the Tribal Context*

With the dearth of traditional economic data available from tribes, utilizing standard Western academic definitions of economic development measured by empirical data is unlikely to create an assessment that is particularly revealing of or relevant to the Native American paradigm. An alternate approach is to utilize a more holistic, qualitative definition of economic development that is better attuned to the needs and circumstances of Native American communities. Harvard Professor Amartya Sen's (1999) *Development as Freedom* argues that economic development requires increasing the capabilities of economic agents so that they can realize their full potential to participate in economic and social life. The U.S. Economic Development Agency states there "is a need to not only lift less prosperous places but to also ensure that the full range of communities can actively achieve their potential", and defines economic development as "the expansion of capacities that contribute to the advancement of society through the realization of individual, firm and community potential." Drawing the concept out to a temporal plane, the 1987 report of the World Commission on Environment and Development presented a modified and expanded concept called "sustainable development", defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own

needs.¹⁰⁸ The global conception of development has gradually migrated toward an understanding that sustainable development—development that promotes prosperity and economic opportunity, greater social well-being, and protection of the environment—offers the best path forward for improving the lives of people everywhere.¹⁰⁹

As global organizations have increased their awareness of and focus on the issues and needs of indigenous peoples, new ideas regarding economic development in tribal communities are beginning to emerge. In 2007, the United Nations produced the UN Declaration on the Rights of Indigenous Peoples, which among many provisions advocates for “control by indigenous peoples over developments affecting them and their lands, territories, and resources [enabling] them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.”¹¹⁰ Utilizing salient elements of Article 20 and Article 21 of the UN Declaration, this paper adopts a two-part qualitative definition of “economic development” for Native American nations:

- The ability of a Native American nation to maintain and develop its political, economic, and social systems and institutions, to be secure in the enjoyment of its own means of subsistence and development, and for its people to engage freely in their traditional and contemporary economic activities; and
- The ability of the nation’s people to improve their economic and social conditions, including education, employment, health, housing, and community infrastructure.

¹⁰⁸ Report of the World Commission on Environment and Development: Our Common Future, 1987, 43. Accessed from <http://www.un-documents.net/our-common-future.pdf> on 5/16/2016.

¹⁰⁹ United Nations webpage: Promote Sustainable Development. Accessed from <http://www.un.org/en/sections/what-we-do/promote-sustainable-development/index.html> on 5/13/2016.

¹¹⁰ Annex: United Nations Declaration on the Rights of Indigenous Peoples, March 2008. Accessed from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf on 5/16/2016.

Employing this definition for tribal economic development, the next step in the assessment process is to analyze the existing potential for consistent economic progress within a given nation's political economy. Economic potential may be viewed as the realistic capacity of a nation to increase the quality of life of its members through the pursuit of new development goals; consistency may be viewed as the progress and pace of a nation's achievement of its development goals over time. An underlying variable in the analysis of economic potential is the self-directed and individualized nature of a given tribe's development goals, which will reflect the tribe's own unique conditions and needs. Thus the economic development potential of a given tribe is not measured relative to other tribes using standard comparative metrics such as GDP, but instead should be assessed on a qualitative basis to determine whether it has the institutional structures and social dynamics necessary to obtain the desired development outcomes. The consistency in progress toward development goals will primarily reflect the relative cooperative/competitive dynamic of the tribe's informal institutions. When cooperation is the prevailing dynamic among a tribe's people, the likelihood of consistent progress in development programs is higher; when competition is endemic among the citizenry, the uncoordinated pursuit of factional self-interest will likely hamper advancement toward national goals.

2.6.2 *A New Analytical Approach –Institutional Relativity within Native American Nations*

A starting point for effectively assessing Native American political economy is to challenge the traditional epistemology wherein tribal economic development is analyzed based on participation in specific commercial activities such as casino gaming or selling tax-free liquor and tobacco. Instead, assessments should be founded on the understanding that economic growth potential is

determined by the relative levels of development and alignment between formal and informal institutions within the nation. This presents tribal political economy as holistic and relational, in contrast to Western research approaches that typically seek to isolate and compartmentalize economic activities as separate from societal dynamics. This new approach recognizes the fact that tribal governance is polycentric, manifests as a complex adaptive system composed of a large number of active elements, and that the outcomes of governmental actions cannot be effectively predicted by examining formal institutions in isolation. The assessment process emphasizes the understanding of social and institutional relationships within tribal communities, as opposed to their specific economic activities.

Working from this theory, tribal political economy can be assessed by the relative state of a tribe's formal institutional development and informal institutional dynamics. In applying this analysis, certain definitions are utilized. Formal Institutional Development is a fundamental catalyst for economic development and, in this context, is manifested in a combination of the official structural and functional characteristics of the tribal government. Tribes that reemerged following the termination era have great variance in their respective level of formal institutional development, ranging from nascent systems providing only a basic structure for governance to highly advanced regimes that are capable of undertaking complex and innovative economic projects. There are various indicators of advanced levels of formal institutional development within tribal governments, including but not limited to:

- Well-defined governance structures, with consistent election and leadership protocols.
- Detailed legal codes, particularly related to commerce and control of resources.
- An experienced and empowered tribal court and/or mediated dispute resolution system.

- Tribal economic enterprises organized and operated with contemporary business best-practices, accountable to government but with operational independence.
- Educational systems/support for tribal members, including tribal K-12 schools, scholarship programs for higher education, and continuing education programs for adults.

Informal Institutional Dynamics reflect the degree to which a tribe's informal institutions are cooperative or competitive with the formal institutions—and also the degree to which these informal institutions and the people within them compete or cooperate with each other. The level of informal cooperation or competition is a real and significant dynamic within tribal nations, but the underlying sentiments of tribal members toward their institutions (and each other) can be difficult to measure empirically. Cooperative dynamics within informal institutions are reflected in actions that indicate citizens view their formal and informal institutions as beneficial and fair, including:

- Broad and frequent citizen participation in governance activities such as voting and general council meetings, facilitated by accessible mass communications (e.g. social media).
- Citizens submitting disputes to their tribal courts, mediators, and peacemakers for conflict resolution, thereby seeking to resolve their problems within the tribal systems.
- Merit-based employment and institutional position appointments, with selections made irrespective of personal family/clan affiliations.
- Regular social gatherings that promote the inclusion of and participation by all ethnic and ancestral heritage groups within the tribe.

Competitive dynamics within informal institutions take many forms, which individually and in combination reflect a lack of trust among the citizens toward each other and/or the institutions that purport to serve their collective interests. Examples of competitive dynamics found within tribal communities include:

- Attempted banishment, disenfranchisement, and/or disenrollment of tribal members, often based on rival family or clan affiliations.
- Tribal members invoking U.S. institutions such as the Bureau of Indian Affairs and federal courts to resolve disputes, rather than utilizing their own Tribal Court or other conflict resolution mechanisms.
- Frequent member allegations of corruption by tribal officials, often indicated by lawsuits being initiated by tribal members against the tribal government and elected leaders.
- Faction-based leadership and tribal resource allocations, with position appointments or other benefits steered toward tribal members who belong or adhere to the same informal institutions as the officials empowered to distribute these public goods.

A tribe that exhibits cooperative dynamics within its informal institutions will not embody homogenous perspectives or a lack of disagreements among tribal members. Rather, cooperative dynamics indicate that tribal members view their institutions as credible, and that members feel it is worthwhile to work within and through those institutions in pursuit of collective goals and to resolve disputes. Consistent with Ostrom's findings, the key determinant in the relative cooperation or competition within a system will be the level of trust tribal members feel toward their institutions, which sets their expectations as to whether the actions of the institutions will reflect equitable reciprocity toward the citizens. A high level of citizen trust in their institutions likely reflects the achievement of Cornell's "cultural match" within the governance system, and

will tend to produce a cooperative environment where institutions are utilized and function appropriately for the common good.

It is important to recognize that the dynamics of a tribe's political economy are not static. As complex adaptive systems, tribes can and will experience changes in the structure, function, and priorities of their formal and informal institutions, often corresponding with changes of leadership within those institutions and/or demographic changes within the populace. Improvements in the functionality of formal institutions may catalyze and/or result from more cooperative dynamics among tribe's informal institutions. Conversely, if the cultural match between the tribe's formal and informal institutions erodes over time, citizens may lose trust in the equity and reciprocity of their institutions and resort to actions imbued with competitive self-interest. The assessment of political economy is therefore a means of taking a "snapshot" of a tribe's institutional balance at a given time, and offers an analytical process for tribal leaders to apply regularly in assessing the potential of the nation to successfully undertake new development endeavors.

2.6.3 *Structural Conditions for Native American Political Economy*

One aspect of the research design for the political economy assessment is to compare nations with similar structural conditions, so that differences in development performance are more likely attributable to differing policy actions of the tribal governments, and the corresponding importance of formal/informal institutional balance is recognized. If the major structural conditions related to development for a group of tribes are substantially similar, but one or more tribes in the group are realizing greater developmental gains than the others, it may indicate the more rapidly-progressing tribes have implemented distinct political and/or socio-

economic policies that have proven advantageous. Once studied, such policies may be replicable to some degree by the other similarly-situated tribes to help advance their respective development agendas.

When utilizing this assessment process to compare development performance between tribes, the study sample should be comprised of tribes with substantially similar structural conditions in four primary areas:

- **Geography.** Tribes in a sample study should have broadly similar physical geography (located in the same region, similar climate, etc.), and economic geography (proximity to transportation infrastructure, natural resource availability, etc.). For example, attempting to compare the political economy of a tribal nation located in the Aleutian Islands relative to another located in Florida introduces too many environmental variables to provide a useful study.
- **Access to Markets.** Tribes being assessed together should all be located within a reasonable proximity to the same population center (or equivalent centers) that offer a market and/or customer base for the tribal economy. The tribes should also have equivalent legal status for conducting economic activity within the market, e.g. state/tribal compacts for casino gaming or tax-advantaged retail sales. If the tribes being compared do not have the same legal status relative to the market, a comparison can still be valid if the differing status is the result of a tribal policy decision or deficiency.
- **Treaty Rights.** Treaties with the United States are a foundational element of a tribe's political economy, as the treaties set the terms for a tribe's activities within its most important political and economic relationship. The 566 current federally recognized tribes entered into treaties with the United States at many different times and under many

different historical circumstances. As a result, there is a vast array of differing tribal rights among these documents, producing significant differences in the scope and powers of a tribe's political economy. Tribes within a study sample should have broadly similar treaty rights, placing them on an equal footing for relations with federal and state governments.

- **Cultural Tradition.** The diversity of tribal history, culture, and traditions exceeds even their geographic diversity, and the social heritage of a tribe is often a driver of governmental priorities for the political economy. Comparing tribes with similar traditions related to leadership, values, and related socio-economic activities (e.g. fishing, arts, trading) helps mitigate confounding factors of a sociological nature.

An example of a group of tribes that form an appropriate study sample for comparative analysis can be found in the Coast Salish nations of the Pacific Northwest.

2.6.4 *Case Study Sample Selection: Coast Salish Nations*

Coast Salish refers to Native American tribes and First Nations located in the Pacific coastal areas of Oregon, Washington, and British Columbia and whose peoples speak one of the various languages/dialects within the Salishan language family.¹¹¹ The term “Coast Salish” is a generalized cultural and ethnographic designation for the numerous tribal communities in the region. Archaeological evidence indicates the Coast Salish peoples may have inhabited the region as far back as 9000 B.C.¹¹²

¹¹¹ The University of Washington's Burke Museum offers a map of the locations and historical territories of the Coast Salish nations; see <http://www.burkemuseum.org/coastsalishart>.

¹¹² New World Encyclopedia webpage: Coast Salish. Accessed from http://www.newworldencyclopedia.org/entry/Coast_Salish#cite_note-0 on 5/13/2016.

The Coast Salish nations located in the Puget Sound area of Washington state offer an ideal sample population for comparative assessment of tribal political economies. They possess substantial commonality of the key structural conditions needed for a comparative assessment:

- **Geography.** The Coast Salish tribes selected for this initial study are located in the Puget Sound region within a 100-mile radius of Seattle, and share substantially similar physical geography and climate conditions. Their proximity to road/rail/air/sea transport, communications systems, and other basic economic infrastructure are likewise substantially similar and are generally of high functionality. Through location and treaty rights, the tribes have access to natural resources including fish, wild game, and timber in areas beyond their actual reservations.
- **Access to Markets.** The Puget Sound-area Coast Salish tribes are located within an hour's drive of the metropolitan areas of Seattle or Tacoma, the first and third largest cities in Washington. The federally-recognized tribes have individually and collectively negotiated economic compacts with the State of Washington, providing the legal basis for the tribes to offer reduced-tax retail goods and casino gaming to the market population.¹¹³
- **Treaty Rights.** The Coast Salish tribes in this study (or their nominal predecessor nations) were joint signatories to either the Treaty of Point Elliott or the Treaty of Point No Point in 1855, which were negotiated simultaneously by Washington Territory

¹¹³ Examples of the gaming compacts between Coast Salish nations and the State of Washington are accessible at: <http://www.indianaffairs.gov/WhoWeAre/AS-IA/OIG/Compacts/index.htm#Washington>.

Governor Isaac Stevens and provide an essentially identical legal framework for the tribes' relationship with the United States.¹¹⁴

- **Cultural Tradition.** The historical socio-economic activities of the Coast Salish nations in the Puget Sound area reflect a commonality deriving from their environment and shared ethnographic heritage. They have traditionally sustained their communities by fishing, hunting game animals, and gathering wild plants for food and medicinal purposes. Their peoples lived communally in longhouses for large extended families and tribal groups. Nearly all of the Puget Sound Salish people lived near rivers, lakes or the ocean, and their primary means of transportation for economic and social activities was by water.¹¹⁵

This commonality of structural conditions contrasts starkly with the economic development indicators among the Puget Sound-area tribes. While some tribes have substantially reduced (or even eliminated) on-reservation poverty since the year 2000, others in close physical proximity have seen their poverty levels increase dramatically.¹¹⁶ This economic performance differential exists even among tribes engaged in the same primary economic activity of casino gaming. For this group of tribes with similar structural conditions yet very different economic development outcomes, the political economy assessment process provides a framework for a qualitative analysis of the tribes' respective levels of formal institutional development and the prevailing dynamics among their informal institutions.

¹¹⁴ Washington State Governor's Office of Indian Affairs webpage: Treaty of Point Elliott, 1855. Accessed from <http://www.goia.wa.gov/treaties/treaties/pointelliott.htm> on 5/13/2016.

¹¹⁵ Puget Salish People of Washington webpage. Accessed from http://www.northwestheritageresources.org/Essays/Puget_Salish_essay.pdf on 5/13/2016.

¹¹⁶ Guedel, William Gregory. "Sovereignty, Economic Development, and Human Security in Native American Nations." *American Indian Law Journal*, Vol. III, Issue I, Fall 2014.

2.7 APPLYING THE POLITICAL ECONOMY ASSESSMENT TO COAST SALISH NATIONS

To illustrate the analytical approach of the comparative assessment of tribal political economies, an example of the differing institutional balance and corresponding impact on economic indicators among tribes with similar structural conditions can be found in two Coast Salish nations: the Jamestown S’Klallam and the Snoqualmie. In addition to meeting the four general comparison group criteria described above, these two tribes are very similar in size for population and territory, and both obtained federal recognition and established their governance in the post-termination era.¹¹⁷ The Jamestown S’Klallam and Snoqualmie are Class III gaming tribes, and a primary economic resource for both is the significant cash revenue generated by their respective casinos.

The Jamestown S’Klallam Tribe obtained federal recognition in 1981, resulting in the recognition of the Tribe's Treaty rights and its authority to operate and negotiate as a sovereign nation in government-to-government dealings. During the recognition process, the Tribal community worked to crystalize the goals and visions for their government and community. The outcome of this process was the development of a clear strategic plan and documentation of the community's goals.¹¹⁸ From the Region 1 statistics for on-reservation poverty, the Jamestown S’Klallam Tribe stands out as the premier success story, being the only tribe to have eliminated

¹¹⁷ In 2008 Jamestown S’Klallam’s membership roll listed 530 members, the Snoqualmie Tribe listed 650 members. For more comparative information regarding Coast Salish nations, see Ruby, Robert H., Brown, John A, Collins, Cary C. *A Guide to the Indian Tribes of the Pacific Northwest*. Norman: University of Oklahoma Press, 3rd Ed., 2010.

¹¹⁸ Tribal-State Compact for Class III Gaming between the Jamestown S’Klallam Tribe and the State of Washington, 1993. Accessed from <http://www.indianaffairs.gov/cs/groups/zoig/documents/text/idc-038572.pdf> on 5/13/2016.

poverty and kept it at zero for the entire 10-year period between 2000-2010.¹¹⁹ This positive outcome on a key economic and human security indicator reflects the tribe's broader success in the development of its institutions, with resultant gains in other economic performance indicators.

The Snoqualmie Tribe's recent history is similar to that of the Jamestown S'Klallam in terms of a square-one start. After being part of the amalgamated Tulalip Tribes following the Treaty of Point Elliott in 1855, the Snoqualmie achieved separate federal recognition in 1999 and began governance as an independent nation. The Snoqualmie Tribe arguably has more favorable economic geography than the Jamestown S'Klallam, having obtained an initial land allocation close to the I-90 freeway less than 30 miles from downtown Seattle, and the tribe constructed its casino on land conveniently accessible to the large population of the greater King County area. In 2008 the tribe opened the \$70 million, 170,000-square-foot Snoqualmie Casino on 56 acres of tribal land, which features five restaurants, a special events center, and employs nearly 900 staff.

2.7.1 *Comparative Historical Context of Socio-Political Institutions*

To illuminate the progression of institutional development for the Jamestown S'Klallam and Snoqualmie tribes, it is useful to examine the historical context of their respective socio-political structures and dynamics leading up to their formal re-establishment of federal recognition by the United States.¹²⁰

¹¹⁹ Guedel, *supra*.

¹²⁰ During the multi-year process of applying for federal recognition, tribes submit an extensive record of anthropological, ethnographic, and socio-political information regarding the history of their peoples and communities. When federal recognition is acknowledged by the United States, a final report is issued by the Department of Interior Office of Federal Acknowledgement that describes the basis of recognition as demonstrated by the tribe. These reports contain a wealth of information from numerous sources and provide the official historical record as accepted by the tribe and the United States. The historical context information in Section VII regarding the Jamestown S'Klallam and Snoqualmie Tribes is derived from the reports and cited sources in the Department of Interior's May 16, 1980 *Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgement of the Jamestown Band of Clallam Indians of Washington Pursuant to 25 CFR 54* (the

Jamestown S’Klallam Socio-Political History

The Jamestown S’Klallam are descendants of the tribe first recorded as “Nu-Sklaim or Nuxclaiyem”, then later as Clallam or S’Klallam meaning “Strong People”.¹²¹ Jamestown is one of three surviving S’Klallam bands, Lower Elwha and Port Gamble being the other two. The Jamestown S’Klallam are descended from village groups which were part of the S’Klallam tribe, a Salish cultural and linguistic group. The earliest known European contact with the S’Klallam was by Spanish/Peruvian explorer Manuel Quimper Benitez del Pino in 1790, soon to be followed by British explorer George Vancouver’s expedition in 1792, which visited villages near the present Jamestown location. Hudson’s Bay Company trading posts were established at Victoria across the Puget Sound and at Nisqually in the 1830’s, and the S’Klallam and other Olympic Peninsula tribes were actively engaged in trading with the whites.¹²² By 1874 a band of S’Klallam under the leadership of Lord Jim Balch, whose father had signed the 1855 Treaty of Point No Point with the United States, raised enough money to pay \$500 in gold coin for a 210-acre tract of land near Dungeness, Washington Territory.¹²³ The Jamestown S’Klallam population at this time was about one hundred people, and the tribe supported itself by farming, fishing, crab harvesting, and working in the surrounding pulp mills.¹²⁴

The S’Klallam were a clearly defined social and cultural unit, whose component villages were closely linked by language, intermarriage, and other cooperative social ties. The basic political unit was the winter village, which could consist of as many as 10 houses owned by

“Jamestown Determination”), and the August 22, 1997 *Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgement of the Snoqualmie Tribal Organization* (the “Snoqualmie Determination”).

¹²¹ Ruby, Robert H.; Brown, John A.; Collins, Cary C.. *A Guide to the Indian Tribes of the Pacific Northwest*. Norman: University of Oklahoma, 2010.

¹²² Jamestown Determination at 9; 75.

¹²³ Id at 12.

¹²⁴ Id at 66.

families linked by marriage and territorial bonds, with up to 50 people altogether in the unit. S'Klallam society was stratified into nobles, commoners, and slaves, with the nobles controlling the major resources. Leadership of a village was often divided according to task, with different leaders for fishing, commerce, and ceremonial activities, and specific leaders appointed to deal with outsiders. Some leaders, particularly those associated with control over fishing resources, were considerably more prominent within the community.¹²⁵

Historians considered the residents of the traditional Jamestown territory to be well-integrated into the tribe. Given that the Jamestown territory was rather small, some families in the region who never resided in the villages were still active enough to be considered part of the “core” of the tribe. These members existed from the time Jamestown territory was founded and participated to some degree in tribal affairs, including holding leadership positions. By the 20th Century there were also a substantial number of members living outside the Jamestown area whose contacts with the tribe ranged from fairly frequent attendance at meetings to very little, including many of the younger members of some of the families who were of low blood degree and/or married to non-Indians. Such members and their spouses were well accepted by most in the tribe. By the 1970s, around the “core” of the Jamestown community was a fairly large number of members whose affiliation was primarily a matter of family ties and formal membership and attendance at organized functions, but not of close contact with each other across family lines outside of organized contexts like official meetings. Although not in close contact with each other or actively involved in tribal affairs, most of the “non-core” members could trace ancestral connections to the core families of the tribe.¹²⁶

¹²⁵ Id at 8.

¹²⁶ Id at 22-23.

The Jamestown S’Klallam have exhibited a very high degree of social continuity throughout their history, with most of the original family lines still represented in contemporary times. There is a consistent group of families listed on membership rolls, with many of the main families residing within the traditional Jamestown territory. At the time of federal recognition, no Jamestown S’Klallam members were enrolled in any other tribes. Traditional social and ceremonial gatherings are carried forward in tribal “clambakes,” which are held for funerals, weddings, and in honor of individuals who are important to the community. These events are characterized by large-scale participation, communal food sharing, and a sense that these are community functions that members are expected to attend. These gatherings are self-consciously viewed by community members as a survival of older ways and are in fact consistent with earlier social patterns. A particular social dynamic has been the high priority Jamestown S’Klallam members place on the education of their children, with significant pre-and-post-recognition resources being utilized to create schools and provide learning programs for young members. Prior to federal recognition and the attainment of a formal land base, the tribe’s day school served as the primary point of contact between the Jamestown S’Klallam and the United States Bureau of Indian Affairs.¹²⁷

The pre-recognition political structure of the Jamestown S’Klallam remained remarkably consistent over generations. From the time the formal community territory was delineated at Jamestown in 1874, the tribe had definite leadership chosen by its members and acknowledged by the United States. Governance was initially conducted by a Chief and an informal group of leading members, then after 1910 by an elected Chairman and Council. These institutions functioned on a continuing basis until the tribe’s Constitution and by-laws adopted in 1975, and

¹²⁷ Id at 5; 23-27; 67.

the United States government acknowledged and dealt with the tribe's self-designated leadership throughout the 20th Century.¹²⁸

There was no noted opposition to the Jamestown S'Klallam's application to the United States for federal recognition. Indeed, the neighboring Port Gamble S'Klallam and Lower Elwha S'Klallam tribes and the Skokomish Tribe (each of which was already federally recognized) officially supported the Jamestown petition for acknowledgment. By the 1970s, the Jamestown S'Klallam had established a leadership role among regional tribes, being a founding member of the Small Tribes Organization of Western Washington, a member of the National Congress of American Indians, and a member of the Northwest Federation of American Indians. The Jamestown S'Klallam Tribe was federally recognized by the United States in 1981.¹²⁹

Snoqualmie Socio-Political History

The people of the Snoqualmie Tribe are the descendants of the community known as "S-Dukwalbixw" or "People of the Moon". The pre-contact Snoqualmie peoples lived in two main villages in what is now the Snoqualmie River Valley between Puget Sound and the Cascade Mountains: one village at the mouth of the Tolt River and the other at the base of Snoqualmie Falls. The Snoqualmie traded with other local tribes including the S'Klallam and Snohomish, but in contrast with the S'Klallam the early relations between the Snoqualmie and white settlers were often combative. In 1849 members of the Snoqualmie launched an attack on the Hudson's Bay Company's Fort Nisqually and killed an American settler, after which two captured Snoqualmie raiders were tried by a settlers' court and hanged.¹³⁰

¹²⁸ Id at 3-4.

