

ECONOMIC DEVELOPMENT IN INDIAN COUNTRY: WILL CAPITALISM OR SOCIALISM SUCCEED?

Robert J. Miller*

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* Assistant Professor, Northwestern School of Law of Lewis & Clark College; J.D. 1991, Northwestern School of Law of Lewis & Clark College; Appellate Judge, The Confederated Tribes of the Grand Ronde Community of Oregon and the Northwest Intertribal Court System; Board Member, National Indian Child Welfare Ass'n and Oregon Native American Business Entrepreneurial Network; Member, Eastern Shawnee Tribe of Oklahoma. The author thanks Kittee Custer, Steve Wehling and Julee Welch for their research assistance, and Patrick Borunda for his comments on an earlier draft of this Article.

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Economic development in Indian country has received considerable attention in the last few decades, and for very good reason. n1 American Indians suffer from the highest rates of poverty, unemployment and substandard housing of any group in [*759] the United States. n2 The basic services and infrastructure that Americans take for granted are absent on most reservations. In fact, Indian reservations in the United States have been compared to “third-world countries.” n3 Moreover, American Indians own private businesses at a much lower rate per capita and the businesses they own produce less income on average than all other racial groups. n4

Attempts to address these economic problems, however, have largely focused on tribal governments. The majority of the public and private efforts to create and sustain economic development [*760] on Indian reservations have dealt with tribal governments funding, starting, and operating business activities. n5 Today, Indian tribes organize, fund, and, in many instances, operate or direct the day-to-day affairs of many of the businesses and the majority of the economic activity in Indian country. n6 This situation is a result of, or an “accident” caused by, federal control over Indians and Indian tribes, federal funding of tribal operations, and over two hundred years of Federal Indian law and policy. It has resulted to a large degree in the formation of what looks to the untrained eye to be socialistic economies in Indian country because the federal and tribal governments control most [*761] of the economic activity and jobs. n7

In contrast, the United States economy is based on the principle of trying to keep government out of private business and free enterprise, and allegedly of allowing the nation’s economy to develop [*762] and grow on its own. n8 The government concentrates on fostering an economy where private investors and entrepreneurs pursue their own property interests and profit motives by operating private businesses. This theory has worked to the point that the American economy is dominated by small privately owned businesses. n9 This form of capitalism allows individual economic self-interest and initiative to fuel the American economy. n10 In Indian country, however, the opposite paradigm prevails because federal policy has allowed and actively encouraged tribes to organize and operate businesses. The results reveal that this policy is not succeeding in developing strong and diverse economies on Indian reservations. In fact, the opposite has occurred because tribally operated or controlled businesses fail regularly or function poorly. n11 In addition, as pointed out above, poverty is still [*763] the norm on most reservations and the economic condition of Indian people is the worst of any ethnic or racial group in America. Far more important than the abstract failure of economic policies and programs is that reservation economies and Indian people cannot afford lost economic opportunities. Reservation populations desperately need economic development, jobs and diverse economies. However, reservations have not prospered because the federal policy of assisting and encouraging tribes to control and operate the majority of the economic activity in Indian country has been a failure.

This Article considers the economic history and situation in Indian country and argues that federal policies have helped create quasi-socialist, inefficient economies for Indian tribes. Socialism, or tribal and federal governmental control of reservation economic life, is not the most effective way nor the only avenue to develop reservation

economies. This Article examines the effect of this type of “socialism” in Indian country and how it developed as compared to the primary economic principle which drives American economic life - capitalism and private free market [*764] enterprise. This Article suggests that as an alternative to the dominant tribal and federal control of economic life in Indian country tribes should look to expand the possibilities for growing their economies by looking to capitalist ideas of private business ownership, free enterprise and the history of Indian private property rights and initiative.

In Section I, this Article debunks the entrenched but erroneous idea that American Indians do not understand or appreciate capitalist principles of private business and private property ownership. Section II analyzes the more than two hundred year history of American treatment of tribes which has contributed to the formation of predominantly tribally controlled economies in Indian country. Section III briefly discusses the enormous potential for economic growth in Indian country through private, free market business ownership and some of the tools needed for tribal economies to develop such a market. Finally, this Article concludes with the recommendation that tribal, federal and state officials, and private parties must utilize the untapped and nearly unlimited potential of the private, capitalist, free market entrepreneurship of Indians to expand and diversify the economies of America’s Indian tribes.

I

Traditional American Indian Economies and Private Property Concepts

European settlers and early Americans misunderstood tribal economies and property rights. n12 Even today, there seems to be an almost universal misunderstanding that American Indian cultures had and still have little or no appreciation or understanding of private property ownership and private, free market, capitalist economic activities. n13 This mistaken idea could not be further [*765] from the truth. It appears to be based almost exclusively on the idea that most American Indian tribes did not consider that land could be privately owned but instead thought that tribal lands were communally owned. n14 Thus, the European and American colonists came to believe that Indians did not believe in or understand private property and capitalist principles.

In contrast, as in all societies, Indians and their governing bodies had to provide for the daily needs of their families and their tribes. Hence, Indians were continuously involved in the production of food, tools, clothing, shelter and all sorts of objects for personal use. Indians also regularly traded goods with other peoples from near and far both for survival and to make life as comfortable as possible. The majority, if not all, of this trade was conducted in free market situations where private individuals voluntarily came together to buy and sell items they had manufactured for sale and which they exchanged by barter and sometimes even sold for money. Startlingly, perhaps, it appears that the only way in which Indian principles of economics and private property differed from the European/American concepts was in the conflicting views these societies had on the private ownership of land. n15 The actual purpose for the European and American settlers to discount or intentionally to ignore how Indians viewed and used private property may have been to provide justification for stealing Indian property rights with a clear conscience. n16

[*766] The following discussion is of necessity general and brief because it attempts to highlight the economic activities and situations of hundreds of diverse Indian tribes that inhabited areas that are now within the United States. n17 We can only scratch the surface of the complexity and significance of these economic activities and the differences among these widely divergent groups. Here, we review some of the economic principles and activities of various tribes to demonstrate that these native peoples understood, appreciated, and lived by principles that we today call private property, free market economics, and capitalism. n18

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A. Indian Private Property Rights

1. Land

Although a common misunderstanding regarding Indian tribes is that they were all nomadic hunting peoples, n19 the exact opposite is nearer the truth. At the time of contact with Europeans, the majority of Indians lived permanently or semi-permanently in small towns and villages and primarily supported themselves through farming. n20 Surprisingly, perhaps, in the eleventh [*768] through the thirteenth centuries, some American Indian towns were larger and controlled by more sophisticated societies than European countries possessed at that same time. n21

Most of the land Indians lived on, however, was considered to be tribal land; that is, it was owned by the tribe or by all the tribe’s members in common. n22 Even though the tribe as a communal group was considered to own the tribal territory, almost all American Indian tribes recognized various forms of permanent or semi-permanent private rights in land. n23 The fact that the land was communal property did not prevent individual tribal members, families and large

house-groups or clans from acquiring and exercising use, or usufructuary, rights over specific pieces of tribal land. n24 Consequently, Indians could acquire “ownership” rights or private property use rights to specific tribal lands even though the lands were held in common by the entire tribe. In many tribes, individual Indians and families that began farming, hunting or trapping on unused land in effect made this “communal” land their own private property when they individually [*769] developed and worked it. n25

There are numerous examples from a diverse group of tribes from all over the United States of this Indian form of private ownership and use of land. The Pueblos, for example, in what is now New Mexico, allotted farming rights to individuals even though the tribe continued to hold communal title to the land. n26 Commentators have characterized this right of families and individuals among the Pueblo people and the Hopis of Arizona as a property right to the use of tribal land and its improvements, including even the sophisticated irrigation systems which these peoples built communally. n27 The Pima Tribe of Arizona also worked communally to build extensive irrigation systems, yet the village headmen would then assign specific farm plots to individuals and the plots became the inalienable property of the assignees and their heirs. n28

There are a myriad of other examples of similar types of private property ownership or use rights in land among the tribes. Many eastern and southeastern tribes produced the majority of their subsistence by farming and, while the land belonged communally to the tribe, individual families held usufructuary rights to certain lands. n29 The people of the Creek and Cherokee Tribes from the Southeast farmed their own plots and put the harvested crops into their own privately owned storehouses. n30 Garden plots among New England and Virginia tribes “were either owned outright by families or held in usufruct by them.” n31 The [*770] Navajos of the Southwest also considered farmland to be individual property which an individual or family claimed by clearing the land and planting crops. n32 The Havasupai Tribe of Arizona also considered that tribal lands could be privately owned by individuals as long as it was in productive use. n33

Various tribes recognized other private property rights in land besides farming. Tribes in the West that relied heavily on fishing also developed personal property rights that demonstrated the importance of this resource to individual Indians. n34 Many Columbia River salmon fishing sites, consisting of man-made wooden platforms or well-located rocks, were individually owned properties that were held by families and passed down by inheritance. n35 Others were allowed to fish on these sites, but if the property owner was not catching enough fish he would make a signal and the other people would have to cease fishing so that he could fully exercise his individual property right. n36 Other tribes also had various principles of private property that controlled fishing sites located on tribally owned lands and these included the right to exclude others from a site. n37 These property rights [*771] were so firmly established in some Oregon and California tribes that the owner’s rights were passed by inheritance, others could not fish at these privately owned sites, and the sites could be rented out or sold by the individual owners. n38

The Inuit peoples of Alaska and Canada and other tribes exercised and enforced definite concepts of private property regarding hunting and fishing territories. n39 Some Canadian tribes controlled overhunting by assigning tribal hunting territories to individuals and granting the owners exclusive use; an example of privatization of communal resources. n40 Other tribes that became heavily involved in the European fur trade also developed individual private property rights in valuable rivers and streams to control overharvesting. n41

The Nootka people of the Pacific Northwest, which include the Makah Tribe of Washington, “carried the concept of ownership [*772] to an incredible extreme.” n42 Among the Makah and the Nootka, individuals held as “privately owned property” their land and houses, beaches, river fishing spots and even fishing sites in the ocean! n43 The Tlingit Tribe of southeast Alaska also recognized private property rights in salmon streams, hunting grounds, and sealing rocks, and recognized and protected the accumulation of wealth by individuals. n44

Tribes also recognized other forms of property rights in land. In the vast majority of tribes, individuals or families were considered to own their housing and often their home sites. n45 Moreover, many tribes recognized property rights to valuable producing plants such as berry patches and fruit and nut trees. n46 Some of these property rights were considered inheritable and some could even be bought and sold. n47 Consequently, many [*773] American Indian tribes recognized and protected a wide range of free market individual and family property rights for privately owned and operated food production activities on specific pieces of tribally owned lands.

2. Private Property Rights Other Than Land

All Indian tribes also recognized various forms of private property other than land. In an early form of what is today called intellectual property, copyright and trademark law, the Makah and other tribal families owned the sole rights to

use the carvings on their houses, dances, marriage ceremonies, names, songs, medicines, masks and rituals. n48 Similarly, individuals in the Tlingit Tribe privately owned their totem pole symbols. n49 Of course, all Indians privately owned their personal property such as their animals, clothing, cooking utensils, housing, tools, weapons and any goods they produced. n50 These items were owned as [*774] private property by individuals and families and were not shared as tribal or communal property.

The ownership and use of horses, one of the most valuable pieces of personal property in certain tribes, is illustrative of how some tribes viewed private property and capitalist endeavors. After the Spanish brought horses to the Americas in the 1500s, some tribes adopted nomadic lifestyles in which increased buffalo hunting played a prominent role. n51 Horses and other animals, however, always remained items of personal property which were privately owned by individuals. n52 In fact, private ownership of horses was so strongly protected in some tribes that an individual retained some property rights in a horse even after it was lost to another tribe and later recaptured. n53 Well-trained buffalo horses were a very valuable privately owned commodity. Interestingly, some Indians engaged in the entrepreneurial activity of leasing out their buffalo horses for payment. n54 In addition, Indian principles of capitalism and private property rights gained by private initiative are demonstrated by the fact that in communal hunting, raiding and warfare situations, where one might assume that tribes would share the spoils communally, many tribes recognized and protected individual private property rights in captured items. Thus, items such as buffalo or whales, captured horses, and the spoils of raids and war created recognized private property rights in many tribes. n55

[*775] Buffalo hunting not only provided the main subsistence for the Plains Indians' lifestyle but also made many individual Indians wealthy. This wealth was demonstrated by large families, the accumulation of material items, and tribal influence. n56 Other Indians from a wide variety of tribes also engaged in specific occupations or professions other than just buffalo hunting and they thereby gained private property rights in their production efforts. The Makah Tribe, for example, had specific "career paths" and occupations to which persons aspired because there was "some degree of specialization into whale hunters, seal hunters, doctors, gamblers, warriors and fishermen." n57 In other tribes, persons specialized in professions such as shamans, healers, craftsmen, and song writers. n58 These private free market jobs provided income and support to the individuals and their families and they kept the payments or goods they received from their occupations as private property.