¹²⁹ Id at 2.

¹³⁰ Ruby, Robert H.; Brown, John A.; Collins, Cary C.. *A Guide to the Indian Tribes of the Pacific Northwest*. Norman: University of Oklahoma, 2010.

Following the Treaty of Point Elliot in 1855, the Snoqualmie Tribe and the Snohomish Tribe were expected under the Treaty to move from their ancestral lands to the newly formed Tulalip Reservation located in present-day Snohomish County. While many Snoqualmie members did relocate there, a significant band did not because the reservation had insufficient land to grant people the amount specified in the Treaty. Anthropological and historical evidence indicates that between 1855 and the 1930s there had been distinct off-reservation Snoqualmie settlements and off-reservation leaders, but the evidence does not indicate that the on-and-off-reservation Snoqualmie peoples constituted two different tribes prior to the 1930s. Instead, there was a process of evolution and reorganization which by the mid-1930s resulted in a separate off-reservation band after other Snoqualmie peoples integrated into tribal communities organized under the Indian Reorganization Act.¹³¹

Until the 1930s, the Government dealt with the Snoqualmie peoples living both on and off-reservation as a single political entity. In 1928, an off-reservation Snoqualmie leader named Jerry Kanim was elected head of the tribal business council instituted by the federal Indian Service to deal with matters affecting Snoqualmie interests on the Tulalip Reservation. Subsequently, the United States began to recognize the Snoqualmie community living on the Tulalip Reservation as a distinct entity from the off-reservation Snoqualmie community. Beginning in 1929, a separate council was established on the Tulalip Reservation to represent the interests of all of the peoples residing there, while the federal government dealt separately with Jerry Kanim as the leader of an off-reservation based Snoqualmie tribe. In 1930, the United States formed a reservation-only business committee which was drawn from all of the tribes of the Tulalip reservation. This committee explicitly excluded off-reservation Indians in its

¹³¹ Snoqualmie Determination at 42.

representation, a limitation that was hotly debated by the tribal members, but reservation-only councils soon became standard on the other reservations in the region.¹³²

These reservation-only councils were formed by the U.S. in response to new federal regulations concerning the leasing of Indian lands, which were interpreted by the Indian Service as requiring the limitation to reservation Indians.¹³³ After the reservation-only business council was organized for the Tulalip Reservation and before the reservation government was organized under the Indian Reorganization Act, there was thus a clear identification of a separate, off-reservation Snoqualmie band in 1934. In response to a questionnaire from the National Resources Board regarding tribal groups within the region, federal Tulalip Agency Superintendent Oscar Upchurch stated that there was “an important band of Snoqualmie Indians under the leadership of Jerry Kanim,” and noted that a number of these Snoqualmie “were not enrolled at any agency and have no land.” As a solution to this situation, Upchurch proposed the establishment of a small reservation for the band within the Snoqualmie National Forest—a suggestion that was not implemented by the United States.¹³⁴ In 1936, the residents of the Tulalip Reservation combined from the Snohomish, Snoqualmie, and Skykomish tribes were organized as a tribal government under the Indian Reorganization Act.¹³⁵ However, the Federal government continued to deal with the off-reservation Snoqualmie under the leadership of Jerry Kanim as a separate political unit, and representatives of the United States expressed the intent that at some point in the future “a reservation sufficient to assure them a home should in equity be secured for them”.¹³⁶

¹³² Id at 40.

¹³³ Department of the Interior 1929; AS-IA 1982, 5; Sampson 1930.

¹³⁴ Snoqualmie Determination at 46.

¹³⁵ The Indian Reorganization Act, 48 Stat. 984 - 25 U.S.C. § 461 et seq, June 18, 1934.

¹³⁶ Snoqualmie Determination at 49.

Historical evidence indicates that Jerry Kanim was a strong leader for the off-reservation Snoqualmie, and that his leadership provided the foundation and the reference point for subsequent leaders. After his death in 1956, there was a decline in off-reservation Snoqualmie socio-political activity, which ultimately resulted in the loss of federal acknowledgement and regular dealings with the United States. Some of the changes occurring after Jerry Kanim's death appear due to a change to younger, less traditional leadership, and others appear connected to social dynamics based on family groupings. After Jerry Kanim's death, prominent off-reservation Snoqualmie leaders Ed Davis and Kiutus Tecumseh refused to take over the Chief's position, for the expressed reason that they were not from the Kanim family line. The Snoqualmie reportedly refused to make Kanim's daughter Chief because the position traditionally had not been held by women. These actions were viewed by anthropologists as evidence that the off-reservation Snoqualmie members were following a cultural tradition, derived from Coast Salish culture, of drawing leadership from specific family lines.¹³⁷ Interestingly, during this period approximately 20% of the off-reservation Snoqualmie were enrolled in other federally recognized tribes, including the Lummi, Muckleshoot, Nooksack, Sauk-Suiattle, Suquamish, Tulalip, and Upper Skagit—in part due to the Snoqualmie's lack of land and other communal resources, and which impacted the tribe's ability to maintain connections with and loyalty among its people.¹³⁸

Strong family line groupings are socially defined and well-known throughout the membership of the Snoqualmie, and thus significantly define social relationships. These kinship groupings are understood and are identified as the major families making up the tribe. They have a clear social definition which ascribes particular characteristics and histories to each family

¹³⁷ Id at 84.

¹³⁸ Id at 166.

group. Historical evidence demonstrates recurring political conflict within the Snoqualmie in the 1960s and 1970s over significant issues such as maintenance of tradition in the style of governance, the Chairman's role versus the Council's role, and how to approach fishing rights. There is substantial information for the modern community showing processes of political conflict and transition in the election or ouster of Snoqualmie leaders, and the political role of family-line groupings within the tribe. A political structure in which family-line groupings play a major role has existed for decades, and family-line groupings are instrumental in lining up political support for and against candidates for tribal leadership positions.¹³⁹

Prior to federal recognition, family conflicts were seen as a characteristic feature of Snoqualmie General Council meetings, with existing conflicts between families coming out during the meetings. Snoqualmie leaders frequently commented on this dynamic and expressed concern that if more constructive methods of resolving social issues were not found, the tribe "will be pulled apart." Family line conflicts led to the re-institution of the office of Chief in 1986. Former Snoqualmie Chairman Andy de los Angeles stated that during his first term from 1984 to 1990, he was "getting into a lot of social issues, and having to be like a judge/jury kind of situation about family squabbles, basically community issues . . ." He concluded that such problems were better dealt with by someone other than the Chairman. The position of Chief was reinstated for this purpose and was different in form and entailed less political authority than it had under Jerry Kanim, with the Chief now dealing primarily with social issues that were bothering members of the community.¹⁴⁰

One particular aspect of Snoqualmie pre-recognition institutions that manifested during the federal recognition process (and continues to the present day) is the banishment of tribal

¹³⁹ Id at 14, 68, 107.

¹⁴⁰ Id at 107-108.

members. During the 1980s and 1990s when the Snoqualmie tribe's application for federal recognition was being considered by the United States, over a dozen members (including two former Chairmen and members of their families) were banished by the tribe.¹⁴¹ The Snoqualmie Tribe's application to the United States for federal recognition was also vigorously contested by the Tulalip Tribes, which argued that the Snoqualmie people had in fact been incorporated into the Tulalip Tribes' socio-political community over the nearly 150 years since the establishment of the Tulalip reservation under the Treaty of Point Elliott. The Tulalip Tribes asserted that the off-reservation Snoqualmie tribe was only a voluntary organization formed solely for the purposes of pursuing land and other claims against the United States government. To demonstrate this, Tulalip cited a 1961 Western Washington Agency federal report stating that the Snoqualmie had no Constitution or charter and were not organized formally for "self-government," and concluded that the main object of the off-reservation Snoqualmie tribe was "to press its suit" to obtain control over land and other economic resources.¹⁴² Despite the internal membership conflict and the opposition of the Tulalip Tribes, the Snoqualmie Tribe received federal recognition by the United States in 1999.

2.7.2 *Comparative Assessment of Contemporary Political Economies*

While the Jamestown S'Klallam and the Snoqualmie tribes each have their own unique socio-political histories, they also possess the broad similarity of geography, access to markets, treaty rights, and cultural traditions necessary for a viable political economy study group. They presently exhibit similar structural conditions and equivalent primary economic activities, making them appropriate case studies for comparison of institutional and economic performance.

¹⁴¹ Id at 162.

¹⁴² Id at 14.

Utilizing the institutional assessment process, the contemporary political economies of the Jamestown S’Klallam and Snoqualmie tribes can be compared by examining indicators of their respective formal institutional development, informal institutional dynamics, and contemporaneous economic performance indicators. Applying the theories and assessment process described in this paper, differences in the economic development outcomes between the two tribes can be expected to correlate with: a) differences in the level of their formal institutional development, b) differences in the relative cooperative/competitive dynamics of their informal institutions, or c) a combination of both. Assessment of these criteria is based on indicators of the tribes’ respective formal institutional development, informal institutional dynamics, and economic performance.¹⁴³

Jamestown S’Klallam Tribe

Advanced Formal Institutional Development & Cooperative Informal Institutions.

In comparison with other Coast Salish tribes (and even the adjacent non-tribal municipalities), the development of formal institutions for governance at Jamestown S’Klallam is highly advanced. Political and administrative authority is exercised through a stable and detailed organizational structure with clear lines of responsibility and accountability, from elected officials and C-Level departmental officers all the way down to assistant librarians.¹⁴⁴ The tribe’s legal codes are extensive in subject matter coverage, are highly detailed, and reflect a balance of

¹⁴³ The empirical information utilized to assess the institutional balance of the tribes as detailed below was obtained from publicly-available source material and data regarding tribal activities and performance, internal tribal documents, legal filings by tribes and tribal members, and interviews with tribal leaders and subject matter experts. This qualitative data should be viewed as a provisional mapping of extant conditions within these tribes as of the time of this writing. Future research is expected to reveal additional factors that impact the institutional balance and resulting outcomes within the tribes’ polycentric complex adaptive systems of governance.

¹⁴⁴ Jamestown S’Klallam Tribal Governmental Organizational Chart. Accessed from http://www.jamestowntribe.org/programs/organizational_chart_2013.pdf on 5/13/2016.

contemporary best-practices and long-standing traditions for governance.¹⁴⁵ The tribe maintains a 10-year comprehensive plan with specific forward-looking goals for governance, public health, education, and cultural awareness.¹⁴⁶ The tribe has established an economic development agency that is organizationally and operationally separate from the Tribal Council, which provides the tribe's business managers with the ability to exercise independent professional authority over economic activities without interference from other socio-political institutions.¹⁴⁷ The tribe's laws and regulations require regular reporting of governmental and economic activity, with extensive information accessible both to members and outside parties.¹⁴⁸ The fact that Jamestown S'Klallam leaders have been repeatedly elected to leadership positions in inter-tribal organizations such as the National Congress of American Indians and National Indian Gaming Association reflects broad recognition of the tribe's exemplary institutional achievements.¹⁴⁹

The indicators of informal institutional dynamics within the Jamestown S'Klallam community reflect a high degree of cultural match and citizen cooperation. The tribe exhibits extensive transparency in its governmental and socio-political processes, with key documents and performance information readily accessible by internet for all members.¹⁵⁰ Regular general citizenship meetings provide all members with a forum to discuss community issues and request governmental action on community priorities. The tribal members and institutions regularly utilize both official and informal social media resources to connect community members and

¹⁴⁵ Jamestown S'Klallam Tribal Code. Accessed from http://www.jamestowntribe.org/govdocs/gov_code.htm on 5/13/2016.

¹⁴⁶ Jamestown S'Klallam Tribal Comprehensive Plan, 2005-2015. Accessed from <http://www.jamestowntribe.org/govdocs/mastcompplanfinal8-27-08.pdf> on 5/13/2016.

¹⁴⁷ Jamestown S'Klallam Tribal Programs webpage. Accessed from http://www.jamestowntribe.org/programs/eda_main.htm on 5/13/2016.

¹⁴⁸ Jamestown S'Klallam Reports, Newsletters & Publications Archives. Accessed from http://www.jamestowntribe.org/announce/annce_newsletter.htm on 5/13/2016.

¹⁴⁹ Jamestown S'Klallam Tribal Council webpage. Accessed from http://www.jamestowntribe.org/main/main_council.htm on 5/13/2016.

¹⁵⁰ See <http://www.jamestowntribe.org/>.

share information regarding tribal activities.¹⁵¹ Tribal agencies maintain extensive financial investment in direct services for members such as medical care, community facilities, and child/elder programs.¹⁵² A high priority for the tribe is compiling extensive and accessible records of the history and culture of the tribal community, made available to the public through museums and archives.¹⁵³ Although disagreements and disputes inevitably arise among the members, there is a notable absence of internal tribal disputes being filed in an outside forum such as federal courts or the Bureau of Indian Affairs, indicating broad acceptance by Jamestown S’Klallam citizens of the tribe’s own formal and informal dispute resolution processes.

The institutional dynamics at Jamestown S’Klallam correlate with exceptionally positive economic performance indicators. The tribe has sustained a zero-poverty rate for members living on the reservation—the only Coast Salish nation (and one of the few tribes anywhere in the United States) to achieve this status. The tribe’s economic development agency demonstrates regular profitability in its business operations, and reinvests revenue into acquisitions that have expanded tribe’s economic base beyond gaming into enterprises including construction, IT/communications, and retail services.¹⁵⁴ The tribe has successfully undertaken the development of modern primary health care facilities that profitably serve both tribal and non-tribal community members.¹⁵⁵ The economic strength of Jamestown S’Klallam has enabled the creation of unique and mutually-beneficial partnerships with the surrounding non-tribal community, exemplified by the tribe’s construction of a new \$1.5 million fire and emergency

¹⁵¹ See <https://www.facebook.com/JamestownSKlallamTribe>.

¹⁵² Jamestown S’Klallam Social & Community Services Department webpage. Accessed from http://www.jamestowntribe.org/programs/scs/scs_main.htm on 5/13/2016.

¹⁵³ House of Seven Generations Museum webpage. Accessed from <http://www.tribalmuseum.jamestowntribe.org/> on 5/13/2016.

¹⁵⁴ See http://www.jamestowntribe.org/programs/eda_main.htm; see also “Jamestown S’Klallam Tribe Buys Wireless Division of Port Townsend’s Intellicheck Mobilisa.” Peninsula Daily News, September 2, 2015. <http://www.peninsuladailynews.com/article/20150903/NEWS/309039986>

¹⁵⁵ Jamestown S’Klallam Health and Human Services webpage. Accessed from http://www.jamestowntribe.org/programs/hhs/hhs_clinic.htm on 5/13/2016.

response station for Clallam County.¹⁵⁶ In keeping with its recognized tradition of prioritizing education, the tribe's successful economic activities enable it to provide full funding of university education for members.¹⁵⁷

The development success of the Jamestown S'Klallam might best be indicated by the astonishing rapidity in which it has been achieved. When the tribe received federal recognition from the United States in 1981, it had no land and no established resource base for economic development. From this absolute "square one" beginning, within one generation the Jamestown S'Klallam Tribe has become a model of self-determination and social advancement, and its leaders are recognized by tribes regionally and nationally for excellence in governance and human security. The combination of advanced institutional development and cooperative dynamics among the citizenry have allowed the Jamestown S'Klallam to surmount the early challenges associated with restored recognition following the termination era and to create a consistent basis for sustained future economic growth.

Snoqualmie Tribe

Advanced Formal Institutional Development & Competitive Informal Institutions.

The development of formal institutions for governance at Snoqualmie is also highly advanced, on par with Jamestown S'Klallam. The tribe has enacted an extensive set of tribal legal codes that address a comprehensive range of governance, economic development, and human security matters.¹⁵⁸ To help ensure the efficient functioning of governmental agencies, an independent audit committee was established and charged with oversight of financial reporting and legal

¹⁵⁶ Ruby, et al, supra at 132.

¹⁵⁷ Ruby, et al, supra, 133.

¹⁵⁸ Snoqualmie Tribal Codes. Accessed from <http://www.snoqualmietribe.us/TribalCodes> on 5/13/2016.

compliance of tribal departments.¹⁵⁹ The tribe implements law enforcement through a self-managed Tribal Court and community corrections department.¹⁶⁰ In furtherance of the tribe's economic development goals, detailed programs have been created at Snoqualmie for promoting broad-based economic security, including a Tribal Employment Rights Ordinance and Workers Compensation Act.¹⁶¹

In contrast to Jamestown S'Klallam, the indicators of informal institutional dynamics within the Snoqualmie community reflect a low degree of cultural match and often intense competition among citizens. Snoqualmie has become known locally and nationally for the repeated banishment and attempted disenrollment of former elected leaders and family groups within the tribe, extending back to the pre-recognition era.¹⁶² There are chronic disputes and litigation among members regarding the legitimacy of their ancestry and blood quantum to qualify for tribal membership and the attendant benefit entitlements.¹⁶³ Tribal members do not appear to accept the legitimacy of the Tribal Court or other informal tribal mechanisms for resolving disputes, and regularly seek legal redress against each other and the tribal government in external venues such as federal courts.¹⁶⁴ Informal social media resources reflect significant member discontent and confusion regarding the operation of the tribe's formal institutions, with members posting comments such as "Election Rigged" and "Do we still have an enrollment committee?"¹⁶⁵

¹⁵⁹ Snoqualmie Tribal Council Act 14.2 – The Snoqualmie Tribal Audit Committee. Accessed from http://www.snoqualmietribe.us/sites/default/files/audit_committee_act.14.2.codified.pdf on 5/13/2016.

¹⁶⁰ Snoqualmie Tribal Court webpage. Accessed from <http://www.snoqualmietribe.us/TribalCourt> on 5/13/2016.

¹⁶¹ Snoqualmie Tribal Council Act 5.2 – Workers Compensation Claims. Accessed from http://www.snoqualmietribe.us/sites/default/files/workers_comp_act.5.2.codified.2.27.12.pdf on 5/13/2016.

¹⁶² "Snoqualmie Tribe 'In Turmoil' – and in Debt." GGB News, Vol. 7, No. 37, October 5, 2009.

¹⁶³ Halverson, Matthew. "Bad Blood: Membership disputes have raged within the Snoqualmie tribe for years, but Marvin Kempf is determined to set the record straight." Seattle Met Magazine, December 2012.

¹⁶⁴ See <http://www.nativelegalupdate.com/2009/05/articles/snoqualmie-members-overturn-banishment-in-federal-court/>

¹⁶⁵ See <https://www.facebook.com/snoqualmietribalconstitution>.

The institutional dynamics at Snoqualmie correlate with uneven and often disappointing economic performance indicators. The Tribe does not provide poverty data to the US Census, and in general any data on the progression of economic experiences of Snoqualmie tribal members is scarce.¹⁶⁶ The tribe's economy is almost entirely reliant upon revenue from gaming and related services, but revenues from casino operations are substantially lower than initially projected levels.¹⁶⁷ Internal issues have further diminished the profitability of tribal business enterprises, with disputes over management and transparency in the tribe's gaming and hospitality operations recently resulting in a \$14 million charge for a buyout of the casino CEO's contract.¹⁶⁸ The tribe's economic departments are regularly subjected to interventions from the Tribal Council that alter the direction and priorities of economic actions, including the removal of business administrators for evidently political reasons.¹⁶⁹ Failed investments, including the complete loss of \$1.5 million in capital for a proposed casino project in Fiji, have characterized the tribe's most externally-visible attempts at expanding its economic base.¹⁷⁰ The Snoqualmie tribe has an often-contentious relationship with its neighboring non-tribal municipalities, exemplified by the termination of sewer services to the tribal casino by the local city following a protracted utility payments dispute.¹⁷¹

Following federal recognition in 1999, the Snoqualmie Tribe rapidly built a system of governance institutions that on paper is comparable to that of the Jamestown S'Klallam in scope

¹⁶⁶ US Census 2010-2014 American Community Survey 5-year Estimates reflect no data provided for the survey periods. See: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1701&prodType=table

¹⁶⁷ Mapes, Lynda V.. "Big Payoff Eluding Troubled Tribe". Seattle Times, September 26, 2009.

¹⁶⁸ "Tribal Council Fight Leads to \$14 Million Buyout of Snoqualmie Casino CEO." Indian Country Today, February 24, 2011.

¹⁶⁹ Mapes, Lynda V.. "Snoqualmie Tribe Gives Casino Plan Another Look". Seattle Times, March 18, 2013.

¹⁷⁰ "Fiji Axes License for Casino that was Linked to Snoqualmie Tribe". Indianz.com, February 10, 2015.

Accessed from <http://www.indianz.com/IndianGaming/2015/02/10/fiji-axes-license-for-casino-t.asp> on 5/13/2016.

¹⁷¹ "Snoqualmie Tribe Sues City for Discrimination." Snoqualmie Valley Record, Dec. 16, 2015.

and sophistication. However, cooperation among the tribe's informal institutions has been undermined by exceptionally vehement disputes among tribal members. The severity and longevity of these disputes have negatively impacted the tribe's economic performance, and reflect a lack of credibility among tribal members for institutions which otherwise appear well-conceived. The level of social discord within the Snoqualmie Tribe became so destructive that in 2012, the Bureau of Indian Affairs suspended federal funding to the tribe and threatened to initiate a "federal takeover" of the tribe's governmental affairs.¹⁷² A clear result of the competitive dynamic among the citizens and their informal institutions is the loss of economic potential for the Snoqualmie Tribe, manifested in the direct loss of revenue from failed business operations and the loss of partnering opportunities with outside investors wary of engaging with a tribe seemingly at war with itself.

2.7.3 *Case Study Outcomes and Assessments*

The most favorable combination of internal dynamics for economic growth is for a tribe to achieve advanced formal institutional development and cooperative informal institutions among its members. The qualitative data utilized in this assessment indicates advanced levels of formal institutional development for both Jamestown S'Klallam and Snoqualmie, but significantly different dynamics in their respective informal institutions, and a notable divide between their contemporaneous economic performance outcomes. Jamestown S'Klallam exhibits consistent positive outcomes in tribal economic endeavors—so much so that it has been called an "Indian economic miracle" by outside observers - while Snoqualmie has encountered numerous difficulties in establishing positive outcomes and sustained progress in its economic development

¹⁷² Mapes, Lynda V., "Stalemate puts Snoqualmie Tribe at Risk of Federal Takeover". Seattle Times, May 27, 2012.

activities.¹⁷³ The primary difference in these outcomes appears to be the distinctly different cooperative/competitive dynamics among the informal institutional dynamics within the tribes, with Jamestown S’Klallam exhibiting cooperation and Snoqualmie exhibiting competition. One apparent root cause for the difference is an inherent source of institutional conflict built into the Snoqualmie tribe’s system of governance, wherein a key formal institution can be usurped to advance the interests of competitive informal groups. Section 3 of the Constitution of the Snoqualmie Tribe of Indians states:

Snoqualmie Tribal membership is a privilege that may be revoked by the General Council for cause as determined by the acts and resolutions of the tribe. The General Council may impose a penalty of full or partial banishment against any enrolled member for good cause in accord with Snoqualmie Tribal tradition or the acts and resolutions of the tribe.¹⁷⁴

The factors or behaviors that would constitute “good cause” for banishment or disenrollment are not specified. Also undefined are the tenets of the informal institution of “Snoqualmie Tribal tradition” that can be utilized as grounds to remove a member from the community. In practice, the disenfranchisement of Snoqualmie tribal members has not been consistent in either substance or procedure. For some cases, a select group of the membership will vote to remove someone; in others, the nine-member Tribal Council decides the matter.¹⁷⁵ In virtually all cases, those who lose their membership have no formal opportunity to face their accusers or contest the issues with which they are charged.¹⁷⁶ Through the partisan application of Section 3 of the Tribal Constitution to strip tribal members of their citizenship (and attendant political rights and economic entitlements), a formal institution is subverted by informal institutional groups to

¹⁷³ “Indianernes økonomiske mirakelkur”, *Horisont*. DR TV, January 4, 2016.