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3. Wealth Accumulation

An intriguing effect of private property ownership is that certain Indian tribes and peoples engaged in wealth accumulation, which led to ample leisure time, the practice of elaborate social and religious ceremonies, and even public displays of wealth. n59 This idea is no doubt contrary to most stereotyped notions of a communal, socialistic Indian society. Instead, it sounds more like the Reagan era capitalism of the 1980s!

As pointed out above, many tribes recognized private property rights in the production and accumulation of food and personal objects. Indians and their families worked hard and often at very dangerous activities to acquire material goods to make their lives easier and more secure. n60 Buffalo hunters, traders, farmers, fishermen and whalers, for example, could be very prosperous private business people who accumulated considerable amounts of [*777] privately owned goods and wealth. n61 Many tribes understood the value of amassing economic goods to provide time for leisure activities, to engage in religious and cultural ceremonies, and to make art and handicrafts. For many Indians, nature's bounty and their work and ingenuity provided an ample source of life's necessities and their "economic year," or the time it took to gather or produce all their annual food and subsistence needs, left plenty of time for leisure and ceremony. n62

In addition, in some tribes, individuals did not keep their wealth a secret and in fact they put their wealth on display. n63 Among the Pacific Northwest coast tribes, some people would demonstrate their wealth by pouring valuable whale oil into the fire or even over their guests at gatherings. n64 Other Indians accumulated [*778] valuable dentalia shells, which were used as money by many tribes, and women wore great strands of dentalia to demonstrate the family wealth, similar to how many people today wear gold and silver jewelry. n65 Some Indians even hoarded and buried their dentalia and would dig it up occasionally to count and admire it. n66 At certain ceremonies, some tribes also engaged in ostentatious displays of wealth by smashing and destroying very valuable copper objects and killing or freeing slaves. n67

A graphic demonstration of how some tribes accumulated, displayed and used wealth is presented by the potlatch, a unique aspect of the Pacific Northwest coast Indian culture. n68 Potlatching is the ritual, social, economic, and even

competitive gifting of [*779] enormous amounts of valuable goods at great feasts that chiefs and rich men and families would give for other families, clans or tribes “for the purpose of gaining fame and standing.” n69 Potlatching required enormous amounts of work to gather the great wealth needed for distribution. n70 The display of wealth played a role in the potlatch and of course the accumulation of wealth was absolutely necessary to be able to host potlatches. n71 The potlatch also demonstrates that Indians understood wealth and its uses and value to the societies they developed, even if it was for giving away to help others or to gain social standing. According to their cultures, this was an economic, social, and valuable use of wealth no different than how we choose to spend money today on activities, including social and charitable giving, that our societies have come to value.

The discussion above demonstrates that most tribes and Indian individuals conceptualized and established private property and ownership rights in many different items. n72 Indians and their [*780] tribes understood and protected the ownership of private property rights, for example, in land, river and ocean fishing and hunting sites, nut and fruit trees, and in personal property such as horses and manufactured items. These Indian people created and acquired individual property rights by “investing” their physical labor and their “capital” of tools and other assets to work and develop land and its resources by cultivating and protecting them, by regularly using hunting and fishing sites, and by making various products. Thus, it is apparent that European settlers and early Americans misunderstood Indian economies and views on private property. In contrast, most Indian tribes and peoples have been very well acquainted throughout their history with private property rights and private free market economic activities.

B. Tribal Economies

Until quite recently, American Indian tribes were not officially active in the economic arena by, for example, operating banks or enacting written policies to control the economies of their peoples and regions. n73 In one sense, Indian people operated under the purest of capitalist systems in that there was very little governmental control over the freedom of individuals to engage in whatever type or amount of economic activity they wished. n74 Tribes as governments, however, played a role in the economic activities of their regions and tried to control the external forces that affected their economic interests. n75 It is sometimes difficult [*781] to draw a fine line between when tribes as governments were acting economically as opposed to when individual Indians and families were acting economically. However, a small-scale economy and especially a “private free market” economy seems to be nothing more than a group of people loosely interacting to produce and exchange necessary and luxury goods through a medium of exchange. This, American Indians have done since time immemorial on the microeconomic level via privately operated small enterprises or businesses. Indian tribes have also participated in the more macroeconomic sense by taking steps as governments to manage or control their economies to benefit their people.

1. Tribal Economic Management

Historically, tribes acted as governments and managers in tribal economic affairs in several ways. As discussed above, many tribal governments exercised various levels of control over their communally owned lands and led military actions to defend their territory and to take other lands. n76 Much of this activity was designed to control valuable farming and hunting areas. Also, as mentioned above in the context of private rights, tribal authorities often organized economic activities regarding land that benefitted the tribe as a whole. Tribal leaders organized and led projects such as building irrigation systems, assigning hunting and farming areas to individuals, and determining planting and harvesting times. n77 Tribes were also astute enough to try to protect their resources by controlling the overuse of hunting, fishing [*782] and trapping rights. n78

In some American tribes at different times, the tribal governments exercised extensive economic authority and even organized their people to build impressive cities and temples and to work together economically to support large populations. In the eleventh, twelfth and thirteenth centuries, Indian cultures in the Mississippi valley and in southern Colorado, New Mexico and Arizona built massive and complex masonry and stone housing and ceremonial structures and gathered large populations together. n79 The Ancestral Puebloans who lived in northwestern New Mexico at Chaco Canyon built hundreds of miles of paved roads thirty feet wide, which connected Chaco and its residential and ceremonial great-houses with the outlying residential and farming towns and villages. n80 The tribal government at Chaco created a manufacturing center where raw materials, such as turquoise, were mined and manufactured into utilitarian goods and ornamental objects such as beads and pendants. n81 Some archeologists believe that “turquoise may have been a medium of intercultural trade” and that Chaco was “the mint.” n82 The Chaco government and the Mississippian Cahokian Indian society also mobilized labor to build impressive public works and for food [*783] production, controlled the exchange and trade of goods, and distributed water. n83 These civilizations were well-structured economically and their governing bodies had significant control over their people. Other tribal governments

also mobilized group assets and would, for example, gather and hold public monies and crops for certain situations. The Cherokee, Creek and other tribes “taxed” tribal members part of each crop, which “tax” was kept in a public treasury to serve future public needs. n84

Other tribes throughout history were also involved in organized tribal manufacturing endeavors to produce specific items for sale. Tribal groups would occasionally engage in the same economic activity at the same time and thus the people could be stated to have been operating economically under the tribal government and economy. Some tribes were famous for the manufacture of certain items, like wampum, which was used as money, or pipes, which were sold and traded all across America, or pottery or blankets. n85 These tribal peoples labored as a group to serve a specific market niche that they had worked to develop. Furthermore, other tribes took more drastic steps to control their economic interests and fought wars to control their trade routes and trade partners. n86 Tribes were even known to relocate their [*784] villages to be closer to trading partners or to exclude other tribes from a certain trade. n87

Tribal governments and their leaders were also very knowledgeable about the economic possibilities and advantages for their tribes from controlling trade routes and the traders themselves. Often tribal governments would seek an economic advantage by ensuring that non-Indian traders dealt only with their tribe so that they could be the middlemen for transactions between Indians and non-Indians and so that they could create the market and set the prices for the transfer of Indian and non-Indian goods and services. n88 Tribes went to great lengths to keep their trading partners separate so that they could make a profit from being the “wholesaler” or “middleman” in economic transfers. n89 To maintain their tribe’s monopoly over trade, tribal leaders often scared or prevented white traders and other tribes from dealing directly with each other by telling outlandish stories about the traders or the other tribes, or by giving traders incorrect directions on how to find other tribes. n90

[*785] These few examples from diverse tribes and different parts of the United States demonstrate that tribal governments understood economic principles such as monopolies and the control of trade and profits. Thus, we have seen that many tribal governments took various steps to control the economic activities and prosperity of their peoples and were actively involved in economic management on the governmental, macroeconomic level.

2. Tribal and Individual Indian Trading

The vast majority if not all Indian tribes and peoples have been heavily involved in trading, exchanging, bartering and outright buying and selling of goods since time immemorial. n91 Indians traded and sold the surplus food and items they produced or manufactured to other peoples in mutually beneficial exchanges [*786] of necessary and luxury goods. n92 Indians or tribes with particular skills would produce and then sell or trade surplus items to others who were proficient at making other items individuals needed but could not make themselves. n93 Indian people have long made goods for sale and trade which they exchanged at large fairs or markets that were held regularly at specific locations and times across the United States. This trading activity was characterized by significant aspects of private property ownership and entrepreneurial business activity because these well-established principles of Indian trade and their trade networks were nothing less than private property rights and a private free market capitalist economy at work. n94

a. Native Trading Networks

American Indians and their tribes participated in extensive regional trade networks that crisscrossed the continent. n95 Tribes [*787] and individual Indians traded a wide variety of goods they had grown, gathered or produced to tribes and persons near and far, and these goods were then traded again to other tribes up to hundreds or even thousands of miles away. n96 For example, sea shells native to the Gulf of Mexico, the southeastern Atlantic, the Gulf of California, and the Pacific Ocean have been found a thousand miles away. n97 This occurred in times when travel and transportation of goods over even short distances were arduous or impossible [*788] tasks. In fact, the dog was the only pack animal Indians had until Spanish horses spread across North America. n98

Tribes and individuals also actively produced, transported and traded minerals to distant locations. Copper from the Great Lakes region and elsewhere, Rocky Mountain obsidian, salt and other minerals have been found in substantial quantities hundreds and even thousands of miles from their point of origin and often after they had been manufactured into ceremonial and luxury items. n99 Southwest tribes traded turquoise and jewelry and masks they manufactured from materials they had mined to Mexicans for macaw birds and feathers and copper bells, and to people from the Gulf of California for shells. n100 After Europeans arrived on this continent, the extensive and well-established tribal trading networks led to the spread of European goods to many tribes long before they met their first white people. n101 Tribes and individual Indians had no problem incorporating newly arrived Europeans into their trading networks. In fact,

[*789] they willingly engaged in trade and extended their activities to the new European and American trading partners and goods as both sides became customers and traders in tandem. n102

Indians also traded personal services between tribes. n103 Some services were paid for with goods or currency and thus were fee rather than barter transactions. n104 Other tribes engaged in slave trading activities. Many of these tribes bought slaves with the “cash equivalent” of Hudson Bay Company blankets or other items at a set price and as a regular aspect of intertribal trade through established networks and markets. n105

b. Tribal Markets

Tribes all across the present day United States operated regional trading markets or fairs from prehistoric times until long after European contact. n106 Trading for necessary and luxury [*790] goods was fundamental to Indians. n107 In the 1740s, a German count was so impressed by the trading market the tribes maintained in eastern Pennsylvania and by the amount and diversity of goods that he stated it was “like the Hague in Holland.” n108 Many tribes that Lewis and Clark encountered on their expedition described the tribal trading fairs and markets. n109 In 1805, Lewis and Clark witnessed firsthand the great Indian market at The Dalles, Oregon, and were amazed at the fish storage technique and the enormous amount of trade in which the Indians engaged. n110

These markets were held at regularly designated times and places and large numbers of Indians from a wide array of tribes would come together every year or more often to trade. n111 The trade network also brought to these markets a wide variety of goods from distant places, including European trade goods. n112 These established trading markets were so important that tribes, [*791] and later even the Spanish, would call truces to hold the markets. n113

c. Traditional Indian Business Skills

Indians and their tribes had established business and trading practices long before Europeans came to this continent. n114 The European and American traders soon learned that Indians were astute and experienced business people. n115 Indians were sophisticated traders and proficient at operating their private business concerns and at manipulating economic factors. n116 Indians were [*792] well aware of the price and value of the goods they wanted and they negotiated vigorously and paid the prices and bought only the goods they desired. n117

Some Indians and Indian markets operated using standardized measurements for selling certain goods. n118 Some Indians also gave guarantees on their products and on brides, and had well-established rules of trade. n119 Some Indian business people extended credit and many white traders sold goods on credit to Indians; hence, most Indians were familiar with this economic principle. n120 Other Indians engaged in lending money and valuable goods and collected interest on these loans. n121

[*793] As discussed above, many tribes and Indians all across North America understood the economic value in gaining monopolies on specific goods and trade routes and becoming the middleman in transactions because it enabled one to pass on goods at higher prices and to earn greater profits. n122 Tribes fought vigorously both politically and by actual warfare to maintain the trade advantages they desired and to control the trading that occurred within their territories. n123 Indians well understood profits and [*794] how to manipulate markets to their advantage. n124

Tribes and Indians also proved that they were adaptable to the new economic activity that arose with the coming of Europeans to America. The fur trade and European trade goods from the 1600s forward brought new economic activity to North America and created changes in many tribal economies. n125 Many tribes and Indians actively and voluntarily participated in the entrepreneurial fur trade and the trade in European goods, and various tribal practices and principles of property ownership were influenced by, and adapted to meet, this new commercial activity. n126 Luxury goods quickly became necessities, as they seem to do for all people, and Indians worked hard to secure the goods that they valued. n127 In conclusion, the foregoing demonstrates that Indians and tribes understood the principles of free market [*795] profit-driven trading activities and they willingly, actively and intelligently engaged in these activities.

3. Tribal Currencies

Many Indians and tribes understood the use of money as a medium of exchange and trade instead of only using a barter system. In various parts of the United States, Indians used wampum (manufactured belts of seashells), beads, Hudson Bay Company blankets, turquoise, dentalia shells, deerskins and other valued items as money or currency to transact business with other Indians and later with Europeans. n128 It is reported that wampum was [*796] even used for a time to pay tuition at Harvard! n129 Moreover, some Indians even engaged in money lending and used these tribal

“currencies” by loaning them out at interest. n130 Various tribes also used accumulated wealth in these currencies to buy goods, to give to the poor, to settle disputes, and even to atone for criminal acts. n131

Wampum was used by many tribes in pre-contact times and after, and even by Europeans, as money to buy and sell goods. n132 The value of wampum as money was well recognized by Europeans. The governor of Pennsylvania in 1744 said that traders cheated Indians out of their furs “and their wampum, which is their Money.” n133 Some tribes even made manufacturing wampum a tribal business and others were economically compelled into making wampum to trade for European goods. n134 Wampum [*797] could even suffer from inflationary valuations. n135

Dentalia is a shell harvested from Vancouver Island, Canada, and was used for personal adornment, like silver and gold, and also as a medium for trade, like money. n136 Dentalia was personal property and was highly valued and traded by many Indians. n137 Some Indians have been described as hoarding and protecting these shells to preserve their personal wealth. n138 Members of different tribes would even tattoo their arms or legs with lines for measuring the length and hence the value of strings of dentalia. n139 Many tribes and non-Indians used dentalia and other such tribal currencies exactly as we use money today; that is, to buy goods and services. n140

The intriguing use of various items as currency by American Indians and the existence of an active market of buying and selling [*798] products using an item as money demonstrates the long-standing experience Indian people have had with economic activities. This entire discussion, brief though it is, clearly shows that Indian tribes and peoples understood and protected a wide variety of private property rights and economic activities that approximate capitalist free market activities in which many individuals and families worked to accumulate wealth and to protect their private rights in the goods and currencies accumulated. Capitalism as an economic system, then, does not appear to be a foreign idea to most of the American tribal cultures.

II

Federal Policies Encouraging Socialism in Indian Country

Socialism is generally defined as an economic and political theory which advocates the collective or governmental ownership and administration of the means of production of goods according to centralized governmental planning. Most reservation economies loosely fall within this definition because they are dominated by federal government jobs and programs, and by tribal government jobs, programs and businesses. This situation is the incidental result of general policies the United States has pursued towards tribal governments and Indians over several centuries. These policies have contributed to the development of economies on reservations in which tribal governments operate many of the economic enterprises and direct or control most of the economic development. The specific federal fiscal policy embodied in the 1934 Indian Reorganization Act, n141 which encourages tribal governments to charter corporations and operate businesses, has also helped create socialist style reservation economies.

As a result of both these general and specific federal policies, tribal governments have been intimately involved in developing the majority of major business and economic enterprises on reservations. Some of these enterprises have been successful; however, as commentators point out, the majority of these “governmental” businesses and economic activities have not succeeded, either because tribal politics and business do not make a [*799] good mix or because the tribal governmental operation of business has created inappropriate institutions that cannot efficiently operate businesses for profit. n142 Commentators state that even under the best of circumstances, tribal, federal, and state governments are the least effective entities to operate businesses. n143

Ironically, tribal ownership of large portions of land and natural resources on many reservations, which is normally a good thing for tribal hegemony and control of cultural and political life, can be a negative factor for capitalist development. Such tribal ownership can lead to forms of socialist economies because the tribal government controls one of the major means of economic production. Thus, these governments own some of the major means of production necessary to create businesses and jobs. Tribal governments that do not own all the reservation land or natural resources still have significant control over the development and use of those resources. This can lead to extensive tribal control of their economy. In America, we claim that just the opposite is true, that the United States does not own or operate businesses and that it tries to maintain a hands-off approach towards the free market economy. Interestingly, this American economic model has proved so successful in recent decades that today private free market capitalism is sweeping the world and is the form of economy pursued by almost all nations. n144

A. Capitalism and Socialism

Capitalism is an economic system in which ownership of the [*800] means of production, that is, for example, the land, factories, machinery and natural resources, is held by individuals and not by governments. n145 The basic principles of capitalism are that, first, the motivating force or incentive in the capitalist economic system is self-interest. n146 Second, the system is regulated by competition between many companies and prices are supposed to be established by competition. n147 Third, there should be little economic regulation by the state beyond the requirements of law and order because competition is the regulatory power. n148 Finally, because competition and the market allegedly bring the best possible results, as large a trading area, as much competition and the strongest market possible are desirable. n149

In contrast, socialism is a system whose main characteristic “is that government owns the major means of production, which are used according to central planning.” n150 As opposed to capitalism, where private individuals own the majority of the land, assets, capital, and factories needed to produce goods and individuals make the private decisions on what goods to make and how to market and price them, in a socialist system the government is intimately involved in these commercial economic functions and decisions. A centrally governmentally planned economy is, among other things, the direct opposite of a pure capitalist system in which the answers to all economic questions are supposed to be made in the marketplace by private [*801] individuals. n151

Applying these definitions, there is a distinct possibility that tribal and reservation economies in the United States are socialist and not capitalist systems. In contrast to the four elements of capitalism set out above, tribal governments own the majority of the land and natural resources on most reservations, own and operate the majority of the larger economic activities on reservations, employ a very high percentage of the reservation work force, and sometimes decide what goods will be produced and at what prices. n152 In addition, tribal governmental programs and businesses often focus on just providing jobs and not on earning profits. n153 Thus, the economic self-interest and profit motivation that drives capitalism is often missing in tribally owned and operated businesses. n154 These businesses are also often economic monopolies, at least on the reservation, and there is no competition [*802] or market to drive these businesses to succeed and grow. This situation does not sound like capitalism. We will investigate how Indian country has evolved into this system in which tribal and federal governments own, employ, and direct the majority of the economic activities.

B. The Federal Political and Trust Relationships with Tribes

The United States has always dealt with Indian tribes as political entities which govern their people and territories. The government-to-government political relationship between tribes and the federal government is an important and valuable element of the federal/tribal relationship. n155 It is usually spoken of in glowing terms, and rightfully so. However, it appears that this relationship, or at least how that relationship has played out economically, might have contributed to governmentally controlled economies in Indian country. The treatment of tribes as political entities may have led the federal and state governments to deal solely with tribal governments regarding economic issues in Indian country, a fact that has contributed to the development of tribally controlled economies for reservations.

Treating American Indian tribes as political entities, which they undoubtedly are, began with the European settlement of North America. Starting as early as 1608, the English, French, Dutch, Russian, and Spanish governments all dealt with tribes as political entities and governments empowered with authority and control over their people and territories. n156 All of these governments [*803] negotiated and entered treaties with tribes regarding land purchases, friendship, trade, and other issues. Moreover, the United States government, from its earliest permutation as the Continental Congress in 1775, continued the European strategy of dealing with tribes as political entities and of negotiating treaties. n157 From 1778 though 1871, the Continental Congress, the Articles of Confederation Congress, and the Congress of the present day United States ratified about 390 treaties with tribes. n158

The United States Constitution places the sole and exclusive power of dealing with tribes in the hands of the United States Congress. n159 This constitutional authority provides Congress with “plenary power to legislate in the field of Indian affairs.” n160 Congress has taken advantage of this power to pass laws of every conceivable nature on every issue regarding Indians and tribes, including economic matters. These laws have been both beneficial and detrimental to Indians and tribes. Consequently, Congress’ plenary power and the political relationship between the United States and tribes have drawn the federal government into a major and active role in managing all aspects of tribal life. They have created a much greater role for the United States in reservation economic life than the federal government plays in [*804] the non-Indian economy. This course of action has had socialistic economic impacts in Indian country.

Another significant aspect arising from the federal/tribal relationship which impacts tribal economies is the trust relationship between the federal government and Indian tribes and peoples. The federal trust duty has arisen from the

constitutional plenary power Congress has over Indians and tribes and in conjunction with the guardian type duties the United States has assumed on behalf of Indians through treaties and statutes over the past two hundred years. n161 This fiduciary or guardian relationship springs from the duties the United States owes to tribes and individual Indians. n162 In regard to this duty, the United States has “charged itself with moral obligations of the highest responsibility and trust.” n163 This trust duty requires that in exercising its broad authority in Indian affairs Congress and the Executive Branch, having the responsibilities of a guardian, must act on behalf of the dependent Indians and tribes. n164 The courts have often held the United States liable in money damages to tribes and Indians for violations of its responsibility as trustee to see that trust economic assets are wisely used. n165

It can be argued that the trust doctrine and the guardian relationship have also had an unintended negative impact on economic development in Indian country and have contributed to the development of socialist economies because they have led the United States into an intensive and nearly day-to-day involvement in the majority of reservation economic activities and with the economic assets of tribes and many Indians. n166 This is so because [*805] the federal government has an ownership interest in the majority of tribal assets and means of production in Indian country as the trustee for Indian tribes and people, and makes or approves most of the decisions regarding these assets and economic development in Indian country. n167 Because these properties are held “in trust” and are jointly owned by the United States, tribes and individual Indians cannot pledge such assets as collateral for loans or develop or dispose of such assets without federal approval. n168 Needless to say, having the federal government looking over the shoulders of tribes and Indians and the time it takes to gain federal bureaucratic review and approval of business deals adds enormous costs and inefficiencies to tribal and individual Indian economic endeavors. n169 The risk of the United States being held financially liable as trustee for bad business decisions on reservations and regarding trust assets, combined with federal employee business inexperience, makes federal agencies very conservative and cautious in approving how such assets will be used and developed. n170 As most people in business are aware, time is money, and speed is crucial in taking advantage of economic possibilities. The inefficient and non-business oriented federal bureaucracy creates numerous problems and obstacles for tribes and Indians who are trying to use their trust assets for economic purposes. n171 The major role the federal government [*806] plays in economic decision making regarding reservation assets and economies is in direct contrast to the role it plays in the American capitalist system. Thus, the political and trust relationships between the United States and tribes have contributed in part to the development of quasi-socialist economies in Indian country.