¹⁷⁴ Constitution of the Snoqualmie Tribe of Indians. Accessed from <http://www.snoqualmietribe.us/sites/default/files/linkedfiles/constitution.pdf> on 5/13/2016.

¹⁷⁵ Halverson, *supra*.

¹⁷⁶ In contrast, Section 4 of the Constitution of the Jamestown S’Klallam Tribe of Indians provides that “any person who may lose their tribal citizenship is entitled to a hearing before the Tribal Council and to adequate notice of such hearing.” See <http://www.jamestowntribe.org/govdocs/10-11-14%20Tribal%20Constitution.pdf>.

advance their own interests against competing groups. A genealogist who surveyed the Snoqualmie membership described the resultant prevailing dynamic within the tribe: “There isn’t anyone you can trust. The problem is that every one of these people that you’re going to talk to has an agenda. *Every. Last. One* of them.”¹⁷⁷

For tribes where informal institutions exhibit competitive dynamics, one factor that contributes to negative economic performance is that competitive dynamics themselves consume crucial economic resources. Socio-political infighting absorbs people’s time, energy, creativity, opportunities, and oftentimes capital that could be used more productively for the nation in other economic applications. It is therefore to be expected that competitive institutional dynamics will correlate with reduced economic performance indicators, making the enhancement of trust and cooperation among the citizenry a key priority for tribal leaders to include in their economic development strategies.

Two leadership vignettes from the Jamestown S’Klallam and Snoqualmie tribes illustrate alternative practical manifestations of this concept. In a 2008 interview, Jamestown S’Klallam Chair W. Ron Allen stated: “The ability of tribes to become more self-reliant based on business opportunity has emerged in the last 10 years. Now we are addressing generations of need in our communities, providing housing opportunities, jobs, health care, and education for our people.”¹⁷⁸ That same year the Snoqualmie Tribal Council passed a resolution summarily banishing nine of its tribal members, including the former Chairman and previous members of the Tribal Council and their relatives, for alleged “treasonous crimes” that included saying a prayer that offended the current tribal leadership.¹⁷⁹ These respective leadership approaches

¹⁷⁷ Halverson, *supra*.

¹⁷⁸ Ruby, et al. *supra*, 133.

¹⁷⁹ Smith, Rob Roy. “Enhancing Tribal Sovereignty by Protecting Indian Civil Rights: A Win-Win for Indian tribes and Tribal Members”. *American Indian Law Journal*, March 2012, 46.

reflect vastly different levels of trust and cultural match within and among the tribes' populations and their institutions, with the cooperative reciprocity of the Jamestown S'Klallam standing in stark contrast to the competitive interests prevailing within Snoqualmie. Upon reviewing the competitive discord within the latter, anthropologist Jay Miller stated: "There are disputes like this in many tribes, but nothing like what's going on among the Snoqualmie. It's over the top. Incredibly over the top."¹⁸⁰

The sampling model utilized above to assess political economies of Coast Salish nations can be replicated and applied to analyze selected tribal groups throughout the U.S. to compare their relative development levels, such as the remainder of the Coast Salish nations, the 39 similarly-situated tribes in Oklahoma, the Plains tribes in the Upper Midwest, and other groupings of tribes with similar structural conditions. Following the approaches described by Rigney (1997) and Wilson (2008), the ultimate goal of research regarding tribal political economy should be to contribute to the self-determination of tribal communities as controlled by the communities themselves.¹⁸¹ For policy analysts and scholars, political economy assessments can provide instructive analysis of institutional structures and dynamics that are producing significant increases in economic development indicators for selected tribes. For tribal leaders, conducting an assessment of their own nation can assist in formulating policies and priorities designed to facilitate the optimum combination of advanced formal institutional development and strong cooperative dynamics among informal institutions, thereby enhancing the tribe's economic growth potential.

¹⁸⁰ Halverson, *supra*.

¹⁸¹ Rigney, Lester-Irabinna. "Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles". *WICAZO sa Review*, University of Minnesota Press, Vol 14, Number 2, Fall edition 1999, 109-121; Wilson, Shawn. *Research is Ceremony: Indigenous Research Methods*. Winnipeg: Fernwood Publishing, 2008.

2.8 FROM ASSESSMENT TO PROGRESS: PATHWAYS FOR STRENGTHENING TRIBAL INSTITUTIONS AND CITIZEN COOPERATION

After the members of a nation have assessed the relative state of their institutions and social dynamics and identified areas of need, the natural next question is: “How can we do better?” A commonly-heard response in tribal development discussions is “strengthen your sovereignty”, implying an inherent cause-and-effect connection between enhancing a tribal government’s control of resources and improved outcomes for the political economy. Yet with the differing conceptions of sovereignty espoused by previously discussed indigenous thought leaders such as Deloria, Alfred, and Bruyneel, and with tribes such as the Jamestown S’Klallam and Snoqualmie operating from an equal foundation of sovereignty but realizing dramatically different outcomes, it is clear that sovereignty alone is not the answer. Instead, sovereignty should be understood as a necessary-but-not-sufficient condition for improving the outcomes of a tribal political economy. The power of sovereignty as a catalyst for positive development must be harnessed and applied through effective formal institutions possessing a close cultural match to the informal institutional dynamics within a tribal community. Tribal leaders therefore need to identify practical methods for creating high-functioning institutions that appropriately reflect the values and goals of the people they serve.

For decades tribes have received development policy recommendations from numerous external sources that, while well-intended, do not reflect or apply to their particular conditions. What is needed is guidance from people who have lived and led in Native American nations, and who have on-the-ground experience with successful development activities. To help obtain and promulgate this guidance, in May 2015 through the University of Washington’s Jackson School of International Studies I hosted a Colloquium focused on Native American sovereignty,

development, and human security.¹⁸² The two-day event was held in the University's newly-opened Intellectual House—known by its Lushootseed name *wəłəb?altx*^w - a unique gathering place dedicated to Native American studies.¹⁸³ The Colloquium provided an exploration of the mutual sovereignty dynamic between the United States and Native American nations, with a particular focus on innovative policies for institutional development, economic growth, and social cohesiveness in Native American nations. The program featured national tribal leaders and subject matter experts from a broad spectrum of development backgrounds including governance, economics, law, education, health, and culture.

The goal of the Colloquium was to provide effective guidance on tribal development from top-level tribal leaders, and the Colloquium presentations described innovative programs and strategies for enhancing institutional development and social cooperation within tribal communities. Featured presenters included Vincent G. Logan, U.S. Special Trustee for American Indians; Chairman W. Ron Allen, Jamestown S'Klallam; President Fawn Sharp, Quinault Nation; Professor and Judge Ron Whitener, UW Native American Law Center and Tulalip Tribal Court; and Lisa M. Koop and Glen Gobin of the Tulalip Tribes, among others.¹⁸⁴

The Colloquium presentations yielded substantial wisdom and practical guidance for Native American development initiatives, illuminating pathways forward for institutional development and enhancing cooperation in tribal communities. Special Trustee Logan highlighted the breadth and fundamental nature of both formal and informal institutions within Native American nations, including institutions centered upon traditional culture, language, and religion.¹⁸⁵ Emphasizing

¹⁸² See Appendix B & C.

¹⁸³ Details on this extraordinary learning venue are accessible at: <http://www.washington.edu/diversity/tribal-relations/intellectual-house/>.

¹⁸⁴ Expanded summaries of selected presentations from the Colloquium are provided in the Appendices, and video recordings and presentation materials for the full Colloquium are accessible at no charge via this website: <http://www.foster.com/resources/events/sovereignty,-development-and-human-security-a-coll?search=colloquium>.

¹⁸⁵ See Appendix D.

the importance of continual dialogue regarding the performance and interaction of tribal institutions, he stated: “We talk about it because institutions provide individuals opportunities. They also provide choice, so the young Native American right out of the tribal community has choices... The abundance of choice with young Native Americans is the key to building and creating opportunity.”

The economic success of the Jamestown S’Klallam tribe has coincided with the tenure of its long-serving Chairman W. Ron Allen. Chairman Allen’s Colloquium presentation focused on self-determination and national identity, and discussed pathways for Native American nations to conceptualize and assert their sovereignty for the benefit of their people.¹⁸⁶ He recognized the establishment of sound governance institutions as being of foremost importance: “One of the challenges we have in Indian Country is to examine: is your governmental infrastructure in place before you can even advance your agenda of self-determination, self-governance, self-reliance, or however you want to characterize your goals for your people?”

Of corresponding importance is establishing the people’s trust in their governing institutions. Chairman Allen noted that for members of the Jamestown S’Klallam, any governmental taking of a person’s rights or property is always preceded by formal due process and the right to appeal the government’s decision. This form of institutional reciprocity is built into the entire breadth of formal governance. “To us, that’s an important element to the integrity of our governmental infrastructure.” Acknowledging the practical changes in the complex adaptive systems of tribal governance over time, Chairman Allen emphasized the ultimate responsibility of tribal leaders to build trust and positive reciprocity with the citizens they represent: “Now you have to be more accountable to the people, because it’s their resources you’re managing.”

¹⁸⁶ See Appendix E.

President Fawn Sharp of the Quinault Indian Nation provided a succinct political philosophy that embodies the essence of Cornell’s cultural match for tribal institutions: “When you have a body of law, it should reflect the people. Legislative hearings should be regular, routine, and should be based on the current pulse of where your community stands.”¹⁸⁷ The governmental departments at Quinault have citizen participation formalized in their standard operations. “We have a public comment period, so tribal members that are concerned about fisheries, housing, or healthcare know they can come in on a regular basis to provide public comment and their questions are answered.” To ensure the consistent alignment between the nation’s formal institutions and the priorities of the citizens and their informal institutions, Quinault provides direct and readily-accessible methods for tribal members to provide feedback on governmental activities. Particular attention is paid to allegations of governmental misconduct. “We created a very simple form [for citizens] - state the policy, state the facts that violated the policy—and we conduct a basic oversight hearing to pursue fact finding. If there’s a need for corrective action, it’s in writing, it’s very clear, it’s very specific.” This transparent method of investigating citizen concerns helps ensure formal institutions at Quinault stay in sync with their informal counterparts.

University of Washington School of Law Professor Ron Whitener, who also serves as Chief Judge for the Tulalip Tribal Court, spoke of the importance of independence and cultural match to align the priorities of formal and informal institutions within tribes.¹⁸⁸ This is particularly crucial for a nation’s legal and law enforcement systems, which have the power to impose the rules of the government upon the lives of the citizens. Tribal governments should develop the capacity to rely primarily on their own tribal law enforcement and probation services, rather than

¹⁸⁷ See Appendix F.

¹⁸⁸ See Appendix G.

federal or state agencies. Utilizing the tribe's own personnel provides distinct advantages to the community, including tribal officers who are local to those they are protecting and have more extensive and detailed knowledge of local family ties and dynamics.

Family law is a formal institution that relates directly to primary informal institutions within a tribe, and tribal communities have the same broad and constant requirements for an effective family law system as any other population. Beyond this basic need, the horrific legacy of the boarding and forced adoptions of Native children illustrates the critical need for effective tribal systems for dealing with inter-family legal issues, particularly regarding the welfare of children. Professor Whitener views establishing comprehensive family law and child protection codes as a fundamental responsibility for tribal governments. Codes based on the conditions and traditions of the tribe offer many advantages for their citizens, and Tribal Courts can utilize their local knowledge to craft culturally-appropriate approaches to peacemaking, parental and guardianship rights, and tribal trust property issues.

To enhance a tribe's economic development potential, Professor Whitener emphasized the basic and critical step tribal governments can take to establish a legal environment conducive to economic growth. Key provisions in a Tribal Business code that should apply equally to tribal members and non-members include allowing specific due process before any takings of property or rights; providing ample notice of intent of a taking to the affected parties; giving a full opportunity for impacted parties to be heard prior to a decision; and having legal decisions issued by an impartial but culturally and community-informed judge. These provisions enhance cultural match with citizens by eliminating opaque and arbitrary governmental decisions that impact the allocation of economic resources. Professor Whitener stated that having clear regulations for business organization and transactions are critical for enhancing economic activity, and tribal

sovereignty offers tribal governments the opportunity to expand their development potential by enacting economic codes that are more efficient and advantageous for business than the surrounding state/county/local regimes.

The results of advanced formal institutions and cooperative informal institutions can be transformational for tribal economic development. Tulalip Tribal Attorney Lisa M. Koop and Glen Gobin, Vice Chairman of Quil Ceda Village together presented the extraordinary story of the Tulalip Tribes' creation of the Consolidated Borough of Quil Ceda Village (the "Village").¹⁸⁹ The Village is a separately chartered political subdivision of the Tulalip Tribes and one of only two "federal cities" in the United States—the other being Washington D.C. This represents the advancement of a Native American nation's formal political and economic institutions to an entirely new level, so much so that the United States government subsequently passed a specific federal law acknowledging and supporting Tulalip's accomplishment. Following the enactment of the federal Tulalip Leasing Act, 25 U.S.C. §415(b), the Tulalip Tribes have built the Village from vacant land into a thriving reservation economy that in 2014 generated nearly \$400 million in revenue and \$40 million in tax receipts.

The Village is a retail and entertainment destination located adjacent to Interstate 5, approximately 45 minutes north of Seattle. Over 160 businesses operate in the Village, including Cabela's, Home Depot, Wal-Mart, Olive Garden, Coach, Calvin Klein, and Polo—all on tribally-governed land. The Village attracts approximately 60,000 visitors each day, and employs approximately 7,000 tribal citizens. The complex is now a growth engine for the entire regional economy and has spurred substantial economic development on nearby off-reservation lands, with the attendant tax revenues benefitting numerous Snohomish County social programs.

¹⁸⁹ See Appendix H.

The Tulalip Tribes' creation of the Consolidated Borough of Quil Ceda Village represents a triumph of sustainable economic development for a Native American nation. It is a foremost model for building a comprehensive formal institutional structure for achieving development potential, and cohesively combines governance, legal codes, strategic planning, and economic facilitation. The Village also provides an exceptional level of cultural match between the nation's institutions and citizen priorities, providing gainful employment for tribal members and substantial cash for funding cultural and social programs. Indeed, it was the mutual trust and cooperation of the Tulalip people that made the Village possible in the first place. Long-time Tulalip Tribal Attorney Michael Taylor, one of the architects of the legal structure underlying the Village, described the philosophical impetus within the tribal community for undertaking the effort: "They were ready - ready to make a positive change."

2.9 CONCLUSION

The primary priority for a Native American nation in developing its political economy should be advancing the capabilities of its formal governance institutions and strengthening the cooperative dynamic within and among its informal institutions. Without high-functioning formal institutions, and the collective acceptance of and commitment to those institutions by tribal citizens, the potential of even high-revenue economic activities such as casino gaming to produce positive and sustainable development outcomes will be significantly constrained. Conversely, tribal nations with advanced formal institutions and strong trust and cooperation among their citizens have increased potential for sustainable development of their political economies, even in the face of structural challenges such as geographic isolation or lack of resources.

The shared experience and wisdom of tribal leaders during the UW Tribal Development Colloquium offers specific guidance for tribal governments seeking to strengthen the institutional and social fabric of their nations. Their recommendations include implementation of:

- A culture of sovereignty awareness within tribal government, driven to protect the rights and traditions of the tribe and its members.
- Governmental policies and priorities that reflect the specific needs and aspirations of tribal citizens, rather than the pursuit of conventional-wisdom economic activities.
- Systems for government-citizen interactions based on transparency and participation.
- Legal codes that embody both contemporary technical expertise and traditional values.
- Dispute resolution methods that are culturally appropriate and fundamentally fair.
- Support for grass-roots cultural activity on the reservation.

These formal and informal institutional actions will enhance the ability of a Native American nation to maintain and improve its political and socio-economic systems, as well as to achieve security in its own means of sustainable development. With a political economy built upon that foundation, the nation can support the efforts of its citizens to improve their individual economic and social conditions, including education, employment, health, housing, and other human security elements that improve quality of life.

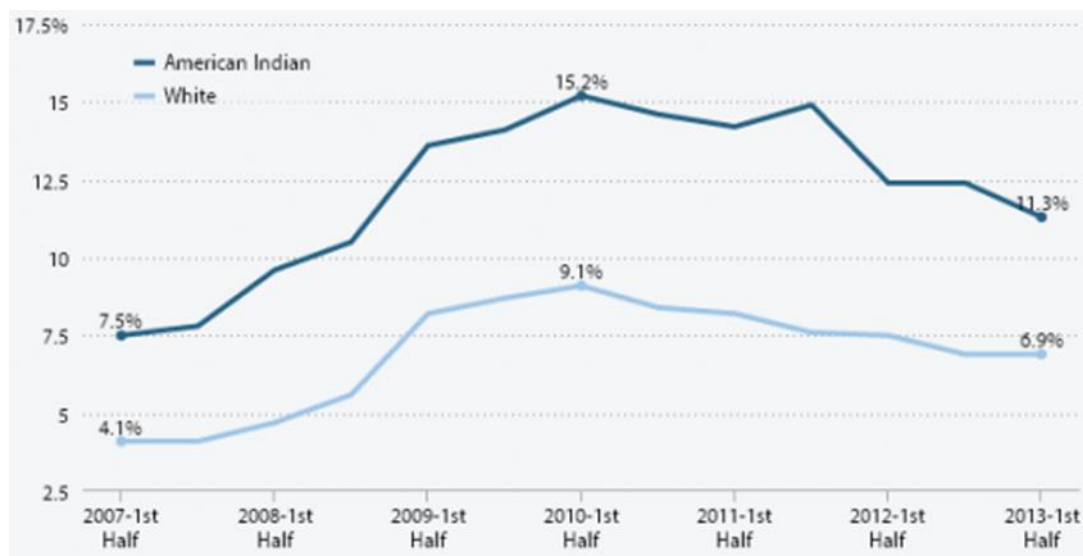
Chapter 3. CAPITAL, INEQUALITY, AND SELF-DETERMINATION: CREATING A SOVEREIGN FINANCIAL SYSTEM FOR NATIVE AMERICAN NATIONS

3.1 INTRODUCTION

The economic and related development conditions of Native American nations and their members chronically and severely lag behind accepted standards for the rest of the United States. One-third of reservation-based Native Americans fall below the poverty line, and aggregate Native American unemployment is twice the U.S. average. Tribal governments, unable to spur economic development within reservation territories and operating without a typical municipal tax base, struggle to provide even the most basic services and infrastructure.¹⁹⁰ The significant and chronic disparity in economic advancement between the Native American population and the U.S. average is illustrated by comparative unemployment rates, reflecting their progression prior to, during, and after the recent “Great Recession”:

¹⁹⁰ FCNL Indian Report: “Poverty and Possibilities in Indian Country”, Issue #91, Spring 2012. See also Miller, Robert J., “Economic Development in Indian Country: Will Capitalism or Socialism Succeed?” 80 Oregon Law Review 757, 2001, 758–59.

Figure 3.1: UNITED STATES NATIONAL UNEMPLOYMENT RATES



Note: “American Indian” refers to individuals identifying as American Indian or Alaska Native alone or in combination with another racial category.

Source: EPI analysis of basic monthly Current Population Survey micro data.¹⁹¹

With these seemingly intractable deleterious economic and human security conditions, it is little wonder some commentators have described Native American nations as the “fourth world.”¹⁹²

A fundamental element for any economic development program is access to capital, which makes possible the purchases, investments, and asset building necessary to increase and sustain economic activity. Although the United States controls more capital than any other nation, access to this capital is uneven within the country and numerous communities struggle to obtain funding for basic development. Nowhere is this inequality more starkly evident than in Native American nations, where poverty, unemployment, the prevalence of “food deserts”, and other symptoms of scarce capital manifest at far higher rates than the national average. According to a report

¹⁹¹ Austin, Algernon, *supra*.

¹⁹² Wilkinson, Charles F. *Blood Struggle: The Rise of Modern Indian Nations*. New York: W.W. Norton, 2006 at 271 (“However favorable the new legal and policy framework might be, every Indian tribe in the postwar years faced challenges befitting a third world nation—some have called aboriginal peoples the fourth world.”). See also Bhatia, Amar. “The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World.” 14 *Oregon Review of International Law* 131, 2012.

published by the Board of Governors of the Federal Reserve, “insufficient access to capital” is a primary challenge to economic development in Native American nations.¹⁹³

From Marx to Piketty, economists and scholars have understood the importance—and bemoaned the unequal distribution—of global capital for the better part of 200 years. Marx identified capital as a “social power”, without which people “cannot become masters of the productive forces of society.”¹⁹⁴ In *Capital in the Twenty-First Century*, Piketty recognizes that “[b]efore production can begin, funds are needed for equipment and office space, to finance material and immaterial investments of all kinds, and of course to pay for housing.”¹⁹⁵ For Native American communities, the chronic lack of available capital has caused development to stagnate in all of these basic elements of their economies.

One element of the inequality of capital distribution in the United States is particularly unusual and counterintuitive from an economic perspective. In general, having a presence within a particular territory for an extended period of time is an advantage for a community of people in accumulating capital available within that area.¹⁹⁶ Yet in the United States, extreme longevity of presence does not correlate with increased wealth—in fact, the opposite has manifested. Native Americans resided within the territory of the United States for thousands of years prior to European contact, yet today they own and control less capital than any other ethnographic group.¹⁹⁷ In essence, those who have lived in the United States the longest have accumulated the

¹⁹³ Susan Woodrow, “Growing Economies in Indian Country: Taking Stock of Progress and Partnerships”. Board of Governors of the Federal Reserve System White Paper, April 2012.

¹⁹⁴ Marx, Karl. *The Communist Manifesto*. New York: W.W. Norton & Co., 1988, 65, 68).

¹⁹⁵ Piketty, Thomas. *Capital in the 21st Century*. Cambridge: Belknap, 2014, 385.

¹⁹⁶ Piketty, p. 368-370.

¹⁹⁷ Regan, Shawn. “5 Ways the Government Keeps Native Americans in Poverty”. *Forbes Magazine*, March 13, 2013.

least, and for Native Americans this historical anomaly has resulted in a situation where, according to Piketty, “[t]he past devours the future”.¹⁹⁸

For Native American nations, the lack of access to capital inhibits their ability to finance new projects such as housing, business development, and renewable energy that would benefit both the tribal communities and the United States.¹⁹⁹ Yet despite their difficulty in accessing capital, Native American nations possess significant potential for economic growth based on untapped resources, land, and sovereignty.²⁰⁰ The transformative opportunity embedded in this potential is beginning to inspire creative approaches to new development pathways, with tribal finance expert Gavin Clarkson identifying Native American nations as “America’s domestic emerging market.”²⁰¹ Harnessing this potential and implementing development programs that can have a real impact on conditions within tribal communities will require not only inventive thinking, but also the creation of new and innovative economic institutions.

Commenting on the current state of global capital distribution, Bill Gates has noted that governments can play a constructive role in offsetting the snowballing tendencies of inequality in access to capital when they embody the will to do so.²⁰² In the government-to-government relationship between the U.S. and Native American nations, the federal and tribal governments have a mutual interest in facilitating the enhancement of Native American economic and human security development. Indeed, for the United States such work in cooperation with tribal governments is directly connected to its legal obligations as a signatory to the United Nations

¹⁹⁸ Piketty, 571.

¹⁹⁹ Small, Jenny. “Financing Native Nations: Access to Capital Markets”. 32 *Rev. Banking & Fin. Law* 463, 2013.

²⁰⁰ Ansson, Richard J. Jr. & Oravetz, Ladine. “Tribal Economic Development: What Challenges Lie Ahead for Tribal Nations as They Continue to Strive for Economic Diversity?” 11 *Kan. J.L. & Pub. Policy* 441, 2002, 443 (“Sovereignty is best defined as the vested powers of self-government, self-control, self-determination, and self-actualization.”).

²⁰¹ Clarkson, Gavin. “Accredited Indians: Increasing the Flow of Private Equity into Indian Country as a Domestic Emerging Market.” 80 *University of Colorado Law Review* 285, 2009.

²⁰² Gates, Bill. “Why Inequality Matters.” *Gatesnotes, The Blog of Bill Gates*, October 13, 2014. Accessed from <http://www.gatesnotes.com/Books/Why-Inequality-Matters-Capital-in-21st-Century-Review> on 5/13/2016.