C. The Trade and Intercourse Era

From its inception, the United States copied the long-standing English political and economic policies towards tribes. The economic goal of the English government had been to make Indians dependent on English goods by integrating them into the colonial marketplace. n172 Politically, England wanted to keep the peace with tribes by preventing the colonists and traders from provoking the tribes to warfare through the colonists’ uncontrolled trade and land grabs. n173 Thus, England and the American colonial governments established regulations and bonding and licensing schemes to control who traded with Indians and how the trade was conducted. n174

[*807] During and after the Revolutionary War, the United States desperately needed to keep the peace with the Indian tribes because it had neither the army nor the funds to fight new enemies. Hence, it officially continued the English policy of trying to placate tribes politically and helping to keep the peace by being a fair trading partner. n175 The United States also was interested in creating markets for its goods and traders and wanted to tie the tribes economically to America. n176 The very first U.S. constitutional Congress acted quickly to exercise its power in Indian affairs [*808] and to enact its policies of appeasing tribes and preventing the states and individuals from dealing with tribes or buying lands without the involvement of the federal government. In the first five weeks of its existence, Congress enacted four statutes concerning Indian affairs. n177

Most significantly, on July 22, 1790, Congress enacted the first Indian Trade and Intercourse Act, which it renewed and amended over the next decades before permanently adopting the statute that is still in effect today. n178 This Act was passed to prevent “obstreperous whites,” lawless frontiersmen, traders, and the states themselves from trading illegally with tribes and buying tribal lands without federal approval. n179 In regard to trade, the Act continued the English and colonial practices of licensing traders, requiring the posting of very high bonds and providing for the forfeiture of any goods taken illegally into Indian country. n180

Surprisingly, the federal government also entered the Indian trading business at this time. President Washington and the government were so serious about trying to keep the trade honest and tribes content and peaceful that the government opened Indian trading houses when Congress adopted Washington’s suggestion [*809] in 1795. n181

Government trading houses were operated at twenty-eight locations all across the frontier from 1795-1822. n182 This process assisted in making Indians dependent on the federal government as they bought their supplies at the federal stores, and it also contributed to shutting the door to free trade and free markets in Indian country. n183

The federal control of free trade and economic activities in Indian country inhibited the operation of a free capitalist market and most economic development in Indian country. n184 In essence, Congress preempted the American free market and became “a surrogate for Indian decision making in ... economic relations with the settlers.” n185 The federal executive branch also participated in this isolation of Indian country from the American capitalist economy. Most treaties with tribes required that the tribe limit their previous trading habits or only trade with the [*810] United States government. n186 Many tribes later realized that they were suffering from an absence of access to trade and they negotiated in subsequent treaties to take steps to increase trade and to gain better access to goods. n187

One result of the Trade and Intercourse Era policy, intentional or not, was to start the process of shutting Indians, tribes, and their lands and resources out of the American capitalist economy and free trade market. n188 Congress caused this result by refusing to allow any use of tribal assets, such as for leasing land for grazing or farming, or for mineral or timber development, by imposing strict limits on traders interacting with Indians, and by creating the federal trading houses which dominated the early American trade with Indians. n189 The policy had the concrete impact of cutting Indian and tribal assets out of the American economy. Indians were thus severely limited if not totally prevented from participating in the American capitalist economy to whatever extent they might have wished to participate. Consequently, Indians have lived in governmentally controlled, quasi-socialist economies since 1790.

D. The Allotment Era

Federal Indian policy remained essentially unchanged over the next one hundred years as far as its intended effect on tribal and [*811] Indian economies. n190 In the 1880s, however, a change in policy occurred which on first glance looks like Congress meant to create a private capitalist economic system in Indian country. In 1887, to be exact, Congress adopted the policy called the Allotment and Assimilation Era by enacting the General Allotment Act. n191

For decades preceding the 1880s, liberal thinkers, politicians, “Friends of the Indians,” and Christian reformers had been closely examining federal Indian policy. The predominant idea on how to deal with tribes was to civilize and christianize individual Indians and liberate them from the control and communal [*812] living of tribal life. n192 This policy was designed to bring Indians into the American “melting pot” by assimilating them into mainstream society. n193 This era in federal Indian policy also had the explicit goals of breaking up tribal ownership of land, ending tribal existence, and, most importantly, opening reservation lands to non-Indian settlement. n194 In fact, the desire of non-Indians to own reservation lands and to open tribal lands and assets to the American economy may have been the prime motivation behind the allotment policy. n195

The allotment aspect of the policy was designed to break up [*813] the communally owned tribal lands into individual plots, or allotments, to be owned by individual Indians and operated as farms. n196 The General Allotment Act and the tribal-specific allotment acts that followed during 1890-1910, generally provided for the division or allotment of reservations into 160 or 80 acre plots to be given to individual tribal members who could later become U.S. citizens. n197 To protect economically unsophisticated Indians, the United States retained legal ownership of these allotments by holding the land in trust for twenty-five year periods during which the land was inalienable and not taxable by the states. n198 The idea was that Indians over time would become astute in business affairs and farming and could eventually handle their own business matters. Significantly, reservation land not allotted to Indians was considered “surplus” and was sold for non-Indian settlement. n199 Most tribes did not have sufficient populations to allot their entire reservation to just tribal members. Hence, the United States sold the surplus lands to non-Indians and today many reservations have much higher non-Indian than Indian populations.

In the 1890s, Congress also began opening reservation assets to the American economy, which had been closed by the Trade and Intercourse policy, by allowing the development of minerals and timber in Indian country and the leasing of reservation land to non-Indians for grazing and farming. n200 Congress also utilized Indian lands for other purposes for the U.S. economy, such as for telephone, telegraph, and railroad rights of ways. n201 Indian lands have also often been used for dams and reclamation and irrigation [*814] projects that benefitted non-Indians. n202

An important aspect of the Allotment Era policy did provide for individual Indians to gain private ownership of land free from tribal and federal governmental restraints. It appears, however, to be an exaggeration to state that the policy had the economic goal to make Indians and tribal economies capitalist in nature. n203 Rather than having economic goals, the purpose of allotment was to turn Indians into “civilized” and “christianized” American citizens and

small scale farmers based on the model of white Americans. n204 In regard to its effect on the economy in Indian country, the Allotment policy ultimately created long-term problems that have stifled individual Indian and tribal economic activity to this very day.

Subsequent events severely limited any private benefits accruing to Indians from the allotment and ownership of ex-tribal lands. Many Indians quickly sold or lost their allotments to tax foreclosures once they received alienable patents or deeds to their land. n205 Thus, the lands are no longer in Indian ownership to help Indians or tribal governments with economic development. [*815] Another problem, which was not foreseen, is the “fractionalization” of ownership of the individual allotments that remain in Indian ownership, which occurred because the original allottees died and their property passed intestate to ever larger numbers of heirs. n206 Many individual allotments on reservations today have hundreds of Indian owners. This has led to a serious lack of coordinated ownership and decision making over allotments and a nightmare of record keeping and legal work to manage and utilize these lands for tribal and federal governments. In this situation, many Indians today have severe problems putting together and operating viably sized pieces of real property to make economic endeavors feasible. n207 It is often easier for Indians passively to lease these properties than to gain consensus on projects or to consolidate enough land to develop a business or project involving allotments on reservation. n208 Congress recognizes the extent of this significant problem and has tried three times to enact legislation that can pass constitutional muster to solve the fractionalization issue. n209

Furthermore, a significant number of trust allotments within reservations are still held today by individual Indians with the United States being the legal owner. n210 This occurred because [*816] the United States changed its allotment policy in the 1930s, as discussed below, and froze in place any allotments that had not yet passed to the Indian owner in fee simple. Hence, many individual Indians own land today on reservations in which the United States is the legal owner. The fact that the United States retained trusteeship and legal ownership of these allotments has rendered them almost totally unavailable for mortgaging and for use in borrowing money by individuals because an individual cannot mortgage, lease, or develop the land without the permission of the federal government. n211 This remains a big problem in any utilization of these lands for economic activities and limits the development of a free and efficient economy in Indian country. Thus, while the Allotment Act and policy may appear to have been intended to promote capitalism or private economic development, it only created more dependency and reliance on the federal government and its leftover effects still seriously impede coordinated attempts to develop reservation economies.

Ironically, instead of helping private economic interests in Indian country, the Allotment Era impeded them. For example, Indian reservation farming was more vigorous and on the increase before the Allotment Era than thereafter. n212 Allotment also resulted in tribes losing sixty-six percent of all tribally owned lands, with the majority of that passing to non-Indians. That fact, in conjunction with the limitations on the trust allotments remaining in Indian hands today, has created a severe impediment to the coordinated development of reservation economies. n213 [*817] The Allotment Era did not create a private market capitalist economy in Indian country or even help economic conditions. It instead left a legacy of problems that inhibit economic development.

E. The Indian Reorganization Era

The Indian Reorganization Era of Federal Indian policy ran from the early 1930s to about 1945 and was marked by passage of the Indian Reorganization Act (IRA) in 1934. n214 Under the IRA, the United States completely reversed its allotment policy of breaking up reservations and attempting to destroy tribal governments and instead decided to support tribal governments. n215 By the 1930s, it had become obvious that allotment of tribal lands and the attempt to assimilate Indians had led to disaster. A two-year study of Indian country showed that reservation Indians were living in far worse economic and social conditions after four decades of allotment and assimilation than they had been in 1887. n216 Consequently, among many other goals, the IRA ended the federal policy of allotting tribal lands to individuals and placed a freeze on the sale or loss of any remaining trust allotments still held by individual Indians. n217

[*818] The federal government now actively encouraged and assisted tribes to organize governments and adopt constitutions and bylaws. n218 The IRA also had a very explicit goal to increase economic activity and development in Indian country. The IRA attempted to accomplish this goal by providing for the formation of federally chartered tribal corporations to engage in economic development and business. n219 This provision is very significant to the modern day predominant role of tribal governments in reservation economies.

The IRA allowed tribes to apply to the Secretary of the Interior for federal charters to create tribal corporations through which they could operate businesses, hire attorneys, enter contracts, and engage in litigation. n220 The official policy of the IRA was to encourage tribal business and economic development to be undertaken by tribal governments and tribal institutions even if it worked to exclude individual Indians from the economic activity. n221 The tribal

corporations formed under section 17 of the IRA were granted the power to manage their own property, to buy and sell and manage any property, and “such further powers as may be incidental to the conduct of corporate business” n222 [*819] Tribal corporations could also borrow money from a ten million dollar revolving loan fund authorized by Congress for tribal economic development purposes. n223 The loan fund was created primarily to serve tribal economic enterprises although tribes could transfer loans to tribal members. n224 The IRA arguably had a significant socialistic impact on the economic life on reservations because the federal and tribal efforts and concentration on economic development became focused on the tribal government as the entity to start and operate reservation businesses, even to the exclusion of individuals.

For this very reason, when the IRA was proposed it encountered virulent opposition by groups claiming that it promoted socialism and communism. The various opponents of the IRA thought, among other things, that assimilation of Indians should continue, that Indians were inhibited in their liberty and citizenship rights by being subject to tribal governmental control, and that reservation lands and assets should continue to be available to the American market. n225 The charges of communism and socialism that were used to fight and later to reverse the IRA might have only been a form of “red-scare” politics in the 1930s. n226 However, many different groups and persons described the IRA and the alleged intention to keep Indian people segregated from white society and living in a communal, tribal society as being the start of communism and socialism in America. n227 Even Congresspersons [*820] opposed the Act and worked to amend and repeal it because of concerns about socialism. n228

Notwithstanding any “red scare” claims of socialism, and the serious doubts about the IRA in the 1930s, it is certain that the IRA established strong tribal governments in Indian country that today have pervasive control over the economic life and economies of reservations. Modern day observers contend that the IRA imposed tribal governments, tribally controlled economies, and artificial economies on Indian country. n229 In fact, the IRA [*821] had such an all encompassing tribal business orientation that many of the tribal governmental entities that were formed under the IRA are today officially called the tribal business committee or tribal business council. n230 This is no surprise since the IRA encouraged tribes “to organize along the lines of modern business corporations” n231 and demanded that economic development proceed with a “tribal approach.” n232 Tribal governments and their role in operating tribal businesses have become so intertwined that even the federal government and others have often confused and failed to distinguish between the activities and identity of the tribal governments formed under IRA section 16 and the tribal corporations formed under IRA section 17. n233 Commentators agree that the IRA has led to tribal governments starting and operating businesses, something they are ill-equipped to do. n234

The economic aspects of the IRA have led to problems for tribes and individual Indians with regard to economic development in Indian country. The primary problem beyond leading tribal governments to becoming the main economic force on reservations is that the IRA also helped create pervasive federal bureaucratic [*822] control over Indian economic activity. n235 For example, while tribes could now hire their own attorneys, the “choice of counsel and fixing of fees [was] subject to the approval of the Secretary of the Interior.” n236 Furthermore, federal control of tribal economic activity had already been greatly increased in 1871 when Congress enacted a statute that required the Secretary of the Interior to approve all contracts tribes might sign “relative to their lands.” n237 The 1871 act and the IRA’s creation of new tribal governments and businesses led to extensive federal agency oversight and direction of tribal governments in their political and business decisions. The federal control and direction of tribes became overwhelming in the IRA Era and for decades afterwards. n238 It is universally accepted, however, that federal bureaucratic review and approval authority over tribal economic activities is a death knell to effective and efficient business decision making, yet this is the situation tribal economic development found itself in during the IRA Era and thereafter. n239 It is [*823] no surprise, then, that tribal economies did not develop well under the IRA and the subsequent federal control over tribal decisions, assets and resources. Tribal and federal management of reservation economies and direct control over most of the reservation jobs and economic activity since the IRA Era has not created economic success. n240 Indeed, the IRA has almost prevented the success on reservations of individual entrepreneurship and free market capitalism and instead has created governmentally controlled economies that do not function very well. n241

F. The Indian Self-Determination Era

The Self-Determination Era of Federal Indian policy began in the early 1960s and is still the policy today. n242 The principal legislative initiative has been the Indian Self-Determination and Education Assistance Act of 1975. n243 This Act instituted a [*824] philosophical change in the administration of Indian affairs by allowing tribes to contract with the federal government for the delivery of federal services. While the programs continue to be federally funded, they can be planned and administered by the tribes themselves. The intent is to end the federal “domination” of Indian

affairs. n244 The economic impact has been that tribes are now taking more control of reservation economic development programs from the federal government. n245

In this era, the federal government has tried several different means to address economic development and poverty in Indian country. In the 1960s, general federal poverty programs invested millions of dollars into tribal programs and infrastructure. n246 In recent decades, the government has worked with tribal governments, and to some extent with individual Indians, to try to remedy the lack of economic activity on reservations. Congress has provided a few loan and grant programs for tribes and Indians for startup funding. n247 Job training and experience have been provided to Indian individuals through several different federal programs that were also available nationwide. n248 For the most part, however, it can be fairly said that the United States is still looking to tribes to create and operate most of the businesses and economic activities in Indian country.

A surprising example in the Self-Determination Era of just [*825] how serious Indian tribes and the federal government are about addressing economic conditions in Indian country is the experiment with gambling. Tribes began successful high stakes bingo projects in the late 1970s and the Supreme Court recognized tribal sovereign authority to operate such activities. n249 This activity had proved to be an excellent source of economic activity for a few tribes; so much so that in 1988 Congress raised the stakes by authorizing the operation by tribes of casino gaming. n250 It remains to be seen what, in the long-term, wildly successful casino operations for a very few tribes will do to improve economic conditions for all tribes and Indians.

The far-reaching effects of federal attempts to assist economic and social conditions in Indian country, such as with tribal gaming and even social welfare programs, are often impossible to foresee. An example of a laudable, socially responsible program of the United States that has had unexpected effects on the development of a private business sector in Indian country is the federal housing program for reservations. n251 This program was started because lack of adequate and available housing in Indian country has long been, and continues to be, a serious problem. n252 Starting in 1962, the U.S. Department of Housing and Urban Development began assisting tribes to form and operate housing authorities to build and operate rental and for-sale housing. n253

This federal program, operated by tribal governments, may have had the unintended effect of helping to hinder the development of private capitalist reservation economies. n254 This is inferred from the fact that the private housing market is an [*826] extremely crucial component of the United States economy. One would expect that it would be the same on reservations, but it is not. n255 The fact that tribes and the United States are primarily responsible for providing rental and for-sale housing on reservations, and do so at below market subsidized prices, has no doubt created a disincentive for the development of a private housing market and a robust private home construction industry in Indian country. n256

In 1996, in apparent recognition of this problem, the United States enacted a new Indian housing law which attempts to bring private investment to Indian country and to encourage tribes and individuals to address the critical reservation housing shortage by private non-governmental means rather than just waiting on the federal government. n257 In clear language, Congress directed that tribes should look to maximize private financing and private sector involvement to help address reservation housing issues. n258 Several federal agencies have addressed the lack of private mortgages in Indian country by working on granting mortgages on [*827] trust lands to overcome the problem of securing mortgages on reservations. A few private bank loans have now been made for the construction and financing of privately owned homes on reservation trust properties with federal assistance. n259

After forty years of the Self-Determination Era, the United States, tribes and reservation inhabitants are still seeking the answer to successful reservation economic development. As exemplified by the federal reservation housing program, federal funding of Indian programs remains the “mainstay of the Native American economy” and the United States continues to look to tribal governments to create and operate economic development in Indian country. n260

III

Private Economic Development Possibilities in Indian Country

The potential for developing the economy and private business sector on Indian reservations is almost unlimited. n261 Regrettably, that is because the economic conditions on most reservations are so poor and Indians as a group place last in the United States in the number of privately owned businesses and business income per capita. n262 The good news, however, is the potential for growth which is demonstrated by the encouraging increase in individual Indian ownership of private businesses in the last three decades. The number of Indian-owned private businesses on and off reservations has grown from 3,000 in 1969 to 13,000 in 1982, [*828] which generated about \$ 5 million in revenues, to

197,300 in 1997, which generated more than \$ 34 billion in revenues. n263 Even after this improvement, though, Indians still rank last in per capita business ownership. n264 Thus, there continues to be a great opportunity for enormous growth in the number of Indian-owned businesses. n265 Indians, their families, reservations and tribal governments will all benefit from this increased economic activity.

A. Potential Benefits

The tribal, social, economic, health, cultural and other benefits that will accrue from increased economic activity on reservations is unlimited. n266 We will highlight only a few of the potential benefits.

[*829]

1. Improved Standards of Living and Reservation Economies

Indian reservations need an active small business environment so that the consumption that reservation Indians engage in will be done on reservations with Indian businesses and not miles away at the nearest non-Indian town. In the United States, it is considered desirable for money to circulate up to five to seven times in a local economy before it spins out of the area. n267 However, very few, if any, Indian tribes in the United States have fully integrated economies in which reservation residents can be employed, cash checks, and spend money for necessities and luxuries all on the reservation. Thus, this spending occurs off reservations. This loss or “leakage” of reservation residents’ income and the economic activity and benefits it represents occurs because of the absence of private small businesses on reservations where people can spend their money on goods and services. On most reservations there are, for example, no movie theaters, motels, video stores, larger grocery stores, clothing stores, restaurants, or even bank branches where residents can cash their checks. Consequently, on the vast majority of the more than three hundred Indian reservations in the United States, reservation residents have to travel to off-reservation, non-Indian cities to cash their checks and spend their money. n268 This leads to the loss of an enormous amount of economic activity and employment which should occur in Indian country. n269 The creation and operation of a diverse spectrum of small private businesses in Indian [*830] country is the tool that would develop reservation economies, increase economic activities and help keep the consumer activities of residents and visitors on reservations. n270

This problem is well documented. Tribes and other observers have long noted that the money reservation inhabitants receive does not circulate in the community due to the absence of small businesses but instead leaves the reservations almost immediately. n271 In 1994, a Navajo Nation official stated that eighty cents of every dollar reservation residents receive leaves the reservation immediately. n272 Indian country is losing an enormous amount of economic activity and benefit by this drain of money to businesses off reservations. n273 This factor seriously dilutes the value of the income that reservation residents receive to stimulate economic activity on reservations. This predicament is a disaster for the economic situation and the standard of living on reservations. Even as poor as most Indian reservations are, collectively Indians receive and spend a very large amount of money. For example, the members of the seven Montana tribes [*831] spend \$ 48 million a year off their reservations. n274 A study those tribes commissioned demonstrated that tribal, reservation and BIA salaries equaled \$ 200 million annually and created an economic benefit for the state of Montana of \$ 1 billion. n275 This tremendous economic benefit could occur in reservation economies if this money was spent on the reservations and circulated five to seven times. The loss of reservation dollars to businesses outside Indian country severely injures the development of reservation economies and destroys potential employment opportunities for reservation residents.

The importance of keeping money on the reservation is demonstrated by the economic principles of the marginal propensity to consume and the multiplier effect. The marginal propensity to consume defines the inclination of persons to spend a set and predictable percentage of any new income. n276 Every dollar that a person spends on cable television, clothes, dining, etc., ends up as profit, overhead, or salary in the pocket of another person. This new person will then also spend a set percentage of that money on consumption. Consequently, one dollar moves on to the next person and the next in layers of consumption and creates what is called the multiplier effect. n277 Using the multiplier theory, economists can accurately calculate the impact of one dollar being spent in an economy as it multiplies by respending and creates a much larger impact than just the effect of one extra dollar. In actuality, then, one dollar reverberates through an economy and becomes payroll, profit and spending money for a great number of people as long as some portion of the new spending stays within the relevant economy. n278 Consequently, if a reservation community can keep its dollars circulating through its economy by the continuing purchase of goods and services at reservation based businesses then the entire reservation economy will benefit and grow based on the respending or multiplier effect as residents and visitors merrily pursue their “propensity to consume.”

[*832] An active reservation economy with numerous private businesses offering a wide array of goods and services will help to keep the money that reservation residents and visitors possess circulating on the reservation and rotating between reservation businesses, employees and consumers. Obviously, if reservation families spend all their income in the reservation economy for housing, transportation, clothing, food, and entertainment, and deposit their savings in banks on reservations, this would be a boon to tribal economies and economic development. This is not the case on today's reservations, however. The solution to this problem seems to be for tribal and federal governments to encourage individuals and corporate entities to develop and operate businesses on reservations so that money can be spent and circulated between reservation consumers, businesses, and employees. This will increase the standard of living for all residents, create more economic activity by circulating dollars around the reservation, and give reservation Indians the option to participate in a capitalist economy to the extent they desire.

2. Tribal Economic, Social and Cultural Benefits

Tribal governments and Indians have much to gain from increased business activity on reservations because it will benefit economic, social and cultural aspects of life. Increasing the scope of business activity on reservations by diversifying tribal economies with a variety of private businesses will be a good step towards providing reliable economic growth in Indian country for tribal citizens. A diversified economy of small and large tribal and private businesses is more recession proof and will give needed economic stability to reservations. n279 Significantly, a very positive social and cultural benefit has already begun for tribes where economic activity is increasing and jobs are available on reservation: tribal members are moving back to their reservations. n280 Commentators attribute this in-migration to the economic activity that has occurred in Indian country to date. n281 An **[*833]** increasing population and the return of more families and family members will be a major boost for reservation societies and cultures.

Tribal governments will also benefit economically from increasing sources of taxation if reservation economies grow. In general, tribes lack adequate funding to operate their services and to develop needed infrastructure. They look mainly to the federal government for their funding and for health and education programs which are all at the mercy of uncertain federal appropriations. n282 Few tribes have access to substantial sources of taxation because of a lack of economic activity. Thus, a wider range of private businesses functioning on reservations would give tribes a broader tax base to utilize for funding social and cultural programs. n283

Increased economic activity on reservations will also have a beneficial effect on many tribal social issues. Increased income and living standards for Indian families should ameliorate some of the social problems affecting reservation populations. n284 Tribes would thus be faced with fewer welfare and criminal **[*834]** problems if there were more jobs and income on reservations. In addition, most tribes have already been using their increased income from tribal casinos and businesses to build infrastructure such as roads, health clinics, day care centers, and housing, which helps social and cultural aspects of tribal life. n285 Tribes could expand these types of programs by accessing an improved tax base if diversified tribal economies are created.