Declaration on the Rights of Indigenous Peoples (2007, ratified 2012), in particular the Articles relating to economic development support.²⁰³

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

The Declaration provides direct mandates (and in fact binding obligations under international law) for the government of the United States to take official action to facilitate improved economic development in tribal communities. These general obligations provide a framework for the United States to begin working with tribal governments on new policy initiatives to address the specific deficiencies experienced by Native American nations in

²⁰³ United Nations Declaration on the Rights of Indigenous Peoples, 2008.

accessing capital within existing financial systems, particularly in light of the failings of those systems so glaringly exposed by the recent financial crisis.

The systemic breakdown in U.S. and global finance that occurred during the “Great Recession” period of 2007-10 revealed numerous weaknesses in the structure and performance of existing financial institutions. Subsequent analysis of those weaknesses has produced policy recommendations for improving the performance and equality of access to these institutions:²⁰⁴

- Establish short, simple, and direct connections between financial institutions and the end-users of capital. The current system has too many intermediaries that slow the pace and increase the cost of access to capital by the people who need it most.
- Prioritize transactions that place capital into the hands of people who will use it for on-the-ground development activities, rather than transactions between financial institutions in pursuit of corporate profits.
- Create specialized institutions with a direct focus on serving specific types of capital users and needs, with business models and institutional priorities based on meeting those needs.

These policy concepts are particularly relevant for addressing the endemic problems Native American nations experience in accessing sufficient capital to promote economic and human security development.

3.2 CHALLENGES FOR TRIBES IN ACCESSING CAPITAL

The problems Native American nations experience in accessing capital for development can be seen as arising from three primary causes: 1) the historical and structural conditions of tribal

²⁰⁴ Kay, John. *Other People's Money: The Real Business of Finance*. New York: Perseus Books, 2015, 259-60.

communities; 2) the unwillingness of commercial lenders and other mainstream capital sources to conduct business with tribes and their members; and 3) the failure of the U.S. government to uphold and properly manage its legal and trust obligations to facilitate capital availability.

3.2.1 *Historical and Structural Problems*

Thousands of years before Europeans first took to the sea in search of the “New World,” the indigenous people of North, Central, and South America had established unique and flourishing civilizations that stretched from the Arctic Circle to Tierra Del Fuego. While the nations of Europe languished in the Dark Ages, the indigenous nations of the Americas were creating scientific, cultural, and architectural achievements that are marvelous to ponder even today. A key element of the success of these societies was their economic activity, which involved trade with other indigenous nations in combination with local endeavors that were harmonious with the natural world and sustainable with available resources.²⁰⁵

The general picture of Native American political economy in the twenty-first century is radically different from pre-Columbian times. The political subjugation of indigenous nations by European colonizers, combined with forced geographic dislocation from their ancestral lands and traditional trading partners, essentially destroyed the original paradigm of economic development in the Americas. Native American nations were forcibly removed from their ancestral territories by the United States government, thereby losing both the capital value of the land and the asset base of natural resources associated with it. This dislocation deprived tribes of untold billions of dollars’ worth of capital-producing assets, and consigned them to areas of the

²⁰⁵ Guedel, W. Gregory. *Strategies and Methods for Tribal Economic Development*. Boston: Thompson Reuters, 2013.

United States that were considered economically undesirable by the U.S. government and American settlers.²⁰⁶

The land that Native American nations were able to retain typically has several associated conditions that prevent it from being effectively leveraged to obtain development capital:

- Reservations are often located in geographically isolated areas, far from established commercial and population centers that could provide a market base for tribal economic activity, and on land that is commonly devoid of natural economic resources.
- Tribal lands generally have a “checkerboard” of varying title status, limiting the ability of tribal governments and businesses to put their lands into productive economic use.
- A lack of infrastructure investment leaves many tribal nations to cope with inadequate roads, utilities, and communication networks for economic development.

A further problem—and a puzzling irony—is inherent in the sovereign lands owned by a tribal government itself. To ensure the protections of tribal sovereignty and prevent alienation to third parties, lands for which title is held by the tribal government are often converted into “trust land”.²⁰⁷ The U.S. government acknowledges that it holds such land “in trust” for the tribe, and thereby extends its own legal protections over the land as against potential creditors or other outside entities. However, tribal governments cannot levy property taxes upon trust lands. This creates a “Catch-22” wherein tribes must place their land into trust in order to fully assert their sovereign jurisdiction over those lands, but by putting the land in trust they forfeit the sovereign capital revenue of property taxes that could be derived from their lands. This deprives tribal governments of a stable (and often sizeable) revenue source that is available to almost every

²⁰⁶ Wilkinson, Charles F. *Blood Struggle: The Rise of Modern Indian Nations*. New York: W.W. Norton, 2006.

²⁰⁷ The Office of Trust Services carries out the Bureau of Indian Affairs’ trust responsibilities to Indian tribes and individuals and oversees all headquarter activities associated with management and protection of trust and restricted lands, natural resources, and real estate services. See <http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/index.htm>

other jurisdiction in the U.S. to provide capital for infrastructure, essential services, and community development.²⁰⁸

3.2.2 *Commercial Capital Source Problems*

Economists and development scholars have long recognized that “[f]or any economy to grow, banking institutions must be available to help provide individuals with standard loans, and provide small businesses and industries with the necessary amount of capital to pay for wages, materials, and other developmental costs.”²⁰⁹ The Federal Reserve has noted the shortage of banking institutions located near native communities as a primary barrier to accessing capital markets.²¹⁰ Native Americans living on reservations may need to travel as much as thirty miles to access an ATM - a barrier known as the “buckskin curtain.”²¹¹ This dearth of mainstream financial institutions available to Native Americans has created a disproportionate unbanked population and a vacuum into which predatory lenders such as payday loan companies have moved, eroding tribal members’ personal capital with high interest rates and fees.²¹² Native Americans too often find themselves in a negative cycle where they turn to predatory lenders

²⁰⁸ “In general, tribal governments lack parity with states, local governments, and the federal government in exercising taxing authority. For example, tribes are unable to levy property taxes because of the trust status of their land”. National Congress of American Indians Policy Issues: Taxation. <http://www.ncai.org/policy-issues/tribal-governance/taxation>

²⁰⁹ Ansson, Jr., and Oravetz, *supra*, 462.

²¹⁰ Woodrow, *supra*, page 4. See also Ansson, Jr. & Oravetz, *supra*, at 462 (“In general, banking institutions have even failed to establish banking facilities within Indian country. For instance, the Navajo reservation, which has a population of more than 200,000 individuals, only has several banking facilities. Meanwhile, a border town, such as Gallup, New Mexico, with a population of 20,000, has almost three times as many as banks.”).

²¹¹ Wirtz, Ronald A. “Breaching the ‘Buckskin Curtain’,” Federal Reserve Bank of Minneapolis publication, Sept. 1, 2000.

²¹² “Borrowing Trouble: Predatory Lending in Native American Communities”. First Nations Development Institute Report, 2008.

because they cannot connect with traditional lenders, and then become ineligible for future traditional lending due to their indebtedness to predatory lenders.²¹³

Existing native-owned businesses that possess adequate collateral and good credit histories still struggle to obtain financing for operations and expansion.²¹⁴ Financing of more than \$100,000 tends to be difficult for Native Americans and tribal nations to obtain, reflecting a seemingly unwritten risk-underwriting threshold beyond which most banks are unwilling to lend.²¹⁵ Even Native Americans with above-average income often have difficulty financing the purchase or improvement of a home, as banks remain wary of any reservation-based collateral for their loans.²¹⁶ The unwillingness of the financial regulatory bodies to adapt policies and procedures that account for the conditions of tribal communities presents another significant barrier to capital access. On an institutional level, Regulation D of the Securities Act of 1933 appears (intentionally or otherwise) to preclude Native American nations from obtaining status as “accredited investors”.²¹⁷ The regulation thereby prevents tribal governments from accessing and investing in various potentially high-return financial vehicles, which further “inhibit[s] capital formation and investment in Indian Country.”²¹⁸ Tribes also do not qualify for the

²¹³ Hearing Before the United States Senate Committee on Indian Affairs: “Predatory Lending in Indian Country” 110th Congress, Senate Hearing 110-484, June 5, 2008. (“The effect of having a tribal population unbanked and subject to predatory financial firms is that it strips an already vulnerable population of the opportunity to advance by preventing them from building assets, equity and wealth.”)

²¹⁴ Woodrow, *supra*, 4.

²¹⁵ Office of the Comptroller of the Currency Report: “Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market”, March 2006 (“Similarly, nearly 70 percent of tribal respondents in the same study noted that larger-sized loans (defined as loans greater than \$100,000) to businesses operated by tribes or individual tribal members and private equity capital (both start-up financing and venture capital investments) were ‘difficult to obtain’ or ‘impossible to obtain.’ Bankers and tribal representatives specifically cite the lack of operating capital as a critical gap in tribal development projects.”).

²¹⁶ Johnson, Aaron Drue. “Just Say No (To American Capitalism): Why American Indians Should Reject the Model Tribal Secured Transactions Act and Other Attempts to Promote Economic Assimilation”. 35 American Indian Law Review 107, 2010-2011, 117.

²¹⁷ Clarkson, *supra*, at 285.

See also U.S. Securities and Exchange Commission information page: “Accredited Investors”. Accessed from <https://www.sec.gov/rules/other/265-23/nac020306.pdf> on 5/13/2016.

²¹⁸ Native American Capital, LP. “Policy Briefing: Native American Tribes Require Reg. D Change”. Accessed from <https://www.sec.gov/rules/other/265-23/nac020306.pdf> on 5/13/2016.

exemption from SEC registration for bond issues enjoyed by municipal, county and state governments, thereby greatly inhibiting the raising of capital for street, sewer, water facilities and other capital improvements in tribal communities.

A concurrent problem is that banks and other traditional capital sources are reluctant to provide funding to tribal communities, as tribal sovereignty precludes the use of standard financial security mechanisms such as property liens, foreclosures, or repossession of goods.²¹⁹ Tribal lands that have been placed into trust status cannot be leveraged as collectible collateral for bank financing, and the legal jurisdiction of tribal governments generally prevents property seizures and sales by outside commercial and law enforcement agencies. As a result, most American financial institutions do not do business with tribes or lend money for on-reservation business, housing, or other development activities, thereby perpetuating the obstacles to economic progress in Tribal communities. Despite federal incentives, non-native private lenders often forego providing needed banking services to tribal members due to perceived structural risks.²²⁰ The fear of sovereign immunity artificially raises the risk profile of tribal borrowers in the eyes of traditional banks, as does a lack of understanding of tribal law and legal systems.²²¹ The inability of banks to utilize traditional default remedies such as foreclosure and repossession on tribal lands also contributes to an industry-wide reluctance to finance Native American development needs.²²²

²¹⁹ Small, Jenny. "Financing Native Nations: Access to Capital Markets". 32 Rev. Banking & Fin. Law 463, 2013.

²²⁰ Woodrow, Susan and Miller, Fred. "Lending in Indian Country: The Story Behind the Model Tribal Secured Transaction Law." Business Law Today, Vol. 15, No. 2, November/December 2005.

²²¹ Statement of Susan M. Woodrow, Community Development Advisor, Federal Reserve Bank of Minneapolis: "Opportunities and Challenges for Economic Development in Indian Country." Hearing Before United States Senate Committee on Banking, Housing, and Urban Affairs, 112th Cong. 52, November 10, 2011. ("[L]enders and others face confusing and uncertain rules, and thus risky legal environments, that either deter them from doing business in Indian Country or raise the costs of doing business in tribal jurisdictions.")

²²² Swan, Jon. "Native American Bank: Banking the Unbanked". Boston Federal Reserve Publication, 2008. http://www.bostonfed.org/commdev/c&b/2008/summer/swan_native_american_bank.pdf

3.2.3 *U.S. Government Trust Management Problems*

An exacerbating factor that compounds the financial struggles of Native American nations is their inability to gain full access to capital and economic resources *they already own*. Dating back to the 19th Century, the United States government has assumed a fiduciary trust responsibility on behalf of Native American nations and their members to manage cash, land, and natural resources worth tens of billions of dollars. Among the many trust activities it undertakes, the U.S. government leases surface use and mineral rights on tribal property, and is responsible for depositing the monetary proceeds from such activities into capital accounts the U.S. manages for tribes and individual Native Americans. This trust concept was ostensibly designed to protect tribes and their members from exploitation by outside parties, and to help the tribal asset base grow for the benefit of future generations. Unfortunately, the various federal agencies in charge of trust assets have chronically mismanaged them, and the amount of actual capital made available for beneficial use by tribal communities is only a small fraction of the true value of the assets—effectively turning those assets into “dead capital”.²²³

Prior to instituting the tribal “trust lands” policy (with its attendant problems noted above), the U.S. government undertook a radically different approach from the late 19th to mid-20th Century. During this “termination era”, the federal government sought to end tribal ownership of land altogether through a policy that would create, in the words of President Theodore Roosevelt, “a mighty pulverizing engine to break up the tribal mass”.²²⁴ The U.S. government ordered the “termination” of ownership of lands by tribal governments, with fee-simple ownership of those

²²³ De Soto, Hernando. “Dead Capital and the Poor”. SAIS Review, Vol 21, No. 1, Winter-Spring 2001.

²²⁴ President Theodore Roosevelt, State of the Union Address, December 3, 1901. Accessed from <http://indigenousknowledge.org/discussion/native-conversations/big-question-1-does-tribalism-have-a-valid-role-in-modern-life/post/teddy-roosevelt/> on 5/13/2016.

lands being allotted in shares to individual tribal members. Two primary results followed, both of which devastated the potential land-capital base of Native American nations:

- 1) Unscrupulous real estate speculators acquired (legally or otherwise) vast tracks of the most desirable properties previously owned by tribal governments, and paid negligible value to tribal members for their lands. This deprived tribal communities of both the short and long-term capital value of the land that the “termination” policy was ostensibly designed to provide.
- 2) Due to a failure of the U.S. government to provide an orderly process for trans-generational ownership succession of allotted tribal lands, the land that remained in tribal members’ ownership became increasingly fractionated over time. Today, many parcels of land within reservations have dozens (sometimes hundreds) of owners, each holding a small percentage of the property title. This fractionation of ownership makes beneficial economic use of the land almost impossible, as securing sale/lease authorizations from so many owners is often unattainable.

Beyond the misguided and destructive policies regarding tribal lands, the U.S. further deprived tribes of capital generated from their retained territory. During the 20th Century and continuing today, the Department of Interior has taken responsibility for stewarding the oil/mineral leases and other resource-based revenue on over 56 million acres of tribal land.²²⁵ The federal trust relationship requires the United States to effectively manage the “acquisition, disposal, rights-of-way, leasing and sales” of tribal land resources, and assist tribes “in the management, development, and protection of trust land and natural resource assets.”²²⁶

²²⁵ Bureau of Indian Affairs Document: “Q&A: Department of the Interior’s Final Leasing Reform.” Accessed from <http://www.bia.gov/cs/groups/public/documents/text/idc-037327.pdf> on 5/13/2016.

²²⁶ Bureau of Indian Affairs Office of Trust Services website. Accessed from <http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/index.htm> on 5/13/2016.

Unfortunately, gross mismanagement of these assets became the norm, depriving Native American communities of vast sums of desperately needed capital.

The most prominent example of trust mismanagement leading to the destruction of Native capital is reflected in the recent “Cobell Settlement.” While serving as Treasurer of the Blackfeet Nation, Ms. Eloise Cobell discovered irregularities in the federal management records of funds held in trust by the United States for the benefit of hundreds of thousands of Native Americans. In many instances, it was discovered that there were no records at all. Working with the Intertribal Monitoring Association, she attempted in the 1980s and 1990s to convince the responsible federal government agencies of the need for procedural reform and an accounting of the trust funds. When the reform effort failed to achieve progress, Ms. Cobell initiated a class-action lawsuit in federal court to force the administrative reform and compel an accounting from the U.S. government of the trust funds belonging to individual Native Americans.²²⁷

After several trials over thirteen years, in 2010 the federal agencies with responsibility for managing trust funds for Native Americans effectively admitted they could not produce a reasonable accounting of their actions. It was clear from the evidence that for decades, billions of dollars in revenue collected by the government—money that was gained from the lease of tribal lands that should have gone into trust for native people—had simply disappeared. The exact amount of money that was unaccounted for has never been determined, due primarily to the government’s failure to keep even basic records of the business transactions occurring on tribal lands. Ultimately, the Cobell trust litigation was resolved in a settlement whereby the U.S. government pledged a total of \$4.3 billion in restitution and supporting programs for tribal

²²⁷ Details on the Cobell Indian Trust litigation, settlement, and compensation programs are available at: <http://www.indiantrust.com/>.

communities—but the average settlement payment check received by individual Native Americans was only one thousand dollars.²²⁸

The inability of Native American nations to unlock and utilize capital that should be available to them has severely limited their development progress. The combination of these structural, commercial, and inter-governmental factors has brought the lack of available capital for tribal communities to a point of socio-economic crisis. In response, in 2015 the United States Senate conducted hearings to investigate the problems and seek pathways toward solutions.

3.3 UNITED STATES SENATE OVERSIGHT HEARING ON ACCESS TO CAPITAL IN INDIAN COUNTRY

On June 17, 2015, the United States Senate conducted a public inquiry entitled the “Oversight Hearing on Accessing Capital in Indian Country”. The purpose of the hearing was to explore means for Tribes “to improve access to capital and their experience in working with federal partners” and “help Indian communities to prosper and to enjoy healthier lives.”²²⁹ The Hearing was chaired by Senator John Barrasso (R-Wyoming), Chairman of the Senate Committee on Indian Affairs, and participants included Senator Michael Crapo (R-Idaho), Senator Al Franken (D-Minnesota), Senator Jon Tester (D-Montana), Alejandra Castillo (National Director, Minority Business Development Agency), Derek Watchman (Chair, National Center for American Indian Enterprise Development), Ross Hill (CEO, Bank2), and Dante Desiderio (Executive Director, Native American Finance Officers Association).²³⁰

²²⁸ Guedel, *supra*.

²²⁹ Opening comments of Senator John Barrasso, Chairman, United States Senate Oversight Hearing on Accessing Capital in Indian Country, June 17, 2015.

²³⁰ Video of the full United States Senate Oversight Hearing on Accessing Capital in Indian Country, June 17, 2015. Accessed from <http://www.indianz.com/News/2015/017889.asp> on 5/13/2016.

The Oversight Hearing produced a number of key findings regarding the current state of capital access for Native American nations:

- Economic development and the capital necessary for that development are significant needs in Native communities. This development relies on capital to start, support, and maintain businesses of all sizes.
- Native and tribal-owned businesses face unique challenges beyond those that non-native businesses in general face. For example, many tribes are located in remote areas, far away from transportation, distribution, or communication systems suitable for sustainable commerce.
- Individual Native Americans do not own as many small businesses compared to other demographic groups. For the most part, they also do not receive business or financial assistance from tribes. Native-owned businesses, however, tend to employ more people than those operated by small business owners in other demographic categories, thereby offering a greater potential impact on employment levels if adequately funded for growth.
- Cost-effective capital for Native American nations is lacking in both access and in being effective in meeting the intended purposes, i.e. the limitations on the use of capital imposed by lenders render tribes unable to deploy it where it is needed most.²³¹

The testimony of the Senators and witnesses participating in the Oversight Hearing provided further insight into the specific conditions and challenges Native American nations and their members confront in seeking capital to advance their development programs. The clear consensus from the Oversight Hearing is that a substantial and urgent need for increased access to capital exists for tribal communities, as the mainstream financial institutions and federal

²³¹ Comments of Senator John Barrasso, Chairman, United States Senate Oversight Hearing on Accessing Capital in Indian Country June 17, 2015.

government programs have chronically proven to be inadequate in providing funding opportunities for economic and community development. The findings of the U.S. Senate clearly mandate a new and more effective institutional and government-to-government partnering approach for increasing the capital available to Native American nations.

3.4 A SOVEREIGN SOLUTION—THE TRIBALLY CHARTERED BANK

In order to overcome their chronic lack of access to capital, Native American nations cannot hope to rely on improvements within the existing financial systems. Indeed, the structural format and economic priorities of those systems virtually ensure the continuation of the status quo, where tribal communities are overlooked, underserved, and struggle to obtain negligible amounts of capital to advance their development. Native American nations must therefore disrupt this inertia by introducing a new dynamic element into the landscape of financial institutions. To help provide an innovative solution to the problem of insufficient capital for tribal development, this paper describes an initiative to create a new Tribally Chartered Bank system (TCB) designed to improve access to capital for tribal communities.²³² This paper describes the legal basis, organizational structure, and potential benefits of the TCB for Native American nations, their partners, and the tribal citizens they represent.

²³² The TCB project concept is developing under the leadership of economic advisor J.D. Colbert, whose past positions include serving as President of Native American Bank, N.A. and as Bank Examiner for the Federal Reserve Bank of Boston. See Melmer, David. "A Conversation with Chickasaw/Creek J.D. Colbert of Native American Bank". *Indian Country Today*, March 29, 2006. The TCB structure and operational approach described in this paper is founded upon Mr. Colbert's presentation "Establishing a Sovereign Financial System" at the May 2015 University of Washington Jackson School of International Studies Tribal Development Colloquium. The full presentation and accompanying materials are accessible at: <http://www.foster.com/resources/events/sovereignty,-development-and-human-security-a-coll?search=colloquium>.

3.4.1 *Concept Plan and Benefits*

The TCB is a new banking system—rather than a new bank under the existing system—that is chartered under tribal law and regulated by a tribally-appointed governing body. Organized under the sovereign authority of one or more tribal governments and free from the short-term focus of publicly-listed banks, the TCB offers a means for tribes to secure the “patient capital” required for long-term economic and infrastructure development. The potential benefits of the TCB for Native American communities are substantial and far-reaching, including:

- Direct capital investment into on-reservation businesses, housing, and infrastructure.
- A long-term, “patient capital” approach to access and ROI on capital investments, designed specifically for the Native American paradigm.
- Lending standards based on tribal needs and conditions, not bank shareholder demands.
- Facilitation and leveraging of existing federal loan guarantee programs for tribal communities.
- Opportunities to become the primary banking institution for emerging businesses such as legal cannabis and online gaming.
- Embracing a culture of creativity and innovation in financial products, processes and technology by the TCB and the tribal bank regulatory body.

The TCB’s organizational structure and operational activities can be designed for mutually-beneficial integration into existing American/global financial networks through:

- Cooperative oversight with U.S. agencies, providing transparency and legitimacy.
- Utilizing existing and accepted financial infrastructure such as SWIFT and NACHA.
- Deploying state-of-the-art FinTech to enhance efficiency and reliability for transactions.

The TCB is an institutional means for Native American nations to address and improve the chronic conditions of poverty, unemployment, and underdevelopment within their communities. Supporting the formation and operations of the TCB is also a means for the United States government to provide substantive redress for its historical policies that have directly resulted in the deleterious economic conditions experienced by tribes. In contrast with traditional banks that are constrained by the legal strictures of federal or state charters, the TCB embodies the beneficial flexibility of tribal laws and sovereignty, and provides a powerful instrument for enhancing Native American self-determination. Banks chartered as a TCB can also gain a competitive financial advantage by organizing as tribal Section 17 corporations to limit their tax exposure.²³³

Banks chartered under tribal law would be imbued with the sovereign powers and immunities of tribal governments, allowing them to participate in emerging economic opportunities such as online gaming and cannabis retailing that are currently either explicitly or effectively prohibited by federal law for federal and state chartered banks.²³⁴ The cash generated by businesses conducting these activities is presently “unbankable”, as federal regulations either prohibit or otherwise dissuade traditional commercial banks from accepting deposits from these forms of commerce.²³⁵ However, a TCB chartered under sovereign tribal law could become the

²³³ Guedel, *supra*, 99-104.

²³⁴ “Banks face a number of risks if they choose to serve the industry, up to and including closure of their institutions,” said Amanda Averch, Director of Communications for the Colorado Bankers Assn. “Regulators can impose civil money penalties, cease-and-desist orders, fines and can ban bankers from their careers for life.” See also Kelley, David. “Limited by U.S. Banking Rules, Pot Businesses Rely on Bags of Cash and Armed Guards”. Los Angeles Times, December 19, 2015. Accessed from <http://www.latimes.com/nation/la-na-pot-banking-20151219-story.html> on 5/13/2016.