Tribal governments, like all governments, will also benefit from increasing economic activity as they gain increased spending power, governmental authority and the ability to protect their sovereign rights. Tribes with money to invest and to affect public policy are becoming influential players on the American economic and political scene. n286 Commentators have noted that economic self-sufficiency is an important part of tribes gaining political self-determination, social well-being, and cultural vitality. n287 This is well demonstrated by the recent actions of California tribes who turned casino profits into very effective political power when they passed two statewide referendums regarding tribal gaming. n288 Successful and active reservation economies **[*835]** will also add to tribal and Indian political and social clout as tribal and reservation based businesses hire non-Indian employees. For example, Indian casinos have created 140,000 jobs in the United States and 85% of them are held by non-Indians. n289 As tribes and private Indian businesses hire even more non-Indians and have an ever greater impact on county and state economies, tribal influence in the political arena will increase and tribes and Indians will be better able to manage their destinies. n290 Significantly, tribes have also used improved economic situations to increase or consolidate reservation land holdings. n291 This has a very beneficial political, social and cultural value to tribes and their citizens. In conclusion, tribes and Indians can benefit in many ways from an increase in economic activity in Indian country.

3. Federal and State Benefits

In a nutshell, the federal and state governments have much to gain from increased economic activity by individual Indians on and off reservations, and from a reduction in poverty levels and the resulting social issues. The federal government will benefit by collecting income taxes on increased economic activity by Indians on reservations and off, and states will receive increased income and sales taxes to the extent Indians operate businesses off reservation and

perhaps also for some on reservation activity. n292 The federal and state governments already benefit significantly [*836] from the spill over effect of different aspects of economic activity in Indian country. n293 That is because reservation activities such as tourism and gaming have benefitted states as tourists travel to visit Indian country or tribal casinos, and the federal government has received increased tax revenues and seen social conditions improve. n294 The United States and the individual states have also benefitted from major increases in non-Indian employment in tribal businesses because the majority of employees at most tribal casinos are non-Indians, and these governments could expect to see increased private business ownership by individual Indians resulting in more employment of Indians and non-Indians, thus lowering the unemployment rates. n295 States will also benefit from an increase in the number of Indian-owned private businesses because it has been estimated that states have lost hundreds of millions of dollars in economic activity due to the underrepresentation and underproduction of Indian private business owners. n296

State and federal governments also benefit when poverty is reduced and the standard of living rises for families and individuals. In these situations, the overall needs of federal, state and [*837] tribal citizens and the need for certain social services will decline, thus benefitting all governments. Consequently, state and federal governments have a significant interest in seeing an increase in the private ownership of businesses by individual Indians on and off reservations.

B. Needs

The majority of commentators agree that tribal economies need certain specific items to grow to their potential. In general, the recommendations are: (1) tribes need to develop sources of financial capital to help both tribes and individual Indians to start new businesses; (2) tribes need to develop the human capital of their workforce by education, work experience, motivation and training; (3) tribes need to free themselves of federal bureaucratic involvement; and (4) reservation land ownership problems from the Allotment Era which negatively affect economic growth must be addressed. n297 A recent study conducted with tribal chairs of one-third of American tribes revealed their opinions of the top five obstacles to tribal economic development: (1) lack of capital; (2) lack of economic resources and the ability to obtain capital; (3) lack of natural resources; (4) lack of trained management; and (5) lack of trained personnel. n298 This Article briefly addresses relevant aspects of these economic development needs.

1. Training and Capital

As pointed out above, two obstacles facing tribal and private economic development on reservations are the needs to develop [*838] a trained, educated and experienced workforce, and to develop sources of capital. It also appears evident that if tribes are to develop private sector economies they need to renew their historical entrepreneurial spirits and concentrate on training, assisting and motivating individual entrepreneurs to start businesses.

Motivation and inspiration to start one's own business can come from seeing other successful privately operated businesses. Indian people, however, have little exposure to successful entrepreneur role models and private business owners since Indians have such a low incidence of business ownership. Thus, most Indians do not have models from which they can learn or be inspired and they rarely even consider the possibility of owning their own business. n299 Tribes can take steps to remedy this problem. Most tribes have economic development departments which could establish or participate in mentoring and training programs to develop entrepreneurs and to help Indians start new businesses. Various private organizations already provide business development training for individual Indians and Indians can also access training programs from the U.S. Small Business Administration (SBA).

Tribes can also promote successful entrepreneurs by giving them publicity in tribal newsletters, award banquets and more. Tribally operated businesses and governmental programs also play an important role in being the training ground for tribal members to gain experience as employees and to learn work habits and management skills. One of the pluses of the Self-Determination Era policy of tribes being able to operate federal Indian programs has been to allow tribal members to gain managerial and operational experience. In addition, tribes have the opportunity to direct all the tribal business they can to privately owned Indian businesses to assist them to get started and to be successful. n300

There are also successful models accessible with proven track records that are readily available for tribes and individual Indians to receive training and assistance in starting privately owned businesses on and off reservations. In 1992, for example, four [*839] Oregon tribes started the Oregon Native American Business Entrepreneurial Network (Onaben) to assist individual Indians on and off reservations to learn to develop business plans, to launch new businesses, and to improve their business skills in preexisting businesses. n301 These tribes realized that creating a private business sector on their reservations was necessary to achieve a balanced economy. n302 With the assistance of

the SBA, Onaben also created the unique Tribal Business Information Centers at three Oregon tribal locations, which was expanded to five sites in 1998. n303

Onaben offers a series of three courses on and off reservations that take students from the formation of a business idea to drafting a workable business plan to a ten week course on the essentials of starting a business, and also provides individual Indians with access to startup loans. n304 For those who get their idea off the ground, Onaben offers a one year small business management program. n305 The Onaben model has been a great success and has helped individual Indians in Oregon and Washington to [*840] start thirty-six new businesses in 1996, fifty-seven in 1997, 114 in 1998, forty-one in 1999, and twenty-seven in 2000. n306

An independent review of Onaben's activities by a University of Calgary professor in 1998 demonstrated the value of programs like Onaben's to tribal, state and federal economies. The new businesses started by the individual Indian Onaben clients in 1998 generated \$ 6.9 million in new sales, created 405 new jobs, and generated \$ 5.1 million in payroll in the Oregon economy. n307 The same study was conducted in 2000 and again revealed the value to tribal, federal and Oregon economies from the entrepreneurial activities of individual Indians. In 2000, Onaben clients generated \$ 3.5 million in new sales, \$ 1.6 million in new payroll and 480 new jobs for Oregon, tribal, and federal economies. n308 Furthermore, federal and Oregon support of Onaben has been amply repaid by the taxes generated on these new business entities. The 1998 study estimated that the new businesses created with Onaben's help generated an additional \$ 2.74 million in taxes in 1998 alone. n309 This represented a return to the state and federal governments of \$ 3.27 in tax revenues on every \$ 1 of federal, tribal, state, and private money spent on the entire operation of Onaben in 1998! n310 In 2000, Onaben clients contributed \$ 3 million in additional taxes - a return of \$ 6.83 in tax revenues in just one year for every \$ 1 spent on the entire operation of Onaben. n311

In 1999, the Cheyenne River Sioux Tribe recognized the value of these types of training programs and assisted in creating the private non-profit Four Bands Community Fund with a grant from the First Nations Development Institute. n312 Four Bands [*841] provides business training classes and assistance for reservation residents to secure start-up loans. Other private organizations across the country also run various programs which range from offering classroom instruction, counseling and technical assistance to helping individual Indians to develop and operate privately owned businesses and to find start-up loans and contract opportunities. n313

Besides training and education issues, it is universally accepted that one of the main reasons for the very low rate of private business ownership among Indians is the lack of capital. Most private non-Indian businesses are started with family money, oftentimes accumulated over several generations, by borrowing money through normal credit avenues or by using home equity. Indians as a group, however, have very little access to these three prime ways of raising funds to start a new business. n314 Due to the history of poverty in Indian country, most Indians lack access to family money and rarely have built up home equity due to the absence of mortgage home ownership in Indian country and a nearly non-existent appreciating private housing market. n315 In addition, Indians have little access to the usual credit channels. Consequently, Indians need access to seed money, which could [*842] be provided by tribal, private, state, and federal loan funds, to help alleviate this funding problem for starting new privately owned businesses. There are a few options already available to Indians through tribes, non-profit organizations and some banks for microloans of start-up money. n316 However, tribes and other governments need to work diligently to address this problem because it seriously hampers the creation of new Indian-owned private businesses.

2. The Tribal Role

Tribal governments have an extremely important role to play in reservation economic activity and in the development of a capitalist private business sector. n317 By no means does this Article discount the importance of tribes in developing and assisting economic activity and in increasing private business ownership by Indians on reservations. In fact, there are no purely capitalist economies in the world because every government takes some role in managing their economy and trying to see that businesses are created and flourish. n318 Moreover, governments act as the watchdog to protect the public interest, keep their economy in balance, and see that fair and true competition continues. All governments also play a crucial part in a healthy economic environment by enacting laws and regulations, maintaining law and [*843] order, enforcing contracts, defining property rights, and establishing court systems and procedures that enforce economic rights. n319 The stability provided by governments encourages people to work to secure commercial rights and to risk investments of their capital and effort. Tribal governments have this same important role on reservations.

There are many steps that tribal governments can take to diversify and grow reservation economies. One of the primary steps is to work on developing the infrastructure of the reservation; both the human and the physical.

Governments often play a leading role of investing in human capital through education, health, and social issues. n320 Education is a necessity to develop persons with the tools to be entrepreneurs. This is a problem in Indian country because Indians have the lowest educational achievement levels as a group in the United States. n321 Federal, tribal and state schools on or near reservations that serve many Indian children have numerous needs and are below the U.S. school averages in most categories. n322 Tribes need to work to improve [*844] the education their people receive and to be seriously involved with improving tribal, BIA and reservation area schools. Tribes can also develop the entrepreneurial spirit and help expand their private sector economies by assisting tribal members with business and economic training and mentoring programs. n323 In addition, tribes can continue to use their governmental and business entities as training grounds for tribal members to gain work experience and management skills. Many tribes have successful “anchor” businesses, such as casinos or large tribal businesses, which are great opportunities to help Indians start new private businesses to supply and support the anchor business. n324 Tribes should continue to act as entrepreneurs themselves as long as it assists reservation economies to grow. There will always be a role for tribal governments to operate some of the businesses on reservations, especially those which utilize assets the tribe itself owns, and also perhaps to operate larger industries until it becomes feasible for individual Indians to own and operate such businesses. n325

Tribes especially need to assist Indians to find funding for new businesses. Tribes need to seek and help create private, tribal, federal and state funding grants and loan programs for tribal members to start and operate private businesses. n326 Several tribes and organizations already provide these services, and other tribes have effectively used tribally owned banks to lend money [*845] to tribal members for start-up businesses. n327 Tribes should also consider using the power of the very large amounts of money they funnel through banks, for example, to gain the assistance of such banks in funding business start-up loan and grant programs for tribal members. n328

The physical infrastructure of most reservations also needs attention. Tribes are well aware of this but mostly lack the funds to address this problem adequately. In this high tech age, it is simply unbelievable that vast numbers of reservation Indians and schoolchildren have no access to phones, computers and the Internet. n329 Reservation roads, housing, communications, power [*846] and water systems, for example, also are problems on many reservations. n330 Tribes are working on these issues but they plainly need more federal and state assistance.

Tribes can also work to attract private Indian and non-Indian businesses to reservations to generate new jobs and economic activity. Tribes need to consider using the same tactics that states, counties and cities use in offering tax incentives, regulatory strategies and other means to entice new investments, new businesses and jobs to their locality. n331

As with all governments, tribes need to create a business-friendly political environment by supporting the creation and operation of private businesses on reservations. Businesses locate and are created where they can be profitable and where the laws and governmental regulations will be fairly and evenly applied. n332 Tribes need to work on this aspect of attracting businesses to locate in Indian country and even to make reservation inhabitants feel confident that they will reap the benefits from their hard work if they start new businesses. n333 Tribes can help improve the [*847] reservation as a business-friendly location by reviewing and adopting as necessary laws and regulatory codes that help businesses function and that protect business and property rights. n334 Studies have shown that tribes that develop effective and efficient regulations and bureaucracies are more successful in attracting new businesses. n335

Tribes also must insure that their court systems are impartial, free of political influence, and evenly and fairly protect business and personal property rights. n336 No one, whether a tribal member, an Indian from another tribe, or a non-Indian will risk their business and their economic future in a location where they can be “home-towned” by the courts and perhaps lose everything they have worked to create. n337 Studies have shown that tribes [*848] that have an independent, impartial court system have five percent higher employment rates on their reservations than tribes that do not have such courts. n338 This is dramatic evidence of the importance and role of tribal governments and their agencies in attracting both Indian and non-Indian private businesses to reservations.

The foregoing demonstrates graphically the significant role tribal governments play in encouraging, creating, promoting and assisting the entrepreneurial small business owner. Tribal governments can greatly assist the development of a private small business economy on reservations by encouraging the entrepreneurial spirit and creating an environment which encourages and assists reservation residents and others to start businesses.

3. Federal and State Support

Federal and state governments have significant reasons to support reservation economic development and an increase in the ownership rate of private businesses by Indians. First, these governments owe the same responsibilities to their Indian citizens to address their social, fiscal, and welfare interests as they owe to other citizens. In addition, as pointed out above, federal and state investments in organizations that assist Indians to start and operate businesses have repaid these governments many fold in increased tax revenues. n339 Thus, from a purely selfish perspective, federal and state governments will benefit from improved economies and higher tax revenues if they are more inclusive and assist all their citizens to participate fully in the American economy as business owners. Some states already recognize this fact and support the development of reservation businesses because they realize the spill-over effect that reservation economies create benefits the state. n340 Oregon, for example, has supported organizations that assist Indians to start businesses and has benefitted in increased tax revenues that more than cover the state's investment. n341

[*849] Financial support seems to be the primary and most immediate assistance that state and federal governments can provide to help increase the number of Indian-owned businesses on and off reservations. Hence, state and federal governments should increase their financial support of programs that assist Indians on and off reservations to learn management and entrepreneurial skills, to be mentored and trained, to gain access to funding, and to start businesses. The federal government has tried several job training programs for Indians in the past but they did not have lasting beneficial results, probably because they provided training for jobs that did not exist. n342 Now, however, is the time for the United States and the states to support training Indians to start their own businesses and actually to create their own jobs. Most importantly, governments must do their utmost to provide start-up business grants and loan programs for Indians. n343 These governmental investments in Indian people will help the entire American economy and lead to greater economic self-sufficiency for Indians and their communities on and off reservations.

An additional important boost that state and federal governments can give future Indian entrepreneurs is to improve education for Indians generally; to bring schools on and near reservations up to the national average in monetary support and effectiveness, and to help reservation residents gain access to computers, phones, the Internet, and business-specific educational programs. n344 The state and federal governments can also **[*850]** support Indian businesses by contracting with them. The United States already provides Indian businesses with federal contracting opportunities under the SBA Section 8(a) program and Congress recently expanded the Department of Defense contracting program to cover individual Indian businesses. n345 In 2000, Congress also enacted the New Markets Venture Capital program, which applies to Indian country and encourages and promotes economic development with federal guarantees and grants. n346 In addition, in 1994, Congress experimented with tax incentives to attempt to lure businesses and jobs to Indian country. n347

[*851] The executive branch has also been actively involved in working to increase economic activity in Indian country. In 1994, President Clinton issued an executive order facilitating the ability of Indian and minority businesses to procure federal contracts. n348 Federal agencies have also included reservation areas and small businesses owned by Indians in programs such as the SBA HUBZone program, and the Department of Agriculture designation of the Pine Ridge Reservation in South Dakota as an Empowerment Zone. n349 Both of these programs are designed to bring economic development to depressed areas. Businesses in these areas can receive federal grants, special tax benefits, and funding under other federal programs. These programs are all excellent attempts by the government to improve economic development in Indian country. The federal and state governments, however, need to be even more creative with tax incentives and other programs to encourage the development of privately owned Indian businesses. n350

As pointed out above, the federal government and its policies have been obstacles to tribal and individual Indian business development. The cumbersome and inefficient federal bureaucracy has often stymied or frustrated cohesive business planning on **[*852]** reservations. n351 The trust status of most tribal and much individually Indian-owned reservation land is a serious obstacle to reservation economic development. The United States is fully aware of this problem and has taken some very recent steps to try to lessen the federal bureaucratic role in Indian economic activities. n352 These steps appear to be experiments that may work or may turn out to cause unforeseen problems. But trying something new that puts development into tribal and Indian hands is a vast improvement over the past two hundred years of federal policy towards reservation economic development. Moreover, in 1999 and 2000, various federal agencies began experimenting with facilitating private mortgages on trust land and trying to work around the very serious problems tribes and Indians face in raising capital for building privately owned housing or starting businesses. n353 Everyone involved in reservation economic development issues should take heed of these federal initiatives and also begin thinking creatively to get around the obstacles to individual Indian business development.

It is encouraging to see the United States taking positive steps to let Indian people and tribal governments take more control over their own destinies and more responsibility for their own economic futures. It only seems logical that

the people who are suffering from the problems and who are closest to the situation would be the people most motivated to find and successfully implement the solutions. n354 This does not mean that the federal [*853] and state governments do not remain important players in continuing to work on these issues. Instead, these governments should expand legislation and programs that educate, encourage, and support Indian individuals to start and operate private businesses and to become full partners in America's economic system. Federal and state governments must work with individual Indians and concentrate on the goal of bringing Indians to the same level of private business ownership per capita as other groups in the United States. It seems to be self-evident to say that the federal and state governments should be promoting free market capitalism for individual Indians.

4. Tribal Cultures and Communities

This Article has repeatedly made exhortations such as "tribes should do this" or "tribes need to work on that." These statements are made as suggestions that hopefully tribes, Indians and economic planners will consider in working to develop economies in Indian country. They are only offered as suggestions because ultimately it is up to each tribal government and its citizens to decide what types of economic activity and development meet their cultural and religious traditions and will be viable and supported on their reservation. n355 There is no requirement, of [*854] course, that tribes or Indians pursue the "American economic dream." n356 Thus, it has been suggested that one of the additional "needs" for successful economic development in Indian country is that any development must be a good match to a tribe's cultural and traditional organization and history. n357 Some people argue that too much or certain kinds of capitalist development are perhaps not the Indian way. n358 As pointed out in section I, however, it does not appear that individual Indians and their families owning and operating private businesses is a cultural construct that is antithetical to traditional and historical American Indian cultures and economies. n359 In fact, the opposite seems true, because principles of small privately owned businesses operated at the free will of individuals and the protection of private property rights are good matches with most tribal cultures, [*855] traditions and histories. n360 Thus, tribal governments should not have to "sell" the idea of a private business economy to most Indians. The history of most tribes supports the freedom of individuals and their families to pursue and operate private businesses for profit, and recognizes and protects private property rights in the goods and services created. This is nothing new to Indians.

Going beyond the question of whether a tribe's history and culture support private business ownership, some people have pointed out that successful Indian private business people stand out on some reservations and sometimes encounter resistance for seeming to have pushed themselves ahead of others. n361 If this is true on some reservations, then it appears that another "need" to create beneficial economic development will be for such tribes and Indians to decide whether they will support reservation businesses operated by their own tribal members and by Indians instead of only utilizing off-reservation non-Indian businesses. n362 One would assume and hope that the general Indian cultural trait of sharing and cooperation would lead reservation residents to help their friends and relatives by patronizing and supporting reservation-based Indian-owned private businesses since this will also ultimately benefit all reservation residents.

Conclusion

Tribal governments have the responsibility to promote and foster economic security, development and jobs for their citizens. Helping to provide at least the necessities of life and the needed resources for Indians to maintain their lives, families, health and property seems to be a reasonable goal for tribal governments. Currently, many tribal citizens do not have the tools or the opportunity to reach the goal of maintaining their families at even a minimal economic level. This situation is not from lack of effort or concern by tribal governments or individual Indians, or perhaps even from a lack of effort by the federal government. In [*856] fact, the federal and tribal governments have tried many different strategies to increase economic activity on reservations as discussed above. Most of these efforts, however, have focused on tribal governments starting and operating reservation economic enterprises, or on providing make-work jobs. This has worked in a few instances to create economic activity but it has not produced lasting results in the majority of cases. A crying need still exists for new jobs, new businesses, new economic activity, and increased income in Indian country.

If Indian tribes are to break out of the cycle of poverty and the absence of business activity on reservations, tribes need to use every possible economic tool and all the options and resources at their disposal to develop diverse economies. n363 Private business ownership for individual Indians, on and off reservations, capitalism if you will, is an idea whose time has come for modern day American Indians. n364 Moreover, a private free market economy looks well suited to the history and cultures of most tribes; better in fact than does the "socialism" of tribal governments monopolizing and directing business activity in Indian country. The bottom line tells us that tribal governments,

reservation inhabitants, [*857] and federal and state governments need to emphasize, encourage and support the creation and operation of privately owned free market businesses on reservations to increase the diversity of economic activity and employment available on reservations.

Tribal governments and Indians will benefit greatly from an increase in Indian-owned private businesses and increased economic activity in Indian country. The potential to develop Indian-owned businesses and functioning reservation economies is enormous. Even a modest increase in the rate of Indian-owned business on reservations would go a long way towards creating viable, operational economies for tribes. If reservation inhabitants could spend the money they receive for services and goods with on-reservation Indian-owned businesses, their money would circulate throughout the reservation among a variety of small businesses over and over creating ever more economic activity, more employment opportunities and an active economy. Besides the benefit of increasing the income and standard of living for many Indians, tribal governments themselves will benefit because increasing economic activity on reservations is an extremely important part of tribes being able to assert self-determination and self-sufficiency. n365 In addition, diverse economies made up of a variety of large and small, private and tribal businesses are more recession proof and will provide needed stability for reservations. It appears, though, that “the only way to get a diverse economy in Indian country is through private enterprise.” n366

Tribal governments have a major role to play in reservation economic development even if the development is exclusively in the private sector. Just as with all governments, tribal governments should work to attract and promote private enterprise and to create business-friendly environments on reservations. n367 As already discussed, tribal governments can emphasize and support [*858] small privately owned Indian businesses by taking the necessary steps to foster their development and growth by helping to find and provide start-up loans and funding, by providing training and mentoring programs, by enacting and fairly enforcing commercial laws, codes and regulations, and developing a tribal bureaucracy that assists the creation of economic activity on reservations. In addition, tribal government employment and tribally owned businesses will continue to play a crucial role in creating economic development because they are the training ground for tribal members, and tribal businesses can also assist in growing an economy where more small businesses can thrive. By no means does the development of a private free market economy on reservations mean that tribal, or even federal and state, governments will cease being important participants in reservation economies. It does mean, however, that governments must support and then get out of the way of private entrepreneurship in Indian country. n368

In conclusion, Indian tribes have an opportunity and an obligation to improve the economic situation and living standards on reservations. There are concrete obstacles that tribes and individual Indians will have to address to create more economic growth, but there are also enormous opportunities available for developing reservation economies. Capitalism and private entrepreneurship are ideas that should be considered and used by tribal and federal planners and which should be developed and nurtured on reservations. Tribes must do everything they can to develop the entrepreneurial, capitalist spirit in reservation residents and ensure that more private businesses are started and operated in Indian country. Furthermore, state and federal governments cannot afford to overlook the unlimited potential of the economic and human benefits to be gained and created by a significant increase in the number of privately owned Indian businesses in and out of Indian country. All of these governments must work with individual Indians to start and operate privately owned businesses. An expanded private sector economy on reservations will provide jobs and economic activity that will stimulate the development of even more small businesses and [*859] more economic activity. Then, when there are fully integrated, diverse, and real economies operating on reservations and a critical mass of private businesses is developed that works in conjunction with tribal economic activities, it will create fully functioning economies which will grow and be sustained from the effect of money circulating and recirculating on reservations. Hopefully, at that time, both “socialism” and “capitalism” will succeed in creating beneficial and appropriate economic development in Indian country.