²³⁵ Federal Bureau of Investigation website article: “Online Gambling – Don’t Roll the Dice.” Accessed from https://www.fbi.gov/news/stories/2007/june/gambling_060607 on 5/13/2016. “You can go to Vegas. You can go to Atlantic City. You can go to a racetrack. You can go to those places and gamble legally. But don’t do it online. It’s against the law,” says Leslie Bryant, head of our Cyber Crime Fraud unit at FBI Headquarters. We’ve also had success against companies supporting the money flows behind virtual gambling. In January, for example, two Canadians were charged with operating an Internet payment services company that transferred billions of dollars in illegal gambling proceeds between U.S. citizens and the owners of online gambling sites outside the country. In

primary depository agency for these funds, in a manner consistent with the U.S. Department of Justice mandate that tribal commerce related to such activities “contain robust controls and procedures”.²³⁶ Two graphs illustrate the scale of the current and projected revenue from online gaming activity and legal cannabis sales, and indicate the corresponding economic opportunity for the TCB to service these revenue streams:

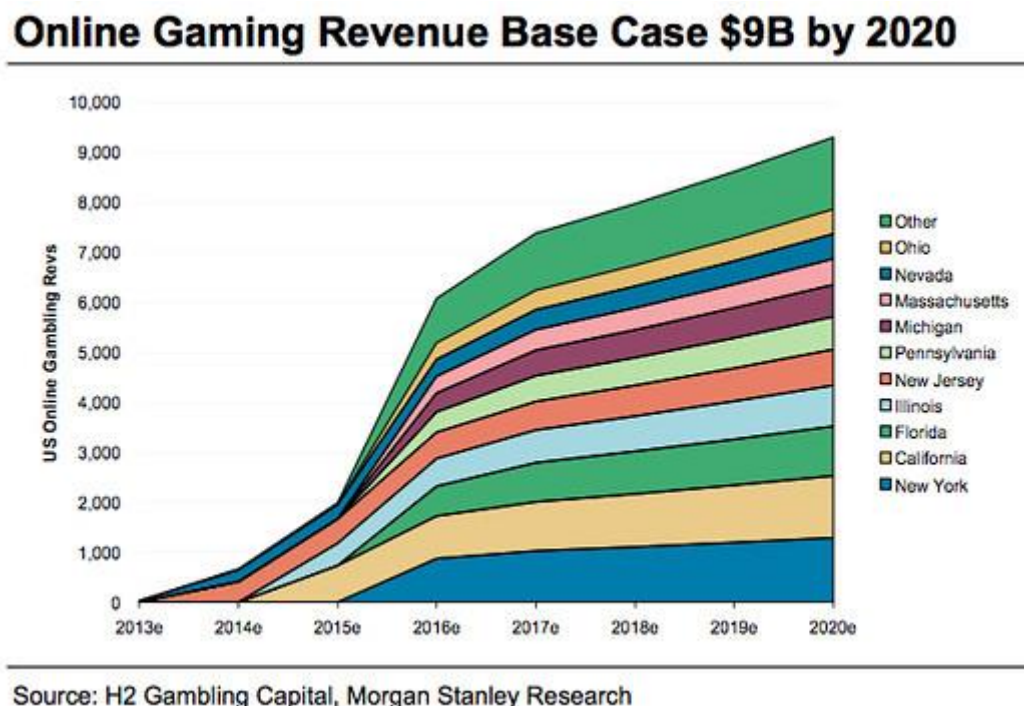


Figure 3.2: Online Gaming Revenue Base Case \$9B by 2020

2003, another Internet financial services company paid \$10 million in a civil agreement to settle allegations that it aided illegal offshore and online gambling agreements. The U.S. government has also settled several cases with online businesses that have accepted money to market virtual gambling operations.”

https://www.fbi.gov/news/stories/2007/june/gambling_060607

²³⁶ U.S. Department of Justice Memorandum: Guidance Regarding Marijuana Enforcement. James M. Cole, Deputy Attorney General, August 29, 2013.

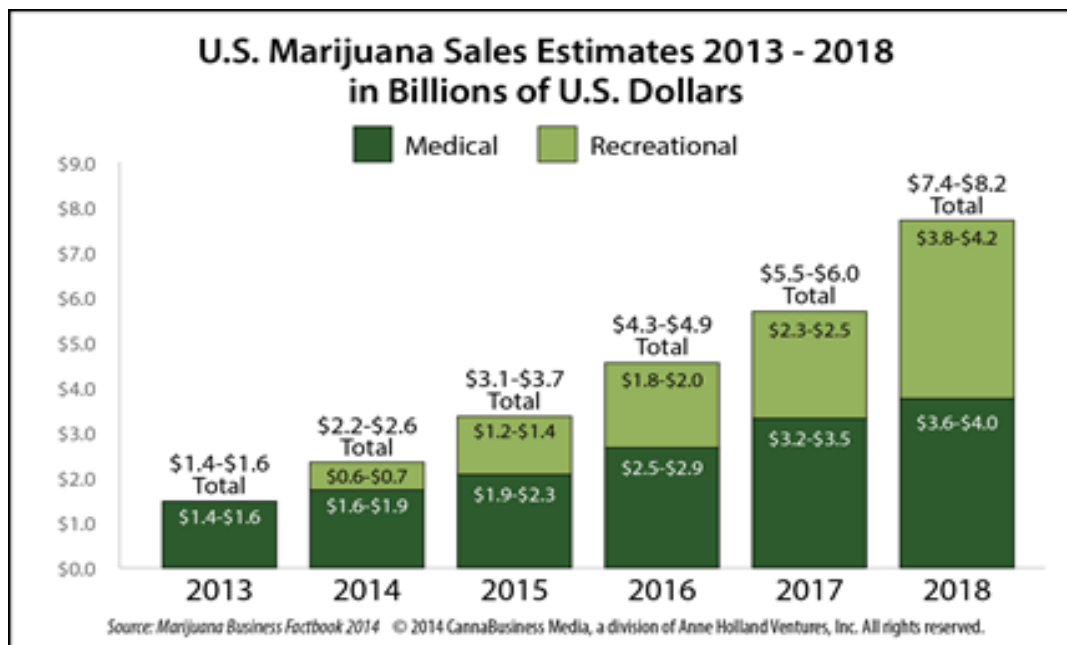


Figure 3.3 U.S. Marijuana Sales Estimates 2013-2018 in Billions of U.S. Dollars

These two activities are sustainably generating billions of dollars of revenue each year - almost none of which is being put to constructive use in the existing U.S. banking system. With federal and state chartered banks unable or unwilling to accept deposits from these economic activities, the billions of dollars in annual revenue generated from the activities are being channeled to off-shore accounts or money-laundering schemes, creating a huge problem for U.S. law enforcement. The United States Department of Justice is now specifically seeking to partner with tribal governments in “[p]reventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels.”²³⁷ The tribal government(s) organizing the TCB can help resolve these problems by entering into a cooperative oversight agreement with U.S. financial agencies for depository receipts and reporting, thereby taking these billions of dollars out of the hands of foreign and/or or unlawful entities and placing them into a legitimate and regulated “on-shore” bank. The direct and potentially gigantic financial benefit for Native

²³⁷ U.S. Department of Justice Memorandum: Policy Statement Regarding Marijuana Issues in Indian Country. Monty Wilkinson, Director, October 28, 2014.

American nations will be the TCB's ability to generate fee revenue from the financial services it provides to these areas of commerce, and to leverage the cash deposits to provide the source capital for financing development in tribal communities.

3.4.2 *Strategic Approach*

The purpose of the TCB should not be to compete with existing banks and replicate their standard activities, which have obviously fallen short in funding Native American development. Instead, the TCB should focus on filling the void commercial banks have created by their lack of service to tribal communities, and utilize electronic technology in lieu of costly (and commercially unnecessary) physical infrastructure for facilitating capital transactions.

The Tribally Chartered Bank can lay the groundwork for improving tribal access to capital by adopting three strategic priorities:

- 1) Creating a culture of financial innovation, for both the scope of services to tribal communities and the delivery methods for those services;
- 2) Providing banking services to under/unbanked areas of lawful commerce, including traditionally overlooked customers in tribal communities and new emerging ventures (e.g., online gaming & legal cannabis); and,
- 3) Emphasizing "real time" electronic payments and settlements, employing affordable and readily upgradeable internet-based technologies.

Building a network of traditional brick-and-mortar depository banks accessible to all 566 federally recognized tribes would be too expensive and take too long to have a real impact within a relevant time period. Instead, the TCB can utilize electronic payment technology to leap forward into next-generation banking activity, and use internet-based access to connect with the

multitude of Native American nations. In lieu of expensive multi-state marketing campaigns, the TCB can partner with national tribal organizations such as the National Congress of American Indians and the Native American Finance Officers Association to help inform tribal communities of the TCB's programs. For tribes whose economic prospects have been limited by geographic isolation, the ability to participate in the global economy through electronic financial transactions via a tribally-chartered bank presents opportunities to engage with potentially limitless customers who need never set foot on the reservation. By combining the new legal regime of a tribal banking charter with existing technology and inherent tribal sovereignty, Native American nations can obtain capital on their own terms for investing in self-directed economic development. The initial step in the institutional formation of the TCB is for the sponsoring tribe(s) to adopt a Tribal Banking Code and create a Tribal Banking Commission.

3.4.3 *The Tribal Banking Code, Tribal Banking Commission, and TCBs*

The foundational legal element for the structure and operations of the TCB will be a new Tribal Banking Code—a set of laws that authorize the TCB's creation and govern its activities. The sponsoring tribe(s) for the TCB would undertake the formation of the Tribal Banking Code as a sovereign political action, ratified in accordance with the required procedures in the applicable tribal Constitution(s). Although the Tribal Banking Code will be established as an independent body of sovereign tribal law, the existing banking codes for federal/state chartered banks should be studied for best practices guidance and to smooth the process for acceptance of the TCB into

global financial networks.²³⁸ Key elements and priorities for an effective Tribal Banking Code include:

- Threshold standards for capitalization and organization of TCB operations.
- Transparency, conflict of interest, and insider-dealing regulations.
- Consumer protection and public disclosure requirements.
- Compliance standards for protecting customer privacy and account security.
- Rigorous but efficient bank examination protocols.
- Regular evaluations and CAMELS-type ratings of all TCB institutions.²³⁹

Although the Tribal Banking Code will be established under tribal law, advance consultations with U.S. banking regulators should be undertaken, and appropriate provisions for compliance with major U.S. federal banking laws should be incorporated into the Tribal Banking Code. Of particular importance will be compliance with the Anti-Money Laundering Act, the Bank Secrecy Act, the PATRIOT Act, and Know Your Customer rules.²⁴⁰ This approach acknowledges the practical reality of the dominant status of U.S. regulations in the global financial system, will increase opportunities to obtain beneficial technical assistance from federal agencies, and will help accelerate the implementation and acceptance of the TCB into global payment and credit systems.

The Tribal Banking Code will also serve to create the structural framework for the system through the establishment of a Tribal Banking Commission, empowered with supervisory and

²³⁸ Information regarding structural models and baseline requirements for new banking ventures is discussed in detail in the Office of the Comptroller of the Currency's "Comptroller's Licensing Manual—Charters", February 2009 edition, accessible via <http://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/charters.pdf>.

²³⁹ The FDIC's Uniform Financial Institution Rating System applicable to U.S.-chartered banks utilizes financial assessment categories known by the acronym "CAMELS"—Capital, Asset quality, Management, Earnings, Liquidity, and Sensitivity to Risk. See 62 Fed. Reg. 752, January 6, 1997.

²⁴⁰ Myers, Forest E. *Basics for Bank Directors*. Federal Reserve Bank of Kansas City, 2005, 5-19.

regulatory authority over the banking entities it subsequently charters in accordance with the Tribal Banking Code. The Tribal Banking Commission will be an independent regulatory body of the tribal nation(s) sponsoring the TCB system, imbued with the sovereign powers and immunities of the tribal government(s), and will have responsibility for the creation, regulation, and regular examination of TCBs. The initial Commission will be established with a Governing Board consisting of perhaps 5-7 members, appointed pursuant to the processes and with the experience qualifications specified by the sponsoring tribe(s). Ideal Board members for the Tribal Banking Commission will have significant prior experience with commercial banking, banking law, and/or service with a federal or state bank regulatory agency.

The Tribal Banking Commission will be responsible for appointing the system's Bank Commissioner, who will take leadership of the day-to-day operations of the Tribal Banking Commission and be its primary public figure. An early priority for the Tribal Banking Commission and its Commissioner should be the pursuit of a Cooperative Oversight Agreement with U.S. banking regulators, to coordinate on a co-regulation regime that will strengthen the legitimacy of the TCB system by providing access to federal investigative and enforcement resources for legal compliance issues.²⁴¹ In addition to its institutional duties, the Tribal Banking Commission should envision and foster a culture of innovation and creativity in the financial products, processes, and service delivery of the banks it charters.

The Tribal Banking Commission should be organized to be financially self-supporting and self-sustaining, with revenue derived through fees and assessments that it will levy upon the

²⁴¹ Co-regulation is a standard aspect of U.S. and global financial systems, and is gaining increased prominence due to the proliferation of domestic and international financial vehicles and regulations. See e.g. "Market Infrastructure Firms Urged to Take a Co-Regulation Approach". Financial News, September 18, 2013. ("Because the financial industry is so busy following one regulation after the other, it has no time, money or resources to go into market requirements...We need to go for co-regulation, where the regulator and the financial industry sit together and define the rules and regulations.")

banks it charters. This will be undertaken within the Commission’s primary activity of issuing bank charters to Tribally Chartered Banks. The TCBs will be the entities that directly manage the capital within the Tribally Chartered Bank system. They will provide the public interface for the system, facilitate payments and deposits, and be the vehicle for providing access to capital for development in tribal communities. The initial TCBs will be organized as part of the overall creation of the TCB system, and be directly connected with the sponsoring tribe(s). The Tribal Banking Commission may also charter TCBs that are formed and owned by other federally recognized Indian tribes. Any TCBs formed by other tribes and chartered by the Tribal Banking Commission shall be subject to the supervisory, regulatory and examination authority of the Commission.

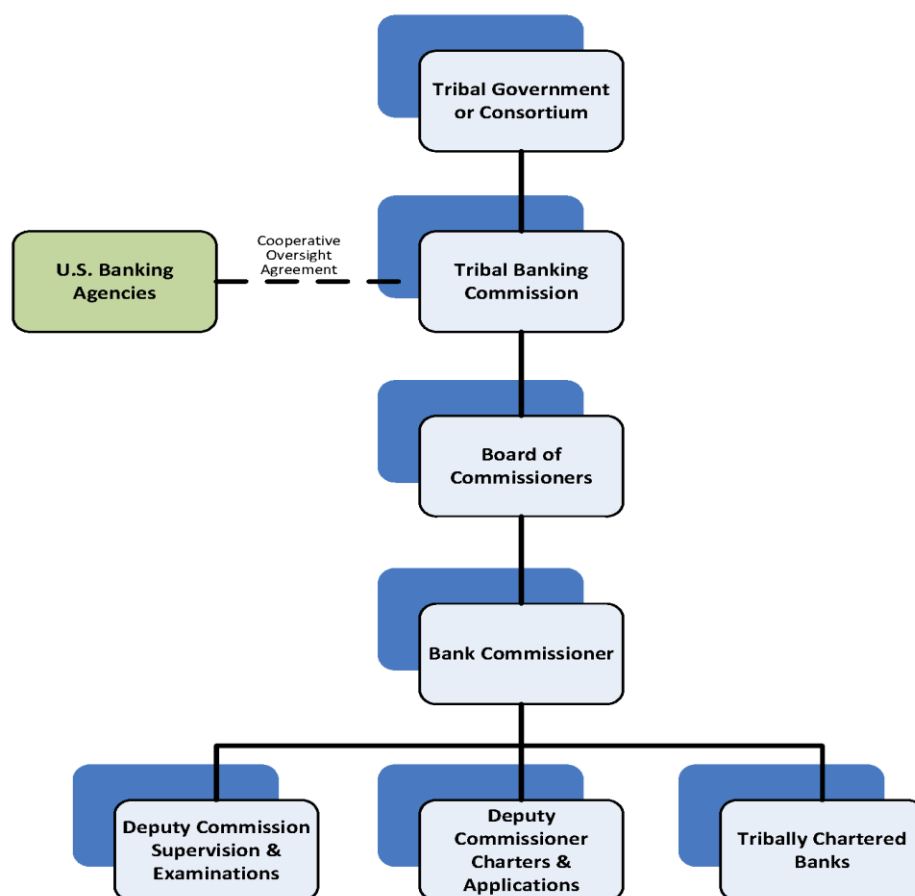


Figure 3.4: TCB Governance and Regulatory Structure

The primary mission of the TCB system is to facilitate increased access to capital for tribal communities. An integral part of the program for achieving this mission is facilitating existing capital access programs. As noted during the U.S. Senate Oversight Hearing, there are numerous federal programs that offer loans, loan guarantees, and other financing vehicles for Native American development projects on favorable terms. In addition to the Bureau of Indian Affairs, funding programs specifically designed for Native American nations are offered by the U.S. Department of Agriculture, the Department of Energy, the Department of Housing and Urban Development, the Economic Development Agency, the Department of Veterans Affairs, and many others.²⁴² However, these programs are chronically underutilized and have never come close to achieving their full potential. Two primary reasons for this failing are: 1) a lack of general knowledge about the programs within the commercial lending community, and 2) a lack of experience (and/or will) on the part of commercial lenders in fulfilling the required federal requirements and procedures to access the programs. The TCB will be uniquely placed to fill this gap, and should emphasize communication and partnering with federal agencies that provide financing support for tribal development—and in the process become the one-stop-shop where tribal communities can learn about and participate in the various funding programs offered by the U.S. government.

In order to efficiently achieve the goal of facilitating increased access to capital for Native American nations, TCBs must adopt a “cutting edge” and “lean-and-mean” approach to the scope of services they provide. Investing capital to create traditional brick-and-mortar banking

²⁴² A list of programs offered by various federal agencies for tribal development financing is provided in the Bureau of Indian Affairs document “Federal Loan Programs for Economic and Community Development throughout Indian Country and Alaska”, accessible via <http://www.bia.gov/cs/groups/xieed/documents/document/idc-022680.pdf>. See also Guedel, *supra*, Chapter 1: “Federal Programs for Tribal Economic Development”.

infrastructure will reduce the amount of capital TCBs can invest back into tribal communities, thereby undermining the driving purpose for the program. Instead, TCBs initially should be conceived as limited purpose banks focusing on advanced electronic commerce, including serving as a preferred platform for electronic payments and funds transfers for commercial and individual customers.

3.4.4 *21st Century E-Commerce*

The rapidly changing nature of how people handle money in every day transactions presents a prime opportunity for the TCB concept. Instead of walking into a bank to withdraw cash before traveling again to make purchases, people now simply place a card, phone, or watch next to an electronic terminal at the shop checkout counter. Increasingly people do not even leave home to make such purchases, using web portals such as Amazon to buy everything from gifts to groceries, and even high-capital transactions such as mortgage loans are often completed entirely via electronic communication.²⁴³ By focusing on the high technology / low infrastructure model of commerce, the TCB can participate efficiently in the current and emerging electronic capital transactions that will be dominant throughout the 21st Century.

The TCB's initial primary commercial activities should focus on real-time electronic funds transfers, payments, and receipts. Utilizing technologies to facilitate instantaneous electronic payments and transfers of funds will enable the TCB to quickly integrate into fee-generating commerce streams including debit card networks; VISA, MasterCard, and American Express systems; the use of e-mail/e-transfer to make instant payments; membership in the NACHA electronic payments association, the Federal Reserve wire system, and the Depository Trust

²⁴³ The author recently refinanced a home mortgage without ever setting foot in a bank or escrow office, and with all communication, document execution, and payment transfers accomplished via the internet.

Company; and retail payment networks such as Apple Pay and PayPal. Focusing on electronic capital transfers will also position TCBs for participating in the emerging e-currency commerce based on block chain platforms such as Bitcoin.²⁴⁴ Focusing on e-commerce for fee generation, rather than the traditional banking approach of basing revenue on interest charges on loans, will be advantageous to the operations and growth of TCBs in numerous ways, including:

- Reduced credit risk profile for bank assets needed to sustain operations.
- Lower reserve capital requirements related to operational assets.
- The ability to maintain smaller Allowance for Loan Losses than peer institutions.

The emphasis on electronic fee-for-service to produce topline revenue also reflects the specific realities of the TCB's mission to serve the needs of Native American nations. The "patient capital" TCBs will provide to finance tribal development projects will need to be structured on long-term payback timeframes and below-market interest rates. Therefore, the fee revenue from e-commerce will be the TCBs' primary profit engine, allowing the TCBs to provide tribal development financing on lower-profit terms that traditional banks refuse to offer.

3.4.5 *Innovation and FinTech Partnering*

Serving as the base for advanced commerce requires the TCB to incorporate forward-looking technology in all of its operations. The key to successfully implementing the vision of creating a nimble and efficient electronic commerce enterprise is for TCBs to partner with financial technology firms ("FinTech") that are rapidly and constantly innovating financial products.

FinTech companies are presently offering systems designed to move money rapidly and on a

²⁴⁴ See Browning, Lynnley. "Oglala Sioux Hope Bitcoin Alternative, Mazacoin, Will Change Economic Woes". Newsweek, August 14, 2014. <http://www.newsweek.com/2014/08/22/tribe-brought-you-custers-last-stand-sitting-bulls-bitcoin-264440.html>

variety of mobile platforms, and base their business models on connecting their technology with global financial systems and the attendant payments and settlements regimes. These technologies facilitate rapidly growing consumer demand for same-day payments and settlements, mobile banking and mobile payments, seamless integration of technological platform, and timely reporting and tracking of financial transactions.

Since only the very largest banking institutions can afford to develop their own proprietary IT platforms and functionality, the majority of financial institutions rely wholly upon third party FinTech providers for their core IT processing and transaction platforms.²⁴⁵ With little to no control over the core processing platform for their financial transactions and standard services, it is difficult for the average bank to obtain a competitive advantage in the market in terms of their ability to positively differentiate their products and services. However, the TCB's inherent competitive advantage of tribal sovereignty presents an attractive new opportunity for FinTech companies to become market leaders—particularly in providing electronic systems to facilitate the previously discussed “unbankable” commerce the TCB is intended to capture. The chance to become the leading provider in these emerging industries is a lucrative proposition for FinTech providers, and the TCB can leverage this unique opportunity to create beneficial long-term partnerships with FinTech firms and obtain cutting-edge technology at an affordable price.

²⁴⁵ Core IT processing and electronic platform systems for banking are presently provided by FinTech companies such as FiServ and Jack Henry. Beyond the core systems, “middleware” systems offered by FinTech firms such as Yantech, Moven, Stripe, Square, Inc., iZettle AB, BrainTree, Balanced Payments, and Standard Treasury provide financial institutions with APIs (application program interface) to develop end-user applications to facilitate capital transfers, mobile banking and payments, e-commerce, and personal financial money management.

3.4.6 TCB Organizational and Chartering Process

The creation of a paradigm-shifting financial system like the TCB requires a methodical approach for initiating and performance-testing each aspect of the organization structure and operational activities as they come into being. The overall process for organizing the TCB system from conception to operational status is illustrated in the following flowchart:

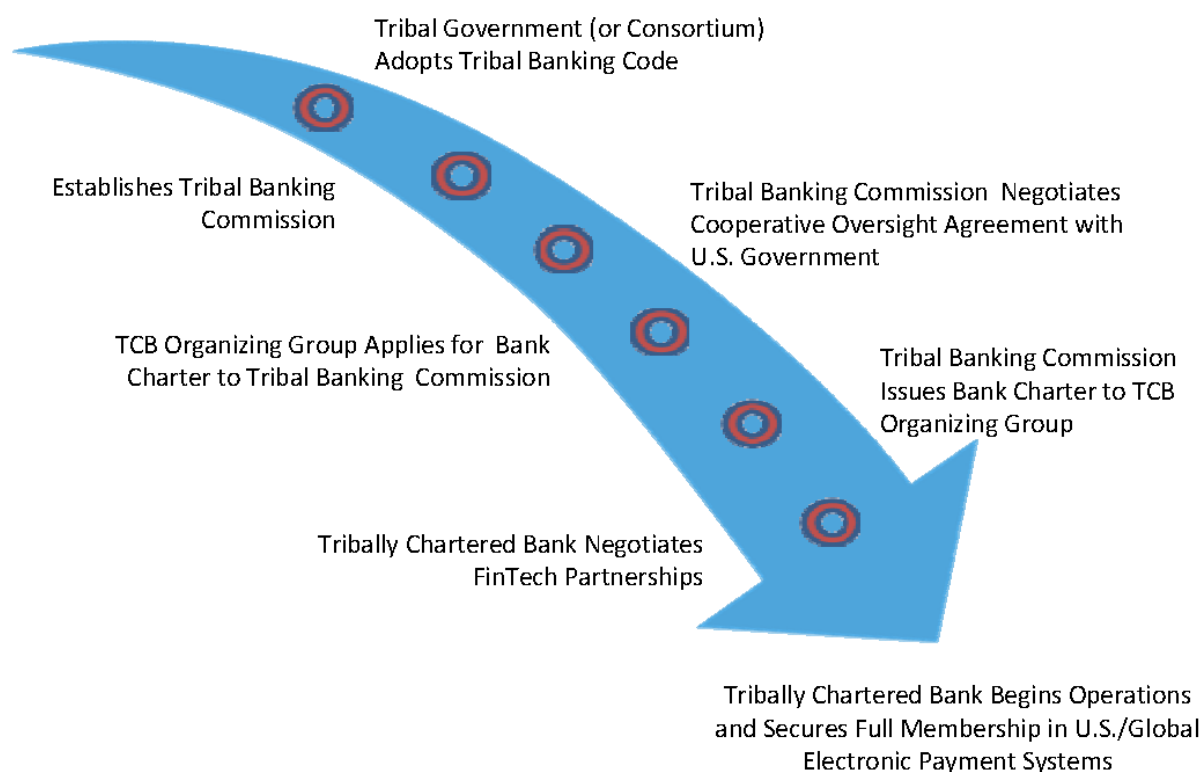


Figure 3.5: TCB Organizational and Chartering Process

The timeline for initiation and completion of the required milestones will depend upon and be impacted by numerous factors, but the successful completion of a given stage should increase the overall project momentum, e.g. creation of a sound Tribal Banking Code will help attract experts to serve on the Tribal Banking Commission. The crucial first steps of establishing the legal codes and regulatory structure for the TCB system can be undertaken immediately and

solely by the sponsoring tribe(s), thereby enabling the process to move forward without reliance upon outside parties or waiting for an alignment of favorable circumstances.

3.4.7 *SWOT Analysis for the Tribally Chartered Bank*

The TCB system is a new and ambitious enterprise, and should be rigorously scrutinized at the conceptual and operational level to determine its viability. A SWOT analysis provides a structured planning method to evaluate the strengths, weaknesses, opportunities and threats involved in a project or in a business venture. For the Tribally Chartered Bank project, the SWOT analysis can be structured with the following categories:

Strengths: Characteristics of the TCB that give it an advantage over others.

Weaknesses: Characteristics that place the TCB at a disadvantage relative to others.

Opportunities: Elements in the environment that the TCB could exploit to its advantage.

Threats: Elements in the environment that could cause trouble for the TCB.

SWOT analysis for the TCB reveals numerous dynamic factors in each category:

Strengths

- Tribal sovereignty provides legal basis for competitive market advantages.
- Self-regulation allows TCBs to set credit standards appropriate for tribal communities.
- Tax advantages of tribal status enhance positive revenue margins.
- Ability to pursue presently unbanked revenue streams.
- Immediate appeal for participation by 567 Native American nations.
- Electronic service platform provides agility to predict/serve new commerce trends.
- Low Capex costs by avoiding brick-and-mortar branch model.
- Fee-for-service revenue reduces reliance upon deposit and loan generation.
- Shortened time to profitability from lower overhead costs.
- Ability to provide “patient capital” to tribes through customized financing terms.

Weaknesses

- Unprecedented endeavor with no equivalent pathway model.
- Must have a financially strong and fully committed Sponsoring Tribe.
- Investments by other tribes may not materialize.
- Concept perception may be tainted by prior history of “off-shore” banks.
- Requires FinTech partnering to implement technology platforms.
- Fear of tribal sovereignty/immunity on the part of potential non-tribal partners.
- Tribal deposits may require FDIC insurance, adding to administrative burden.
- Tribes may be reluctant to work together due to competing economic interests.
- Likely requires co-regulation regime with U.S. government for legitimacy.

Opportunities

- Service to increasing numbers of Native-owned businesses.
- Ability to bank emerging commerce such as legal cannabis and online gaming.
- Become bank of choice for 200+ tribal casinos.
- Establish TCB as one-stop-shop for accessing federal loan guarantee programs.
- “Corner the market” for development financing to Native American nations.
- Partnerships with innovative FinTech companies readily available.
- Perfect model for banking emerging block chain currencies such as Bitcoin.
- Pro-business regulation from Tribal Banking Commission to entice new customers.
- Some existing banks may switch their charter to the Tribal Banking Commission.
- Will be high-profile endeavor that can generate significant free positive publicity.

Threats

- Effort may be viewed as an attempt to skirt U.S. banking laws, rules and regulations.
- Failure to create a legally viable and operationally sound Tribal Banking Code.
- Inability to appoint expert personnel to Tribal Banking Commission.
- Inability to hire necessary tech/marketing experts to implement TCB services.
- May not be able to obtain FDIC insurance and/or co-regulation agreement.
- May not be able to obtain Federal Reserve Bank Master Account Number.
- U.S. banking community may react negatively and attack the effort.
- Refusal of U.S. government to co-regulate legal cannabis/online gaming accounts.
- U.S./global banking laws may conflict with TCB code provisions.

The threats that confront the TCB concept and its implementation are real and not insubstantial, and they require a considered approach to neutralize. However, given the chronic

difficulties faced by Native American nations in accessing capital, a far larger threat to their development is doing nothing and maintaining the status quo. The chronic problems persist despite repeated attempts to modify the existing finance system to ameliorate such conditions, and despite various federal government interventions into the capital markets and financial system designed to improve conditions in tribal communities. Although well-intended, federal efforts such as the BIA Loan Guaranty program consistently fall short in addressing tribal needs—not least because of a paucity of funding that Senator Al Franken describes as “embarrassing”.²⁴⁶ The United States Special Trustee for American Indians Vincent G. Logan has stated: “When we talk about economic development, I always tell all the people that I work with: credit is how the world was built. We are not going to get very far unless we have access to credit.”²⁴⁷ On balance, the SWOT analysis for the Tribally Chartered Bank concept indicates the risks of the venture are outweighed by the opportunity to fulfill an urgent and substantial need for credit and capital among Native American nations. The inherent challenges of creating a new financial system dictate that successful implementation of the TCB will require focused effort and investment by one or more tribal governments, beneficial partnership with advanced FinTech firms, and a collaborative inter-governmental relationship with the United States.

3.5 POLICY RECOMMENDATIONS AND NEXT STEPS

The Tribally Chartered Bank presents an opportunity to create an innovative financial institution that can directly address and improve the access-to-capital conditions for Native American

²⁴⁶ See Appendix A.

²⁴⁷ United States Special Trustee Vincent G. Logan, Presentation: “Development Strategies for Tribal Nations”. University of Washington Tribal Development Colloquium, Seattle, May 28, 2015, hosted by W. Gregory Guedel of the University of Washington Jackson School of International Studies. Special Trustee Logan’s entire presentation may be viewed at: <https://youtu.be/H9Ru4hVsyJM>.

nations and their members, and facilitate the delivery of the “patient capital” needed for long-term economic, infrastructure, and community development in tribal communities. Patient capital is not unprofitable capital—a TCB must be profitable to sustain its operations. However, a TCB need not continually and exclusively chase the highest possible profit margin, nor abandon the financing of lower-margin but socially beneficial activities. A TCB can maintain a long-term view of capital productivity consistent with the “seven generations” concept, rather than a short-term focus on meeting the quarterly expectations of outside financial analysts, and prioritize projects that meet the urgent needs of the most overlooked communities.²⁴⁸

The next steps for bringing the TCB to fruition involve policy actions by the tribal government(s) taking leadership of the program:

- Drafting TCB governance codes that embody consistency, transparency, cogent dispute resolution mechanisms, and robust oversight.
- Investing in partnerships with FinTech companies to create electronic payment infrastructure.
- Presenting a workable cooperative regulatory oversight plan to U.S. finance authorities.
- Implementation of the TCB program will be facilitated by a corollary set of policy actions undertaken by the United States Government:
- Providing technical assistance for integrating the TCB into existing domestic and global electronic payment networks.

²⁴⁸ "The Peacemaker taught us about the Seven Generations. He said, when you sit in council for the welfare of the people, you must not think of yourself or of your family, not even of your generation. He said, make your decisions on behalf of the seven generations coming, so that they may enjoy what you have today." Oren Lyons (Seneca), Faithkeeper, Onondaga Nation. See <http://www.pbs.org/warrior/content/timeline/opendoor/roleOfChief.html>.

- Designing a clear path of required actions for the TCB to obtain FDIC insurance for future depository accounts.
- Working proactively to implement a cooperative regulatory oversight regime, and providing guidance and resources to establish electronic security and fraud-prevention best practices for the TCB.

A key element for launching the TCB initiative is obtaining an initial “critical mass” of support among tribal nations, and for credible leaders to agree to manage the program’s creation. To obtain federal cooperation, tribes must first demonstrate the commitment, know-how, and willingness to invest in the program and create the legal and operational infrastructure. To help build this support, the academic community can take an active role in facilitating meetings and discussion among tribal leaders, utilizing in-person networking and real-time electronic participation models similar to the University of Washington’s 2015 Tribal Development Colloquium.²⁴⁹ Partnering with trans-tribal entities such as the National Congress of American Indians and the First Nations Development Institute can assist in bringing key leaders into the discussion, and help with identifying appropriate divisions of labor among participating tribes based on relative institutional strengths, resources, and administrative capabilities.

The TCB represents a game-changing paradigm shift in that it; a) disrupts the 240-year model in the U.S. of the “dual banking system” (i.e. only state or federal charters) by creating a tribally chartered bank system; b) is a public policy innovation arising locally and organically from tribal communities to intervene in the capital markets to address their well-documented and

²⁴⁹ In May 2015 the University of Washington’s Jackson School of International Studies hosted a two-day Colloquium focused on Native American sovereignty, development, and human security. The Colloquium provided an exploration of the mutual sovereignty dynamic between the United States and Native American nations, with a particular focus on innovative policies for institutional development, economic growth, and social cohesiveness in Native American nations. The program featured national tribal leaders and subject matter experts from a broad spectrum of development backgrounds including governance, economics, law, education, health, and culture. Video recordings and presentation materials for the full colloquium are accessible at no charge via this website: <http://www.foster.com/resources/events/sovereignty,-development-and-human-security-a-coll?search=colloquium>

chronic lack of access to financial services and capital; c) represents a commitment to robust bank regulation and supervision married to a “pro-business” environment that welcomes and embraces innovations in financial processes, technology; and lending and deposit products and services; and d) assimilates and distributes “patient” capital for long term economic, community and social development in Indian Country. The United States Special Trustee for American Indians Vincent G. Logan has succinctly stated the mutual foundation that underlies contemporary Native American development: “We know that economic development and the relationship between the U.S. and tribal nations—it all depends upon getting the right pieces into place.”²⁵⁰ The TCB provides a unique platform for the U.S. and tribal governments to collaborate and construct a “missing piece” within the network of existing financial institutions, and launch a purpose-driven vehicle for enhancing access to the capital that is essential for Native American socio-economic development.

²⁵⁰ United States Special Trustee Vincent G. Logan, *supra*.

BIBLIOGRAPHY

CHAPTER 1

- 2011 White House Tribal Nations Conference Progress Report, December 2011.
- Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).
- Corntassel, Jeff. *Forced Federalism: Contemporary Challenges to Indigenous Nationhood*. Norman: University of Oklahoma Press, 2008.
- Deloria, Vine & Wilkins, David. *Tribes, Treaties, and Constitutional Tribulations*. Austin: University of Texas Press, 1999.
- Wellman, James K. Jr., and Lombardi, Clark. *Religion and Human Security: A Global Perspective*. New York: Oxford University Press, 2012.
- Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations*. Minneapolis: University of Minn. Press, 2007.
- US Census: The American Indian and Alaska Native Population, issued January 2012.
- US Census CB13FF.26, Oct. 31, 2013.
- “South Dakota - Quietly Booming”. *The Economist*, August 30, 2014.
- US Census Release CB13-29, February 2013.
- Bureau of Justice Statistics, Census of State and Local Law Enforcement Agencies, 2008.
- CDC Health Disparities and Inequalities Report – United States, 2011.
- National Indian Gaming Commission Tribal Gaming Revenues, 1995 – 2013.
- Guedel, W. Gregory. *Strategies and Methods for Tribal Economic Development*. Boston: Thomson-Reuters (2013).
- Robertson, Dwanna L. “The Myth of Indian Casino Riches”. *Indian Country Today*, June 23, 2012.
- “Slow Recovery, More Competition Hurting Foxwoods”. *Providence Journal*, August 18, 2014.
- Boehmke, Frederick J. and Witmer, Richard. “Indian Nations as Interest Groups Tribal Motivations for Contributions to U.S. Senators.” *Political Research Quarterly* 65, 2012.
- The United States Department of Interior Budget Justifications and Performance Information, Fiscal Year 2014.
- U.S. GAO Report B-276713, “Bureau of Indian Affairs: Information on Potential Budgetary Reductions for Fiscal Year 1998”, April 25, 1997.
- U.S. Department of Interior News, “Assistant Secretary Deer Delivers Budget Cut Warning”, May 16, 1996.

- National Indian Gaming Commission Regional Gaming Revenue Data, 2001-2010.
- 2000 US Census, American Indian and Alaska Native Summary Files.
- 2010 US Census, American Community Survey: American Indian and Alaska Native Tables.
- The Indian Gaming Regulatory Act, 25 U.S.C. 2710.
- Native American Rights Fund: “Dispelling the Myths About Indian Gaming”. Accessed from <http://www.narf.org/pubs/misc/gaming.html> on 5/12/2016.
- National Indian Gaming Commission, Gross Gaming Revenues by Region. Accessed from <http://www.nigc.gov/commission/gaming-revenue-reports> on 5/12/2016.
- “Greed, Corruption, and Indian Country’s New Welfare States”. *Indian Country Today*, June 27, 2013.

CHAPTER 2

- US Census Release CB13-29, February 2013.
- Akee, Randall K.Q. and Taylor, Jonathan B. *Social and Economic Change on American Indian Reservations*. Sarasota: The Taylor Policy Group, 2014.
- Austin, Algernon. “High Unemployment Means Native Americans are Still Waiting for an Economic Recovery”. Economic Policy Institute, Issue Brief #372, December 17, 2013.
- Guedel, W. Gregory; “Sovereignty, Economic Development, and Human Security in Native American Nations.” *American Indian Law Journal*, Volume III, Issue I, Fall 2014.
- Indigenous Knowledge Commons: “Teddy Roosevelt”. Accessed from <http://indigenousknowledge.org/discussion/native-conversations/big-question-1-does-tribalism-have-a-valid-role-in-modern-life/post/teddy-roosevelt/> on 5/12/2016.
- Official Report of the Nineteenth Annual Conference of Charities and Correction (1892). Reprinted in Richard H. Pratt, “The Advantages of Mingling Indians with Whites,” *Americanizing the American Indians: Writings by the “Friends of the Indian” 1880–1900*. Cambridge: Harvard University Press, 1973.
- Wilkinson, Charles F., *Blood Struggle: The Rise of Modern Indian Nations*. New York: W.W. Norton & Co., 2006.
- 25 USC 450, with implementing regulations codified at 25 CFR Part 900.
- The White House Fact Sheet: The 7th Annual White House Tribal Nations Conference. Accessed from <https://www.whitehouse.gov/the-press-office/2015/11/05/fact-sheet-7th-annual-white-house-tribal-nations-conference> on 5/12/2016.
- Wilkinson, Charles. *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy*. New Haven: Yale University Press, 1987.
- Wilkins, David E.. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. Austin: University of Texas Press, 1997.
- Cobb, Amanda J.. “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations.” *Indigenous Studies Today*, Fall 2005/Spring 2006.

- Deloria, Vine Jr. and Wilkins, David E.. *Tribes, Treaties, & Constitutional Tribulations*. Austin: University of Texas Press, 1999.
- Lyons, Scott. "Rhetorical Sovereignty: What Do American Indians Want from Writing?" *CCC* 51, 2000.
- Deloria, Vine Jr. and Lytle, Clifford M. *The Nations Within: The Past and Future of American Indian Sovereignty*. Austin: University of Texas Press, 1984.
- Warrior, Robert Allen. *Tribal Secrets: Recovering American Indian Intellectual Traditions*. Minneapolis: University of Minnesota Press, 1995.
- Deloria, Vine Jr., "No More Free Rides." *Native American Literatures: Boundaries and Sovereignties*. Ed. Kathryn Shanley. Vashon Island: Paradoxa, 2001.
- Deloria, Vine Jr. *We Talk, You Listen; New Tribes, New Turf*. New York: MacMillan, 1970.
- Alfred, Taiaiake. *Peace, Power, Righteousness: An Indigenous Manifesto*. New York: Oxford University Press, 1999.
- Alfred, Taiaiake. "Sovereignty". *A Companion to American Indian History*, Ed. Philip Deloria and Neal Salisbury. New York: Blackwell, 2002.
- Alfred, Taiaiake. "Sovereignty". *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*. Ed. Joanne Barker. Lincoln: University of Nebraska Press, 2006.
- Alfred, Taiaiake. *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. New York: Oxford University Press, 1995.
- Bruyneel, Kevin. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.–Indigenous Relations*. Minneapolis: University of Minnesota Press, 1997.
- Murphy, Alexander B. "The Sovereign State System as Political-Territorial Ideal: Historical and Contemporary Considerations". *State Sovereignty as Social Construct*. Ed. Alexander Murphy. Cambridge: Cambridge University Press, 1996.
- March, James G. and Olsen, Johan P.. "The New Institutionalism: Organization Factors in Political Life". *The American Political Science Review*, Vol. 78, No. 3, September 1984.
- Ostrom, Elinor. "Coping with Tragedies of the Commons". *Annual Review of Political Science* 1999, 2:493-535, 1999.
- Helmke, Gretchen and Levitsky, Steven. "Informal Institutions and Comparative Politics: A Research Agenda." Kellogg Institute Working Paper #307, September 2003.
- Dietz, Thomas; Ostrom, Elinor; and Stern, Paul C.. "The Struggle to Govern the Commons." *Science - New Series*, Vol. 302, No. 5652, December 12, 2003.
- Nicholas, Stephen and Maitland, Elizabeth. "Informal Institutions: How Social Norms Help or Hinder Development". OECD Report, 2007.
- Holland, John Henry. "Can There Be A Unified Theory of Complex Adaptive Systems?" *The Mind, The Brain, and Complex Adaptive Systems*. Ed. Harold J. Morowitz and Jerome L. Singer. Boston: Addison-Wesley, 1995.

- Ostrom, Elinor. "A Behavioral Approach to the Rational Choice Theory of Collective Action". *The American Political Science Review*, Vol. 92, No. 1, March 1998.
- Dasgupta, Partha S., Mäler, K. G., and Vercelli, A.. *The Economics of Transnational Commons*. Oxford: Clarendon Press, 1997.
- Cornell, Stephen and Kalt, Joseph P.. "Two Approaches to the Development of Native Indians - One Works, the Other Doesn't." *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007.
- Begay, Manley A. Jr., Cornell, Stephen, Jorgensen, Miriam and Kalt, Joseph P.. "Development, Governance, Culture: What Are They and What Do They Have to Do with Rebuilding Native Nations?" *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007.
- Cornell, Stephen. "Remaking the Tools of Governance: Colonial Legacies, Indigenous Solutions". *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007.
- Grant, Kenneth and Taylor, Jonathan. "Managing the Boundary between Business and Politics: Strategies for Improving the Chances for Success in Tribally Owned Enterprises". *Rebuilding Native Nations*. Ed. Miriam Jorgenson. Tucson: University of Arizona Press, 2007.
- Report of the World Commission on Environment and Development: Our Common Future, 1987. Accessed from <http://www.un-documents.net/our-common-future.pdf> on 5/16/2016.
- United Nations webpage: Promote Sustainable Development. Accessed from <http://www.un.org/en/sections/what-we-do/promote-sustainable-development/index.html> on 5/13/2016.
- United Nations Declaration on the Rights of Indigenous Peoples, March 2008.
- Burke Museum webpage: Coast Salish Art. Accessed from <http://www.burkemuseum.org/coastsalishart> on 5/13/2016.
- New World Encyclopedia webpage: Coast Salish. Accessed from http://www.newworldencyclopedia.org/entry/Coast_Salish#cite_note-0 on 5/13/2016.
- US Department of the Interior Indian Affairs webpage: Gaming Compacts. Accessed from <http://www.indianaffairs.gov/WhoWeAre/AS-IA/OIG/Compacts/index.htm#Washington> on 5/13/2016.
- Washington State Governor's Office of Indian Affairs webpage: Treaty of Point Elliott, 1855. Accessed from <http://www.goia.wa.gov/treaties/treaties/pointelliott.htm> on 5/13/2016.
- Puget Salish People of Washington webpage. Accessed from http://www.northwesteritageresources.org/Essays/Puget_Salish_essay.pdf on 5/13/2016.
- Ruby, Robert H., Brown, John A, Collins, Cary C. *A Guide to the Indian Tribes of the Pacific Northwest*. Norman: University of Oklahoma Press (3rd Ed.), 2010.

United States Department of Interior. *Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgement of the Jamestown Band of Clallam Indians of Washington Pursuant to 25 CFR 54*. May 16, 1980.

United States Department of Interior. *Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgement of the Snoqualmie Tribal Organization*. August 22, 1997.

The Indian Reorganization Act, 48 Stat. 984 - 25 U.S.C. § 461 et seq, June 18, 1934.

Tribal-State Compact for Class III Gaming between the Jamestown S'Klallam Tribe and the State of Washington, 1993. Accessed from <http://www.indianaffairs.gov/cs/groups/zoig/documents/text/idc-038572.pdf> on 5/13/2016.

Jamestown S'Klallam Tribal Code. Accessed from http://www.jamestowntribe.org/govdocs/gov_code.htm on 5/13/2016.

Jamestown S'Klallam Tribal Comprehensive Plan, 2005-2015. Accessed from <http://www.jamestowntribe.org/govdocs/mastcompplanfinal8-27-08.pdf> on 5/13/2016.

Jamestown S'Klallam Tribal Governmental Organizational Chart. Accessed from http://www.jamestowntribe.org/programs/organizational_chart_2013.pdf on 5/13/2016.

Jamestown S'Klallam Tribal Programs webpage. Accessed from http://www.jamestowntribe.org/programs/eda_main.htm on 5/13/2016.

Jamestown S'Klallam Reports, Newsletters & Publications Archives. Accessed from http://www.jamestowntribe.org/announce/annce_newsletter.htm on 5/13/2016.

Jamestown S'Klallam Tribal Council webpage. Accessed from http://www.jamestowntribe.org/main/main_council.htm on 5/13/2016.

Jamestown S'Klallam Social & Community Services Department webpage. Accessed from http://www.jamestowntribe.org/programs/scs/scs_main.htm on 5/13/2016.

House of Seven Generations Museum webpage. Accessed from <http://www.tribalmuseum.jamestowntribe.org/> on 5/13/2016.

“Jamestown S'Klallam Tribe Buys Wireless Division of Port Townsend's Intellicheck Mobilisa.” Peninsula Daily News, September 2, 2015.

Constitution of the Snoqualmie Tribe of Indians. Accessed from <http://www.snoqualmietribe.us/sites/default/files/linkedfiles/constitution.pdf> on 5/13/2016.

Snoqualmie Tribal Codes. Accessed from <http://www.snoqualmietribe.us/TribalCodes> on 5/13/2016.

Snoqualmie Tribal Council Act 14.2 – The Snoqualmie Tribal Audit Committee. Accessed from http://www.snoqualmietribe.us/sites/default/files/audit_committee_act.14.2.codified.pdf on 5/13/2016.

Snoqualmie Tribal Court webpage. Accessed from <http://www.snoqualmietribe.us/TribalCourt> on 5/13/2016.

- Snoqualmie Tribal Council Act 5.2 – Workers Compensation Claims. Accessed from http://www.snoqualmieltribe.us/sites/default/files/workers_comp_act.5.2.codified.2.27.12.pdf on 5/13/2016.
- “Snoqualmie Tribe ‘In Turmoil’ – and in Debt.” GGB News, Vol. 7, No. 37, October 5, 2009.
- US Census 2010-2014 American Community Survey 5-year Estimates.
- Mapes, Lynda V.. “Big Payoff Eluding Troubled Tribe”. Seattle Times, September 26, 2009.
- “Tribal Council Fight Leads to \$14 Million Buyout of Snoqualmie Casino CEO.” Indian Country Today, February 24, 2011.
- “Fiji Axes License for Casino that was Linked to Snoqualmie Tribe”. Indianz.com, February 10, 2015. Accessed from <http://www.indianz.com/IndianGaming/2015/02/10/fiji-axes-license-for-casino-t.asp> on 5/13/2016.
- “Snoqualmie Tribe Sues City for Discrimination.” Snoqualmie Valley Record, December 16, 2015.
- Mapes, Lynda V., “Stalemate puts Snoqualmie Tribe at Risk of Federal Takeover”, Seattle Times, May 27, 2012.
- “Indianernes økonomiske mirakelkur”. *Horisont*. DR TV, January 4, 2016.
- Halverson, Matthew. “Bad Blood: Membership disputes have raged within the Snoqualmie tribe for years, but Marvin Kempf is determined to set the record straight.” Seattle Met Magazine, December 2012.
- Smith, Rob Roy. “Enhancing Tribal Sovereignty by Protecting Indian Civil Rights: A Win-Win for Indian tribes and Tribal Members”. American Indian Law Journal, March 2012.
- Rigney, Lester-Irabinna. "Internationalisation of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles". WICAZO sa Review, University of Minnesota Press, Vol. 14, Number 2, Fall edition 1999.
- Wilson, Shawn. Research is Ceremony: Indigenous Research Methods. Winnipeg: Fernwood Publishing, 2008.
- University of Washington wələbʔaltx^w – Intellectual House webpage. Accessed from <http://www.washington.edu/diversity/tribal-relations/intellectual-house/> on 5/13/2016.
- Sovereignty, Development and Human Security: A Colloquium on United States and Native American Relations. Accessed from <http://www.foster.com/resources/events/sovereignty,-development-and-human-security-a-coll?search=colloquium>. on 5/13/2016.
- Quil Ceda Village webpage. Accessed from <http://www.quilcedavillage.com> on 5/13/2016.
- Tulalip Tribal Codes. Accessed from <http://www.codepublishing.com/wa/Tulalip> on 5/13/2106.
- Consolidated Borough of Quil Ceda Village Codes. Accessed from http://www.quilcedavillage.org/qcv_ordinances.asp on 5/13/2016.

CHAPTER 3

- FCNL Indian Report: "Poverty and Possibilities in Indian Country." Issue #91, Spring 2012.
- Miller, Robert J.. "Economic Development in Indian Country: Will Capitalism or Socialism Succeed?" 80 Oregon Law Review 757, 2001.
- Bhatia, Amar. "The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World." 14 Oregon Review of International Law 131, 2012.
- Susan Woodrow, "Growing Economies in Indian Country: Taking Stock of Progress and Partnerships". Board of Governors of the Federal Reserve System White Paper, April 2012.
- "Growing Economies in Indian Country: Taking Stock of Progress and Partnerships". Board of Governors of the Federal Reserve System publication, April 2012. Accessed from <http://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf> on 5/13/2016.
- Marx, Karl. *The Communist Manifesto*. New York: W.W. Norton & Co., 1988.
- Piketty, Thomas. *Capital in the 21st Century*. Cambridge: Belknap, 2014.
- Regan, Shawn. "5 Ways the Government Keeps Native Americans in Poverty". Forbes Magazine, March 13, 2013.
- Small, Jenny. "Financing Native Nations: Access to Capital Markets". 32 Rev. Banking & Fin. Law 463, 2013.
- Ansson, Richard J. Jr. & Oravetz, Ladine. "Tribal Economic Development: What Challenges Lie Ahead for Tribal Nations as They Continue to Strive for Economic Diversity?" 11 Kan. J.L. & Pub. Policy 441, 2002.
- Clarkson, Gavin. "Accredited Indians: Increasing the Flow of Private Equity into Indian Country as a Domestic Emerging Market." 80 University of Colorado Law Review 285, 2009.
- Gates, Bill. "Why Inequality Matters." Gatesnotes, The Blog of Bill Gates, October 13, 2014.
- Kay, John. *Other People's Money: The Real Business of Finance*. New York: Perseus Books, 2015.
- National Congress of American Indians Policy Issues: Taxation. Accessed from <http://www.ncai.org/policy-issues/tribal-governance/taxation> on 5/13/2016.
- Wirtz, Ronald A. "Breaching the 'Buckskin Curtain'," Federal Reserve Bank of Minneapolis publication, September 1, 2000.
- "Borrowing Trouble: Predatory Lending in Native American Communities". First Nations Development Institute Report, 2008.
- Hearing Before the United States Senate Committee on Indian Affairs: "Predatory Lending in Indian Country" 110th Congress, Senate Hearing 110-484, June 5, 2008.
- Office of the Comptroller of the Currency Report: "Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market", March 2006.

- Johnson, Aaron Drue. "Just Say No (To American Capitalism): Why American Indians Should Reject the Model Tribal Secured Transactions Act and Other Attempts to Promote Economic Assimilation". 35 American Indian Law Review 107, 2010–2011.
- U.S. Securities and Exchange Commission information page: "Accredited Investors". Accessed from <http://www.sec.gov/answers/accred.htm> on 5/13/2016.
- Native American Capital, LP. "Policy Briefing: Native American Tribes Require Reg. D Change". Accessed from <https://www.sec.gov/rules/other/265-23/nac020306.pdf> on 5/13/2016.
- Woodrow, Susan and Miller, Fred. "Lending in Indian Country: The Story Behind the Model Tribal Secured Transaction Law." Business Law Today, Vol. 15, No. 2, November/December 2005.
- Statement of Susan M. Woodrow, Community Development Advisor, Federal Reserve Bank of Minneapolis: "Opportunities and Challenges for Economic Development in Indian Country." Hearing Before United States Senate Committee on Banking, Housing, and Urban Affairs, 112th Cong. 52, Nov. 10, 2011.
- Swan, Jon. "Native American Bank: Banking the Unbanked". Boston Federal Reserve Publication, 2008.
- De Soto, Hernando. "Dead Capital and the Poor". SAIS Review, Vol 21, No. 1, Winter-Spring 2001.
- President Theodore Roosevelt, State of the Union Address, December 3, 1901.
- Bureau of Indian Affairs Document: "Q&A: Department of the Interior's Final Leasing Reform." Accessed from <http://www.bia.gov/cs/groups/public/documents/text/idc-037327.pdf> on 5/13/2016.
- Bureau of Indian Affairs Office of Trust Services website. Accessed from <http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/index.htm> on 5/13/2016.
- Cobell Settlement website. Accessed from <http://www.indiantrust.com/> on 5/13/2016.
- United States Senate Oversight Hearing on Accessing Capital in Indian Country, June 17, 2015. Accessed from <http://www.indianz.com/News/2015/017889.asp> on 5/13/2016.
- Melmer, David. "A Conversation with Chickasaw/Creek J.D. Colbert of Native American Bank". Indian Country Today, March 29, 2006.
- Kelley, David. "Limited by U.S. Banking Rules, Pot Businesses Rely on Bags of Cash and Armed Guards". Los Angeles Times, December 19, 2015.
- Federal Bureau of Investigation website article: "Online Gambling – Don't Roll the Dice." Accessed from https://www.fbi.gov/news/stories/2007/june/gambling_060607 on 5/13/2016.
- U.S. Department of Justice Memorandum: Guidance Regarding Marijuana Enforcement. James M. Cole, Deputy Attorney General, August 29, 2013.
- U.S. Department of Justice Memorandum: "Policy Statement Regarding Marijuana Issues in Indian Country", October 28, 2014.

Office of the Comptroller of the Currency's "Comptroller's Licensing Manual – Charters", February 2009.

62 Fed. Reg. 752, January 6, 1997.

Myers, Forest E. *Basics for Bank Directors*. Federal Reserve Bank of Kansas City publication, 2005.

"Market Infrastructure Firms Urged to Take a Co-Regulation Approach", Financial News, September 18, 2013.

Bureau of Indian Affairs. "Federal Loan Programs for Economic and Community Development throughout Indian Country and Alaska." Accessed from <http://www.bia.gov/cs/groups/xieed/documents/document/idc-022680.pdf> on 5/13/2016.

Browning, Lynnley. "Oglala Sioux Hope Bitcoin Alternative, Mazacoin, Will Change Economic Woes". Newsweek, August 14, 2014.

APPENDIX A

United States Senate Oversight Hearing Selected Witness Testimony: Access to Capital in Indian Country

The following excerpts are quotes from the June 17, 2015 testimony of the indicated witnesses appearing at the United States Senate Oversight Hearing on Accessing Capital in Indian Country, and highlight the issues and challenges that impact the accessibility of development capital for Native American nations.

Senator Michael Crapo (R-Idaho):

Regardless of location, access to capital is one of the most important fundamentals of business and economic development...We know that the challenge that Indian Country faces in accessing essential business resources is significant. In fact some of our witnesses today have noted in their testimonies that native peoples are the most underserved demographic in terms of access to capital.

Alejandra Castillo, National Director, Minority Business Development Agency:

Access to capital continues to be the number one impediment for native businesses and other minority businesses - and by any socioeconomic indicator, Native Americans are the most underserved population in the country. This means that financial literacy, credit history, and access to lending institutions on or near native lands may be lower than in other areas of the country.

Derek Watchman, Chair, National Center for American Indian Enterprise Development:

Lower margin projects and start-ups are always challenging to finance. Infrastructure projects which are badly needed in Indian Country are very hard to finance especially if there's limited federal funding or because tribes have little tax base. It's hard to do bonds based on a limited tax base. Tribes themselves, however, are increasing access to capital through self-financing of their business and economic development projects.

That is why the National Center, the National Congress of American Indians, and NAFOA have repeatedly urged Congress to improve and increase the allocations to the BIA loan guarantee program. Right now it's set at \$7 million.

Senator Al Franken (D-Minnesota):

I was hearing that the BIA loan guarantee program is underfunded. Mr. Hill just talked about it being badly administered. It's hard to get more funding for a program that's badly administered. But what I'm hearing is that...I mean \$7 million is next to nothing. I mean that's sort of embarrassing I think.

There are certainly bands of tribes in my state that I guess there is a great need for capital—and because of that, they'd be considered a high credit risk. But that's exactly why they need capital.

The need in Indian Country is so great. What I wonder about is sometimes the tribes that need it the most, that need economic development the most, are probably, you know, the worst credit risk in a sense...and I just want to make sure that the tribes that...need it the most get the opportunity to do economic development on their land because they have such high unemployment rates, and they need something and they need it the most...

Ross Hill, CEO, Bank2:

The BIA commercial loan guarantee program is truly the only guaranteed loan program that can be widely used for nearly any need on tribal lands. The program could become a vital source of growth and development of Native America...(but) typically it is funded about 20 to 30% of the maximum authorized. This year's a prime example of the problem. The BIA is already out of commitment authority.

But perhaps as many as 200,000 homes are still needed on reservations alone. The economic impact of satisfying this need could reach as much as 40 billion dollars on the U.S. and Indian Country economies. Think of this to picture that: 200,000 homes - that's what the city of New Orleans has. The demand is high, the need is great and the opportunity for real economic impact is unquestionable.

The [BIA loan guarantee] program's not funded adequately nor is it administrated properly. The BIA's not very accountable to their customers or to the banks. Their process for approval is subject to individual offices and subject to different edicts handed down from Washington from time to time. So the process is not one that can be counted on, nor is it one that can be counted on in a timely basis.

We can't close a transaction and get a guarantee on the loan. So without the BIA addressing this problem and making it a serious matter...most loans will not be completed and funded that could be... I believe that there's just a lack of commitment at the BIA office to remedy the problem.

Dante Desiderio, Executive Director, Native American Finance Officers Association:

While the need for capital to flow freely into Indian Country is great, existing federal capital programs have failed to drive economic growth and development that is profoundly needed in Indian Country. We think it's time to take a different look at these programs and ask ourselves why they are not working to reach their full potential...and the first program is of course, the Indian Loan Guarantee Program... However, the program is not reaching its potential because the total amount of federal funds budgeted is around \$7 or \$8 million for all of Indian Country - that's \$7 or \$8 million for all of Indian Country.

Treasury set aside the native program from the larger CDFI (Community Development Financial Institution) program... The program works, but again its entire budget is around \$15 million for all of Indian Country...We have 70 native CDFIs that if you average it out it's about \$200,000 each, which isn't enough for technical assistance and loans.

So tribal governments are much different. They need much longer-term capital, much more patient capital. We don't have the ability to go to the market and raise equity, so we rely on long-term patient capital to grow enterprises. It's a much different role. The tribal governments are looking at those enterprises to fund programs and services...And the long-term patient capital is needed to build the infrastructure and the tribal businesses to provide those programs, services, even the telecommunications infrastructure that's needed for business development.

Senator Jon Tester (D-Montana):

I think that access to capital in Indian Country is an incredible inhibitor to increase the economy and reduce poverty, and reduce a necessity for the safety programs at the federal level... (O)pportunities will go for naught if tribal economies are struggling—forcing children to take their skills and find good jobs elsewhere. We can't let that happen. Our First Americans should not have to choose between making a good living away from their family and homelands or living in poverty.

**Video of the full Oversight Hearing proceedings is available online:
<http://www.indianz.com/News/2015/017889.asp>**

APPENDIX B

Sovereignty, Development and Human Security A Colloquium on United States and Native American Relations

May 28 - 29, 2015

**The University of Washington Intellectual House: “wəłəbʔaltx”
<http://www.washington.edu/diversity/tribal-relations/intellectual-house/>**

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PROGRAM DESCRIPTION:

The United States and Native American nations have a treaty-based, government-to-government relationship with a unique political and legal dynamic of mutual sovereignty. Tribes retain their sovereign status as nations that existed prior to European contact, but limitations have been placed on their sovereignty by the U.S. government through armed conflict, treaties, and unilateral policies. Today, numerous areas of human security for Native American communities continue to be significantly impacted by federal agencies, but key indicators of human security for Native Americans such as poverty, employment, and public health have chronically and significantly lagged U.S. national averages. As a result, many Native American Tribal governments are seeking to enhance and exert their sovereignty to obtain greater control over policies and resources affecting governance, economic development, human rights, cultural heritage, environmental protection, and conditions of health and social justice. This colloquium features recognized experts presenting in-depth information and current perspectives on U.S./Tribal relations, their evolving sovereignty balance, and innovative strategies and programs for enhancing Native American development and human security. The colloquium program provides topical lectures and panel discussions, with Q&A and networking opportunities throughout the program. An evening reception for speakers and attendees to continue dialogue followed Day 1 of the program.

Video recordings and presentation materials for the full colloquium are accessible on-line at no charge via this website: <http://www.foster.com/resources/events/sovereignty,-development-and-human-security-a-coll?search=colloquium>

APPENDIX C
PROGRAM SCHEDULE

DAY 1: TRIBAL SOVEREIGNTY, GOVERNANCE, AND DEVELOPMENT		
9:00	<p>Opening Blessing</p> <p>Program Introduction</p>	<p>Roger Fernandes (Lower Elwha S’Klallam)</p> <p>Greg Guedel, UW JSIS and Foster Pepper PLLC</p>
9:30	<p>Native American Development and US/Tribal Relations</p> <p>The United States Special Trustee for American Indians will discuss the continuing challenges and emerging opportunities for effective partnership between the US and Native American nations to facilitate Tribal economic and human security development.</p>	<p>Vince Logan (Osage), US Special Trustee for American Indians; Tyler Fish (Cherokee, Muscogee (Creek)) Special Counsel, US Dept. of the Interior</p>
11:00	<p>Self-Determination and National Identity</p> <p>This session will focus on the ways Tribal nations conceptualize and assert their sovereignty in external political relationships and for the benefit of their people.</p>	<p>W. Ron Allen, Chairman, Jamestown S’Klallam Tribe</p>
12:30	Lunch	
1:30	<p>Strengthening Tribal Governance and Institutions</p> <p>Sovereignty is implemented through Tribal institutions; this session will explore methods for improving the ability of Tribal governing agencies to meet the needs of the people they serve.</p>	<p>Fawn Sharp, President, Quinault Indian Nation and Affiliated tribes of Northwest Indians; Prof. Laura Evans, UW Evans School of Public Affairs</p>
3:00	<p>Sovereignty and Justice - Tribal Law and Court Systems</p> <p>US policy has significantly limited Tribal sovereignty in law enforcement and jurisdiction, which has resulted in crime rates and related social issues far exceeding the US average. This session will describe how Tribal governments are increasing the control and effectiveness of their legal systems and creating culturally-appropriate judicial and rehabilitation systems.</p>	<p>Prof. Ron Whitener (Squaxin Island), Center for Indigenous Research & Justice and Judge, Tulalip Tribes; Jerry Gardner (Cherokee), Executive Director, Tribal Law and Policy Institute</p>
4:30	Program Adjourns	
5:30	Reception	

DAY 2: ENHANCING NATIVE AMERICAN HUMAN SECURITY		
9:00	<p>Political Economy and Human Security in Native American Nations</p> <p>This session will discuss how the complex and multi-faceted challenges confronting Tribal communities require both collaborative and locally-designed solutions.</p>	Greg Guedel UW JSIS, Foster Pepper PLLC
9:45	<p>Sovereignty and Strategic Economic Development</p> <p>The leaders behind the creation of Quilceda Village, the Tulalip Tribes' unique economic development zone and the only "federal city" in the US outside of Washington DC, will describe the conception and implementation of this revolutionary Tribal business development engine.</p>	Glen Gobin (Tulalip) Vice Chairman, Quil Ceda Village; Lisa M. Koop (Moravian of the Thames Band, Delaware Nation) General Counsel, Tulalip Tribes
11:15	<p>Establishing a Sovereign Financial System</p> <p>This session will describe the landmark effort to create new Tribal Banking Code and Tribal Banking Commission, which will allow Native American nations to access development capital and participate in global commerce under their own sovereign regulatory regime.</p>	J.D. Colbert (Muscogee (Creek)/ Chickasaw) Chair of Economic Development for the Muscogee Creek Nation
11:45	Lunch	
1:00	<p>Pathways for Enhancing Native American Education</p> <p>This session will highlight the innovative approaches educators are pursuing to attract Native students into college and graduate school and provide them with the tools for academic and professional success.</p>	Prof. Eric Eberhard, Seattle University School of Law
1:30	<p>Improving Public Health in Native Communities</p> <p>The majority of Native Americans reside in urban areas, which presents significant challenges for accessing health services. This session will examine the Indian Health Care Improvement Act and the efforts of the Seattle Indian Health Board over the years to develop a health clinic and programs to serve urban Native Americans.</p>	Ralph Forquera (Juaneño Band of California Mission Indians) Executive Director for the Seattle Indian Health Board and Director of the Urban Indian Health Institute; Millie Kennedy (Tsimshian) Northwest Justice Project; Aren Sparck (Cup'ik), Seattle Indian Health Board
2:30	<p>Human Rights and Governmental Ethics</p> <p>Discrimination, marginalization, and violence are regular threats to the human security of urban Native Americans. This session explores how governmental agencies can improve the recognition and protection of human rights.</p>	Chris Stearns (Navajo), Seattle Human Rights Commission

3:30	Protecting Cultural Heritage and Traditions The creation of “Tribal art” is a multi-billion-dollar industry, but much of the trade is in works that are misappropriated from Native cultures. Leaders of the new Washington Indian Arts and Crafts Committee will describe their approach for certifying the authenticity of indigenous artworks and protecting the intellectual property of Native artists.	Jeffrey Smith (Makah), Washington Indian Arts and Crafts Committee; Brian Rowe National Technology Assistance Project Coordinator, Northwest Justice Project
4:30	Program Adjourns	

APPENDIX D

Development Strategies for Tribal Nations Vincent G. Logan (Osage), United States Special Trustee for American Indians

Vincent G. Logan (Osage) was sworn in as the Special Trustee for American Indians on July 7, 2014. Prior to joining the Department of the Interior as the Special Trustee, he served as President of the tribal investment consulting firm The Nations Group, LLC, as a private banker at Merrill Lynch, as a corporate finance attorney at the law firm of Schulte, Roth & Zabel in New York, and as legal counsel in the Antitrust Division of the U.S. Department of Justice.

As an investment professional, a mentor for Native American attorneys, and a member of the Osage Nation, Special Trustee Logan has dedicated his asset management expertise, legal experience, and extensive network of professional relationships to improving development in tribal communities. As U.S. Special Trustee, his office manages Indian beneficiaries' financial assets and is responsible for coordinating reform efforts to improve trust asset management and beneficiary services throughout the federal government. The assets under Special Trustee Logan's supervision consist of 55 million surface acres of land, 57 million acres of subsurface minerals estates, and approximately \$4.9 billion in funds held in trust by the United States for individual Native Americans, tribes and Alaska Natives.

Special Trustee Logan's Colloquium presentation addresses a broad range of historical and current contexts and issues for Native American economies, and highlighted specific areas of need and opportunity for tribal development, sections of which are quoted here:²⁵¹

Historical Context for Tribal Development

“Let's think about where we were pre-European contact. I think about the term 'wealth accumulation'. I've had this discussion a number of times with friends and colleagues about whether or not Native America had wealth accumulation. Many people have told me their opinion that wealth accumulation comes from Europe. It wasn't part of our culture. In fact, I always point out that wealth accumulation - they might be talking about money in the bank, but when I think about wealth accumulation, I think about seeds and grains and furs. There was wealth built on this continent long before the Europeans came here. There was trade, commerce, all documented. So wealth accumulation is not new to us, it did not come from Europe.”

Institutional Development

“I think that as we go forward, people need to look at their tribe and maybe a restructuring of their institutions...Although we talk about institution building, part of it is about the bigger picture of economic development. I focus on the

²⁵¹ US Special Trustee Logan's entire presentation may be viewed at: <https://youtu.be/H9Ru4hVsyJM>

financial institutions, but that's just part of the background. We have cultural institutions, we have language, we have religious institutions in Indian Country - we have the need for more institutions. Why do we talk about it so much? We talk about it because institutions provide individuals opportunities. They also provide choice. So the young Native American right out of the tribal community has choices... The abundance of choice with young Native Americans is the key to building and creating opportunity."

Access to Capital and Credit

"When we talk about economic development, I always tell all the people that I work with: credit is how the world was built. We are not going to get very far unless we have access to credit."

"The number of laws, regulations, and codes across Indian Country - it's deep, it's complex and involves lots of lawyers. We're missing, however, the business underwriting pieces of that. It's difficult to get that to move forward."

Professional Training

"I see a shortage of Native American financial professionals. I can tell you that in my experience working with tribes in the private sector and in my role today, we had such a shortage of investment, credit, underwriting professionals, that it's really one of the barriers we always talk about. Why is that? I think about that all the time, particularly when it comes to accredited professionals, CFAs. We have how many CFAs in the Native American tribes? Three, four...six? That's shocking to me. That is something we have to work on. Is this because we didn't experience the industrial age, is this the result of that? I don't know. But the shortage of credit professionals is very telling."

Capital Investment

"I want to talk a little bit about liquidity here. The White House estimates that Indian Country has liquidity in the last few years of about 3.4 billion dollars, in my office we guesstimate about 4 billion dollars. That's defined as the tribal settlements, the Cobell settlement, the Keepseagle settlement, now the Land Buy-Back program. I'd say somewhere about 3.5 billion dollars in direct payments to tribes and tribal individuals. My question to Indian Country is: what would the data indicate for us as to new businesses starting? What would the data indicate as to new financial institutions that started or perhaps financial networks getting started in our area? I think the problem is the answer is very few. The issue is capital flight. This is a well-documented condition in World War II reconstruction era Germany and Japan, and continuing on to Korea. One of the concerns there

was whether the dollar that went into the economy stayed. What we're seeing would be 3.4 billion dollars - people are questioning how much has stayed in Indian Country? How much went back out directly—some of it that same afternoon? We know this issue. With the settlements...we have another opportunity, a golden opportunity to create businesses and economic development and wealth.”

Small Business Development

“A friend told me an interesting story. He works for the tribe in economic development...and he pointed out to me that he couldn't get a haircut on the reservation. The inability to get a haircut. Look at your communities. Look around you. Do you have to go outside of your community to get a haircut? I would say that in many places in Indian Country, that is true... This is the idea of investing in ourselves in Indian Country - it is something that, it's not new. We already have the capability. I know one thing, when I talk to tribal people, many of them tell me they do own businesses. They own the casino. And I point out to them: if you think you own that casino, try to borrow against your interests. The answer is no, you don't own that casino. The tribe owns that casino. What businesses do you own? What businesses do people own on the reservation?”

APPENDIX E

Self-Determination and National Identity Chairman W. Ron Allen, Jamestown S’Klallam

W. Ron Allen has served as Tribal Council Chairman of the Jamestown S’Klallam Tribe since 1977 and as Chief Executive Officer since 1982. He is a member of the Tribe’s Art Board, Hunting/Fishing Committee, Tribal Gaming Commission, and the U.S. Canada/Pacific Salmon Commission. He served four years as President of the National Congress of American Indians, two years as NCAI First Vice President, ten years as NCAI Treasurer, and is currently President of the Washington Indian Gaming Association.

The Jamestown S’Klallam present an extraordinary success story of Tribal economic and community development. Upon obtaining federal recognition in 1981, the Tribe had no land base or other established economic resources, and its full-time organizational staff was comprised of two people. From this “square one” starting point, within one generation the Tribe had created a professional operational structure that is now the model for the national Self-Governance Demonstration Project, and built an economic base that has eliminated on-reservation poverty.²⁵² Chairman Allen’s leadership from the Tribe’s federal recognition to today provides a unique continuity of experience on how a Native American nation—starting with only the will of its people—can establish high-functioning institutions that serve and enhance the social cooperation and human security of its members.

Chairman Allen’s Colloquium presentation “Self-Determination and National Identity” provides insights and guidance on numerous crucial areas of Native American development, with particular emphasis on key institutional dynamics, some of which are quoted here:²⁵³

Sovereign Philosophy and Collective Support:

“You’re a government. Your people are citizens, they’re not members of an association. They’re citizens of a nation. If you believe you’re sovereign, then act like you’re sovereign.”

“It doesn’t matter your size, because sovereignty is sovereignty. If you’re a tribe that represents 350,000 people, that’s sovereignty. If you’re a tribe that represents 50 people, that’s sovereignty. You’re defending the same sovereignty—if one loses their sovereignty, then the others lose their sovereignty.”

“Tribes want our sister tribes to be successful. And so if a tribe doesn’t have a lot of resources and they say: *How did you build that, could you give us a design,*

²⁵² The "Tribal Self-Governance Act of 1994" (Public Law 103-413) was passed and signed into law by President Clinton. On August 18, 2000, President Clinton signed the "Tribal Self-Governance Amendments of 2000" (Public Law 106-260).

²⁵³ Chairman Allen’s entire presentation may be viewed at <https://youtu.be/yYTEsJuqYp0>

could you give us the business plan? -- they would, more often than not. They'd say: 'Here, borrow it, make it'."

Citizenship Policies:

"Back in the late 80s, we moved from 1/4-blood to 1/8-blood, and then that tripled our numbers. Back then we were developing our governmental infrastructure, which includes the ordinances and committees with jurisdiction over enrollment. When they looked at it, they realized we had enrolled people who weren't qualified to be enrolled, and we actually had to de-enroll probably a half-dozen people because they didn't qualify. It was awkward, it was very sensitive, it was very passionate—but we had to do it. It wasn't for political reasons. For us, the enrollment process is a very sensitive issue. We spend a lot of energy on our rules and due processes and due diligence. So if somebody is applying and we go through our process in terms of 'do they qualify' based on close social and economic ties...If the answer is 'No', then we want them to have an appeal process. To us, that's an important element to the integrity of our governmental infrastructure."

Preparation for Advancement:

"One of the challenges we have in Indian Country is to examine: is your governmental infrastructure in place before you can even advance your agenda of self-determination, self-governance, self-reliance, or however you want to characterize your goals for your people? Well, you can always start with your Constitution and fundamental governing documents for your tribe...within those governmental infrastructures you have to have your operations in order. You are exercising your jurisdiction as a sovereign nation. So what is your land use law and codes? Do you have policies in place with regard to every matter that we deal with? As we as nations exercise more authority over our citizens, whether it's civil or whether it's criminal, are our laws and codes and ordinances in place? Have we done our homework? And if not, are we going back to do our homework with regard to it and educate our reservations so that they understand what their responsibilities are, so that you can function as a government? And then that allows you to move forward with regard to all these services and all of these expectations that the tribal community holds."

Per Capita Revenue Sharing:

"It's always been a concern to me...as I watch different tribes and how creative they are with regard to economic development. The issue of per capita is something that has caused me a great deal of concern, and many of my colleagues. Now some people would say: *Don't touch that, don't talk about*

that—per capita is what we're entitled to. I would make the case - and I'm not against per capita - but what I am saying is where does it fit into your priorities? Have you taken care of all the essentials in the community before you even cross that threshold? That's my feeling. If per capita becomes the priority, then your ability to take care of future generations - the seven generations concept - is curtailed. Your politics is changed by per capita. How much money will you put in my pocket before I vote for you? I want you to put money in my pocket, plus I want you to take care of my education. I want you to put money in my pocket, plus I want you to take care of my healthcare. You can't have both. Tribes' ability to have disposable revenue to advance their agenda and maintain their responsibilities as a community is relative to that. Is it in balance?"

Next-Generation Leadership:

“Success breeds higher expectations...what are tribes doing to develop their own makers of their success, and ways to determine whether or not they're effectively making progress? Are they making progress or are they losing ground? New leadership has to emerge, they have to know exactly who you are and what you're about. Their roots aren't necessarily the same as the roots of the previous generation. They have to be accountable to the people. And that's one of the things about governments: now you have to be more accountable to the people because it's their resources that you're managing. A good question for [leaders] to examine with our tribes, with different kinds of measurements, is to examine how well that they're performing and how well they're meeting their goals or their objectives.”

APPENDIX F

Strengthening Tribal Governance and Institutions President Fawn R. Sharp, Quinault Indian Nation

Fawn R. Sharp is the President of the Quinault Indian Nation in Taholah, Washington. Her prior positions included serving as the Nation's Managing Attorney and lead counsel; Administrative Law Judge for the Washington State Department of Revenue; Quinault Tribal Court Judge, and Counsel for the law firm of Phillips, Krause & Brown.

Beyond her service with the Quinault Nation, President Sharp has held numerous leadership positions in both tribal and non-tribal institutions and organizations. She was appointed by Washington State Governor Gary Locke to serve as Trustee for Grays Harbor College, has served as an elected Governor and Trustee of the Washington State Bar Association, is a Founding Member for the National Intertribal Tax Alliance, and is the current President of The Affiliated Tribes of Northwest Indians.

Under President Sharp's leadership, the Quinault Nation has created and participated in numerous innovative programs to enhance the development opportunities and quality of life for its citizens, including:

- Hosting events for the United Nations Permanent Forum on Indigenous Issues;
- Early participation in the Cobell Settlement Land Buy-Back program;
- Establishing an international carbon credits access platform;
- Partnering with NASA for on-reservation global climate tracking stations.

The foundation for these advanced activities is the Nation's strong and consistent system of tribal institutions, which are recognized nationally and internationally as a model for efficient and effective governance.

President Sharp's Colloquium presentation "Strengthening Tribal Governance and Institutions" gives details on the philosophy underlying the Quinault Nation's institutional structure, and how political and administrative processes are designed to maximize credibility and functionality, some of which are quoted here:²⁵⁴

Institutional Philosophy:

"When you have a body of law, it should reflect the people. Legislative hearings should be regular, routine, and should be based on the current pulse of where your community stands—and how we can legislate laws and policy to make the governing structure stronger. It's for the public. We reached out to 200 tribal citizens for our strategic plan, and it's my goal to ensure citizens have a role in

²⁵⁴ President Sharp's entire presentation may be viewed at <https://youtu.be/3yyKWNjqtek>

the planning and decision making and the oversight piece—the full cycle of governance.”

Addressing Citizen Concerns:

“There’s a process and procedure for how to engage the Council if things appear to be ‘going south’. We’ve learned that if we don’t have that process, that mechanism, then things lead up to the Tribal Council level...pretty soon they’re on the floor of the General Council...sometimes it’s the subject of a petition. It gets ugly, it takes on a life of its own - we don’t like that. So we created internal processes to ensure that we can effectively govern through our legislative body to provide oversight.”

“We ensure there’s a bright line between Tribal Council and administrative staff. When we have citizen complaints that staff aren’t following the laws, we don’t pick up the phone and give orders or directions to staff, we conduct an oversight hearing. We created a very simple form [for citizens] - state the policy, state the facts that violated the policy—and we conduct a basic oversight hearing to pursue fact finding. If there’s a need for corrective action, it’s in writing, it’s very clear, it’s very specific.”

Departmental Accountability:

“On a quarterly basis, we conduct regular oversight hearings. We have a performance section for each department. We have a financial section—are you staying within budget? If you’re above budget, what’s the justification? We have a public comment period, so tribal members that are concerned about fisheries, housing, or healthcare know they can come in on a regular basis to provide public comment and their questions are answered.”

“We also have both staff and elected officials in the [oversight hearing] room at the same time. Otherwise tribal citizens will be sent to staff, to Councils...they feel like they are in a revolving door. So having everyone in the room at the same time is something we’ve done to strengthen our legislative body.”

Governmental Administration:

“One recommendation that will really strengthen tribal nations is an administrative body of law. A tribe that has a regular, consistent body of administrative procedures like the Administrative Procedures Act.²⁵⁵ We have codes and we have staff procedures, but there’s no comprehensive body of law from which we can provide consistency. For resolving disputes among our

²⁵⁵ 5 U.S.C. Subchapter II.

various departments—we have 27 Committees, Commissions, and Boards; we have employees in six different Departments—a lot of their administrative procedures are ad hoc. There are vacuums in some departments. So we are adopting an administrative procedures act and an administrative law judge and a system for resolving disputes within the administrative structure. It's another measure to insulate the administrative body from the political body.”

APPENDIX G

Sovereignty and Justice—Tribal Law and Court Systems Professor Ron Whitener, Squaxin Island Tribe

Professor Ron Whitener (Squaxin Island) is the Executive Director of the University of Washington’s Native American Law Center and Director of the Tribal Court Public Defense Clinic, serves as Chief Judge of the Tulalip Tribal Court, and is President of the Center for Indigenous Research and Justice. In 2011, President Obama honored Professor Whitener as a “Champion of Change” for his leadership in closing the justice gap within American society.

A 1994 graduate of the UW School of Law, Professor Whitener worked first as a tribal attorney for the Squaxin Island Tribe where he represented the tribal government in treaty rights defense, gaming and enterprises, and infrastructure development. He later worked at the Northwest Justice Project’s Native American Unit in Seattle, and headed the Indian Law Clinic at the UW School of Law. In 2008 he was awarded a MacArthur Foundation Models for Change grant to identify strong programs and areas of need for Washington State tribal juvenile justice programs.

Professor Whitener’s Colloquium presentation identifies specific areas where tribal governments can enact policies and legislate codes to strengthen their legal systems. He highlights two conceptual sectors for building capacity and functionality within a tribal legal system: 1) “personal legal security”, which enhances the nation’s ability to effectively handle social concerns, and 2) “economic legal security”, which strengthens a nation’s ability to produce sustainable economic growth. Key sections from Professor Whitener’s presentation are provided here:²⁵⁶

1) Personal Legal Security.

Criminal Law Codes and Systems:

Tribal governments should develop the capacity to rely primarily on their own tribal law enforcement and probation services, rather than federal or state agencies. Utilizing the tribe’s own personnel provides distinct advantages to the community:

- Tribal officers are local to those they are protecting;
- More extensive and detailed knowledge of local family ties and dynamics; and,
- Greater understanding of best responses to “frequent flyers”.

Tribal criminal codes should be reflective of cultural and community priorities:

- Tribal codes can allow alternatives to incarceration for non-violent crimes;
- Treatment and sober living requirements can be built into the resolution options;
- Provide for community accountability for individual actions;
- Tribes can provide right to counsel for low-income defendants;

²⁵⁶ Professor Whitener’s entire presentation may be viewed at <https://youtu.be/WJUKZqnJikA>

- Protect against governmental over-reach by federal/state agencies; and,
- Help eliminate bias against Native American defendants in a non-tribal judicial system.

Mitigating Recidivism:

With the United States currently incarcerating the largest prison population in the world, many of whom have multiple convictions over time, tribes have an interest in developing systems that can help at-risk individuals find constructive life actions and stay clear of legal troubles. Numerous initiatives have proven beneficial in tribal communities, including:

- Access to treatment for chemical dependency, mental health, and medical issues;
- Counseling and treatment for domestic violence and sexually aggressive behaviors;
- Life skills training for obtaining employment and managing health/welfare issues; and,
- Harm reduction oversight, including regular review of personal coping strategies.

Domestic Violence Protection:

Tribal communities are plagued by domestic violence at a far higher rate than the U.S. average, and the extreme rates of abuse against Native American women spurred the federal government to renew and expand the Violence Against Women Act in 2013.²⁵⁷ Tribal governments can help reduce domestic violence by empowering and encouraging their courts to utilize preventative tools that have proven effective, including:

1) Domestic Violence Protection Orders, which provide legal protection and physical security measures to safeguard family members from violence by other family members. Enabling Tribal Courts to issue DV protection orders backed up by Tribal Police enforcement increases the security and efficiency of domestic violence prevention, and:

- Allows local and faster law enforcement response;
- Leverages local law enforcement familiarity with the community; and,
- Enables the legal system to work with the DV advocacy system to maximize protections.

2) Anti-Harassment/Restraining Orders, which provide legal protection and physical security measures to safeguard tribal citizens from violence/harassment within non-intimate/non-family relationships. The ability of tribal members to obtain legal protection such as no-contact orders can help reduce community violence by:

- Heading off festering disputes and allowing a cool-down period; and,
- Leveraging local law enforcement community knowledge to take preventative actions (e.g. monitoring community gatherings where abusers might contact victims).

To be effective, these legal protections must also be readily accessible to tribal members who likely do not have the financial means to retain attorneys to petition the Tribal court to issue an order. Tribal governments and/or Tribal Courts must therefore provide simple and affordable methods for citizens to obtain the protection they need, and should consider creating and widely

²⁵⁷ https://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf

publicizing a dedicated advocacy office that provides low/no cost access to the Tribal Court to obtain protection orders.

Family Law and Child Protection:

Family law is a formal institution that relates directly to primary informal institutions within a tribe, and tribal communities have the same broad and constant need for an effective family law system as any other population. The horrific legacy of the boarding and forced adoptions of Native children illustrates the critical need for effective tribal systems for dealing with inter-family legal issues, particularly regarding the welfare of children. Establishing comprehensive family law and child protection codes is a fundamental responsibility for tribal governments, and offers many advantages for their citizens:

- Allows divorce in courts knowledgeable about tribal trust property issues;
- Tribal Courts have more direct knowledge of the parties and family dynamics;
- Opportunities for traditional peacemaking (assuming no domestic violence);
- Tribal courts can order long-term relative guardianships over termination of parental rights;
- Can use tribal social services to increase assistance to parents and support reunification; and,
- Enables parents to regain custody from guardianships after establishing parental fitness.

Protecting Vulnerable Adults:

Just as children need legal protection from neglect and abuse, so too do elderly adults who may be partially or completely reliant upon the care of others for their life needs. As the population of elderly citizens continues to grow, tribal governments and courts need to institute legal codes and processes - again with ready access for low-income members - to:

- Improve access to family support systems for elderly and disabled adults;
- Utilize familiarity with the parties and family dynamics to provide appropriate care structures;
- Engage tribal services to maintain vulnerable adults in the least restrictive environment;
- Help maximize resources from the Indian Health Service and tribal agencies; and,
- Encourage family involvement in their elders' lives.

2) Economic Legal Security.

Takings Protections:

A significant barrier to economic growth in Native American nations is a lack of understanding, both outside and within the tribal community, of how tribal sovereignty impacts economic rights and the conduct of business on the reservation. A basic and crucial step tribal governments can take to establish a legal environment conducive to economic growth is to enact property takings protections within their Tribal Code, along the lines of those set forth in the Fifth Amendment to the US Constitution. Key provisions that should apply equally to tribal members and non-members include:

- Allowing specific due process before any takings of property or rights;
- Providing ample notice of intent of a taking to the affected parties;

- Giving a full opportunity for impacted parties to be heard prior to decision;
- Decisions issued by an impartial but culturally and community-informed judge.

Business Codes:

Having clear regulations for business organization and transactions are critical for enhancing economic activity, and tribal sovereignty offers tribal governments the opportunity to enact codes that are more efficient and advantageous for business than the surrounding state/county/local regime. Important code elements for fostering economic activity include:

- Contract litigation/mediation provisions, designed to resolve disputes fairly and quickly;
- Recourse for tort claims, with damages limits linked to insurance coverage maximums;
- Systems for permitting of commercial activities under tribal law; and,
- Tribal Uniform Commercial Codes, setting processes for credit and security.

Zoning and Land Use:

The confusing “checkerboard” of on-reservation property status (trust land, non-trust tribal land, fractionated allotments, private fee simple parcels, etc.) creates a challenge for land-based business activities. Tribal governments can help alleviate the confusion and promote beneficial growth by enacting land use regulations that clarify where/how business can be conducted and:

- Provide consolidation of similar business activities in appropriate locations;
- Protect personal security by limiting commercial activity in residential areas; and,
- Enhance security for outside interests to do business on-reservation.

Protection of Wealth:

An important driver for economic development is the ability to maximize the utility of available wealth, be it monetary, land, or other resources. In tribal nations, much wealth has been effectively frozen by an inability of members to access collective resources like tribally-owned real property, or leverage trust payment or other income for capitalization of business activities. Tribes can unlock the development power of trust-asset wealth by enacting codes that offer:

- Increased flexibility to use individual trust resources, e.g. land and resource royalties;
- Supervised permission to leverage tribal trust lands for business and community use;
- The ability to use per-capita payments as collateral for business loans from the tribe.

APPENDIX H

Sovereignty and Strategic Economic Development
Glen Gobin (Tulalip), Vice Chairman, Quil Ceda Village
Lisa M. Koop (Moravian of the Thames Band, Delaware Nation), Tulalip Tribes

Lisa M. Koop, Tulalip Tribal Attorney, and Glen Gobin, Vice Chairman of Quil Ceda Village together presented the extraordinary story of the Tulalip Tribes' creation of the Consolidated Borough of Quil Ceda Village (the "Village").²⁵⁸ The Village is a separately chartered political subdivision of the Tulalip Tribes and one of only two "federal cities" in the United States—the other being Washington D.C.²⁵⁹ Following the enactment of the federal Tulalip Leasing Act, 25 U.S.C. §415(b), the Tulalip Tribes have built the Village from vacant land into a thriving reservation economy that in 2014 generated nearly \$400 million in revenue and \$40 million in tax receipts.²⁶⁰

The Village is a regional retail and entertainment destination located adjacent to Interstate 5, approximately 45 minutes north of Seattle. Over 160 businesses operate in the Village, including Cabela's, Home Depot, Wal-Mart, Olive Garden, Coach, Calvin Klein, and Polo—all on tribally-governed land. The Village attracts approximately 60,000 visitors each day, and employs approximately 7,000 tribal citizens. The Village is an economic boon to the entire Snohomish County economy and has spurred substantial economic development on nearby off-reservation lands, including a shopping mall and hotel, with attendant tax revenues.

In the mid-1990s, Tulalip began to devise a master plan to diversify Tulalip's economy, to attract visitors to the reservation, to provide a tax base to generate revenues for services, and to create employment for tribal members. In 2000, the Tribes chartered the Consolidated Borough of Quil Ceda Village, a municipal corporation comprising 2,163 acres of trust lands.²⁶¹ The Tribes' governing body delegated to the Village Council broad governmental powers, including the power to levy taxes. Through this ground-up institutional development initiative, the Tulalip Tribes transformed a vacant parcel of tribal trust lands into a self-governing municipality and economic engine that is organized, financed, managed, and serviced exclusively by the Tribes and the Village.

To create the infrastructure to support economic development, the Tribes designed and constructed roads, sidewalks, and parking areas; traffic control, signage, and lighting; an electrical substation and electrical lines; freshwater, wastewater, and storm-water systems; water reservoirs and pumping stations; a state-of-the-art sewage treatment facility; fire hydrants and an irrigation system; natural gas lines; and data and telecommunications lines. The Tribes managed and completed these projects without an outside developer, instead using tribal staff, employing dozens of tribal members and their businesses, and investing tens of millions of dollars in tribal

²⁵⁸ Ms. Koop and Mr. Gobin's entire presentation may be viewed at: <https://youtu.be/Ek5lovOnIr0>

²⁵⁹ <http://www.quilcedavillage.com>

²⁶⁰ <https://www.law.cornell.edu/uscode/text/25/415>

²⁶¹ <http://www.quilcedavillage.org/>

funds leveraged with a general government operations loan guaranteed by the Bureau of Indian Affairs.

Under tribal laws approved by the Secretary of the Interior, Tulalip comprehensively regulates all aspects of the leasing of trust lands within the Village, including the permitted uses of leased lands; lease and rental payment procedures; rental rates, including appraisals and formulas for calculating and adjusting rates; performance bond, insurance, and indemnification requirements; lease duration; mandatory lease provisions; assignment, encumbrance, and subleasing; administration fees; ownership of improvements; dispute resolution and tribal court jurisdiction; environmental review and protection, including water and air pollution; and taxation.²⁶² Village lessees are subject to comprehensive tribal codes that support economic activity by regulating, inter alia, land use and zoning; building and construction; business licensing; building and fire safety inspections; traffic; signage; right to work; tribal and Indian hiring and contracting preference; rights of way and easements; health and safety; food service; sanitation; liquor sales; noise and animal control; solicitation; civil and environmental infractions; transient accommodation; and tort liability.²⁶³

The Tribes and the Village also provide all tribal and many federal government services within the Village. These services include full-time police protection by tribal officers who hold general peace officer authority under State law and are cross-deputized as Snohomish County officers; traffic control; parking; fire protection; emergency medical and 911 services; food safety and health inspections; water supply and transmission services; sewer, storm-water, and wastewater services; garbage and debris collection and disposal; road and sidewalk maintenance and snow removal; landscaping and maintenance of common areas; pest control; phone, internet, and cable television services; utility services and maintenance; and a civil court system for the resolution of disputes arising within the Village.

The Tulalip Tribes' creation of the Consolidated Borough of Quil Ceda Village represents a triumph of sustainable development for a Native American nation. It is a foremost model for building a comprehensive institutional structure for achieving development potential, and cohesively combines governance, legal codes, strategic planning, and economic facilitation. The Village also provides an exceptional level of cultural match between the nation's institutions and citizen priorities, providing gainful employment for tribal members and substantial cash for funding cultural and social programs. Indeed, it was the mutual trust and cooperation of the Tulalip people that made the Village possible in the first place. Long-time Tulalip Tribal Attorney Michael Taylor, one of the architects of the legal structure underlying the Village, described the philosophical impetus within the tribal community for undertaking the effort: "They were ready - ready to make a positive change."

²⁶² The governing codes are accessible at <http://www.codepublishing.com/wa/Tulalip>

²⁶³ Village regulations are accessible at http://www.quilcedavillage.org/qcv_ordinances.asp

VITA

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Mr. Guedel is Chair of the Native American Legal Services Group for the law firm of Foster Pepper PLLC, and serves as Chair of the American Bar Association's Committee on Native American Concerns. He is a lecturer and Co-Director of the Munich Study Abroad program at the University of Washington through the Comparative History of Ideas Program, and is the author of the book *Strategies and Methods for Tribal Economic Development: Building Sustainable Prosperity in Native American Communities*.