FOOTNOTES:

n1. Indian country is defined in 18 U.S.C. 1151 (1994). Generally, it includes all land within the exterior boundaries of Indian reservations and individual allotments of land given to Indians, not contained within a reservation, if the United States continues to have an ownership interest in the allotment.

n2. Kenneth E. Robbins, Reflecting on the Numbers: Media Hype Breeds Misperception, Am. Indian Rep., Sept. 2000, at 22 (stating that reservation unemployment is 50.42% compared to 6.3% in the U.S.; the poverty rate is 31.6% on the reservation and 6.3% for U.S.; reservation housing without plumbing is 20% to 1% in U.S. and housing without

phones is 61% compared to 6% in the U.S.); Robert J. Miller & Maril Hazlett, *The "Drunken Indian": Myth Distilled Into Reality Through Federal Indian Alcohol Policy*, 28 *Ariz. St. L.J.* 223, 230 (1996) (noting that the unemployment rate is 45% while national average is 5%, and 31% of Indians live below the poverty line); U.S. Dep't of Housing and Urban Dev., *Assessment of Am. Indian Housing Needs and Program: Final Report* xii, 66-67, 76-78, 80 (May 1996) [hereinafter *Housing Assessment*] (reporting that Indians have the worst housing problems in the U.S.; 44% of housing is substandard as compared to 27% in the U.S.); Sar A. Levitan & Barbara Hetrick, *Big Brother's Indian Programs - With Reservations* 11-13, 189, 197-98 (1971) (noting that BIA and Census figures show median family income for reservation Indians at about 40% of white family income; reservations have "chronically depressed economic conditions" and "substandard housing").

n3. John M. Glionna, *Rural Tribe Gives New Meaning to 'Wireless,' Oregonian*, Aug. 12, 2001, at A25 (citing Yurok tribal chairwoman that they live in third world conditions with nearly half the homes not having electricity or phone service, 85% live below the poverty level and unemployment is 80%); U.S. Dep't of Energy, *Indian Energy Study* (Mar. 28, 2000) (stating that 14.2% of Indian homes on reservations have no access to electricity, compared to just 1.4% for all U.S. households); Michelle M. Taggart, *Challenging the Traditional View of Tribal Economics*, *Am. Indian Rep.*, Oct. 1999, at 17 (mentioning that President Clinton compared reservations to third-world countries); Ward Churchill & Winona LaDuke, *Native North America: The Political Economy of Radioactive Colonialism*, in *The State of Natives America: Genocide, Colonization, and Resistance* 246 (M. Annette Jaimes ed., 1992) (claiming that reservations are like third world countries with the highest infant death rate, unemployment and malnutrition, shortest life expectancy, lowest per capita income and level of formal education of any group in the United States).

n4. Courtenay Thompson, *Adviser 'Straddles Both Sides of River,' Oregonian*, May 17, 1998, at C1 (1992 Census of Business shows white Oregonians owned 81.8 businesses per 1,000, while Native Americans owned 14.7 businesses per 1,000 - half the rate for Oregon's Latinos and African Americans.); *Stat. Rec. of Native North Ams.* 812 (Marlita A. Reddy ed., 2d. ed. 1995) (Indian businesses, male and female owned, produce smaller amounts of revenue on average than all other racial groups.).

n5. Associated Press, *Business Loans Up on Reservations*, *Billings Gazette* (Oct. 17, 2000), at <http://www.billingsgazette.com/index.php?display=/rednews//2000/10/17/build/wyoming/loans/inc> (quoting a U.S. Department of Agriculture employee as saying that economic development has been "left up to the individual tribal business councils"); Theresa Julnes, *Economic Development as the Foundation for Self-Determination*, in *American Indian Policy: Self-Governance and Economic Development* 151 (Lyman H. Legters & Fremont J. Lyden eds., 1994) [hereinafter *American Indian Policy*] (noting that the study on economic development in Indian country focused on tribally operated enterprises); *Am. Indian Pol'y Rev. Comm'n, Final Report* 347 (1977), quoted in Robert N. Clinton et al., *American Indian Law* 924 (3d ed. 1991) (stating that a congressional commission recommended that "tribal control" of the development of reservation resources be insured); Steven Haberfeld et al., *A Self-Help Manual for Tribal Economic Development* 1-2 (1982) ("Tribes can wait no longer for private initiative to play the pivotal role in reservation economic development. Tribal leadership must take the initiative. It must institute central economic planning at the tribal level."); Richard Wilson, *Land Use and Economy on Indian Reservations*, *Native Am. Today* 124 (1974) (suggesting that the federal government support "tribally based industries which should not necessarily have to show a profit"); Levitan & Hetrick, *supra* note 2, at 120-22, 201 (recommending tribes use their own resources for economic development and that tribal councils must play a major role in these decisions "since they are likely to act as the agents for the development efforts").

n6. Ron Selden, *Economic Development Attitudes Must Change*, *Indian Country Today*, June 13, 2001, at A1 (noting that most jobs in Indian country are federal or tribal resulting in little diversity in the economy); James Hagengruber, *Crow Tribe Reduces 700 Workers' Pay to \$ 5.15*, *Billings Gazette*, June 5, 2001, at B1 (describing that the Crow Tribe is the major employer on the reservation and that unemployment is 44%); Cathy Siegner, *Making and Keeping Dollars on Montana Reservations*, *Am. Indian Rep.*, Feb. 1999, at 18 (maintaining that most businesses on reservations are tribally owned); William V. Vetter, *Doing Business with Indians and the Three "S"es: Secretarial Approval, Sovereign Immunity and Subject Matter Jurisdiction*, 36 *Ariz. L. Rev.* 169, 174 n.29 (1994) (Tribal governments "control or participate in commercial activities more frequently than other governments" and "in many instances, direct government participation is the only way economic enterprises are brought to the reservation."); Mark A. Jarboe, *Fundamental Legal Principles Affecting Business Transactions in Indian Country*, 17 *Hamline L. Rev.* 417, 418 (1994) (declaring that tribes have been the prime actors in operating businesses in Indian country; federal, state and local governments rarely do).

n7. Socialism means “any of the various economic and political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods; a system or condition of society in which the means of production are owned and controlled by the state.” Webster’s Ninth New Collegiate Dictionary 1118 (9th ed. 1985) [hereinafter Webster’s Dictionary]; see, e.g., Brenda Norrell, *Catching the Dream of Free Enterprise*, *Indian Country Today*, May 23, 2001, at C1 (A successful Navajo private businessman stated that “free enterprise is going nowhere in Indian country, because the United States supports socialism. Tribal enterprises ... suffocate ideas of free enterprise.”); Chet Brokaw, *Tribe Looks At Creating High-Tech Jobs*, *Press & Dakotan*, May 7, 2001, available at http://www.pressanddakotan.com/stories/050701/new_0507010011.html (Cheyenne River Sioux Tribe chairman Gregg Bourland says “we are making a transition from a socialist-democratic nation into a socialist-capitalistic-democratic nation.”); Stephen Cornell & Joseph P. Kalt, *Culture and Institutions as Public Goods: American Indian Economic Development as a Problem of Collective Action* [hereinafter Cornell & Kalt, *Culture and Institutions*], in *Property Rights and Indian Economies* 215, 217, 222-23 (Terry L. Anderson ed., 1992) [hereinafter *Property Rights*] (noting that most reservations are heavily dependent on transfer economies of tribal, federal and state payments and public assistance; 59% of reservation employment is in the transfer economy compared with 17% for United States as a whole; on the Crow reservation nearly 75% of employed Indians work for federal, tribal or state governments); Churchill & LaDuke, *supra* note 3, at 245 (illustrating that in 1978, 57.7% of employed persons at Navajo worked as a result of government subsidies); Lawrence David Weiss, *The Development of Capitalism in the Navajo Nation: A Political-Economic History* 23, 29, 37, 69, 123-27, 132-35, 148, 151, 157-58 (1984) (claiming that the United States undermined Navajo capitalist and merchant policies by exporting Navajo labor thus leaving the tribal economy underdeveloped; government filled the vacuum of a private business class of entrepreneurs); Russel Lawrence Barsh & James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* 231-32 (1980) (“Tribal economies are frequently socialized, not entirely without the encouragement of the [BIA], and ... many tribes believe this works quite well... . Tribes will have to “persuade economic conservatives that tribal policy is not fundamentally inconsistent with capitalism.”); Levitan & Hetrick, *supra* note 2, at 9, 11-13, 189, 197-98 (stating that reservation economies are “totally dominated by the federal presence” and there are very few private sector jobs).

Two professors state it is not socialism when tribal governments exercise property rights and operate businesses concerning property they own. Joseph P. Kalt & Stephen Cornell, *The Redefinition of Property Rights in American Indian Reservations: A Comparative Analysis of Native American Economic Development* [hereinafter Kalt & Cornell, *Redefinition*], in *American Indian Policy*, *supra* note 5, at 133; cf. *The Encyclopedia of Native American Economic History* xiv, xv, 29, 248 (Bruce E. Johansen ed., 1999) [hereinafter *Econ. Encyclopedia*] (claiming that to consider profits in Indian trade “often was taken to be uncouth;” European capitalism was imposed on Indians and on what was “fundamentally a set of collectivist social and economic systems”).

n8. Free enterprise means “freedom of private business to organize and operate for profit in a competitive system without interference by government beyond regulation necessary to protect public interest and to keep the national economy in balance.” Webster’s Dictionary, *supra* note 7, at 491; see also Stephen Cornell & Joseph P. Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, in *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* 36-37 (Stephen Cornell & Joseph P. Kalt eds., 1992) [hereinafter *What Can Tribes Do?*] (“Both inside and outside of Indian Country, it is difficult to make government ownership of business work.”); Kalt & Cornell, *Redefinition*, *supra* note 7, at 121, 126 (proposing that federal attempts at business creation have a long and embarrassing history).

n9. James L. Huffman & Elizabeth Howard, *The Impact of Land Use Regulations on Small and Emerging Businesses*, 5 *J. Small & Emerging Bus. L.* 49, 50, 55 (2001) (citing U.S. Small Business Admin.); see also Ericka Schenck Smith, *Meeting Spotlights Reservation Economies*, *Billings Gazette* (June 1, 2001), at <http://www.billingsgazette.com/index.php?display=/rednews//2001/06/01/build/local/2rezeconomy.inc> (stating that small businesses create 93% of the new jobs nationwide); Presidential Commission on Indian Reservation Economies, *Report and Recommendations to the President of the United States* (1984) [hereinafter *Presidential Commission*], reprinted in Clinton et al., *supra* note 5 (“The private sector accounts for about 88% of the [U.S.] gross national product.”).

n10. “Capitalism” means “an economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decisions rather than by state control, and by prices, production, and the distribution of goods that are determined mainly by competition in a free market.” Webster’s Dictionary, *supra* note 7, at 204; see also *infra* Section III.A.

n11. Navajo Ag Tops List of Federal Agricultural Farm Subsidy Payments for 2000, *Indian Country Today*, Sept. 19, 2001, at D1 (noting that the Navajo Nation tribal farm, a \$ 500 million investment, has not turned a profit in more than twenty-five years of operation); Kalt & Cornell, *Redefinition*, supra note 7, at 126, 146 (arguing that there are no or only a very few successful significantly sized reservation-based businesses; federal policy with respect to Indian economic development is a failure); Cherokee Business Needs \$ 2 Million to Avoid Default, *Indian Country Today*, June 20, 2001, at A3 (157 jobs at risk); Telephone Interview with Patrick Borunda, Principal, Navigator Group Strategic Management Counsel (May 4, 1999) [hereinafter Borunda 1999 Interview] (declaring that tribal governments are not well suited to operate profit generating businesses; tribal businesses are not created or operated to make a profit and thus they are not competitive in their markets); Frank Pommersheim, *Braid of Feathers: American Indian Law and Contemporary Tribal Life* 170 (1995) (mentioning that some tribes have a problem distinguishing their governmental from their proprietary roles and will politically intervene in business); Felix S. Cohen, *Handbook of Federal Indian Law* 723 (Rennard Strickland et al. eds., 1982 ed. 1982) (citing 1975 Comptroller General Report that of twenty-five major projects for economic development in Indian country over seven years with a federal investment of \$ 23 million, fifteen projects had ceased operations and nine others were in financial difficulty); Duane Champagne, *Economic Culture, Institutional Order, and Sustained Market Enterprise: Comparisons of Historical and Contemporary American Indian Cases*, in *Property Rights*, supra note 7, at 204-05 (arguing that tribal council oversight and direction of reservation economies creates lots of potential for political interference; the arbitrary and unstable suspension of laws and political abuse of commercial codes and legal protections create uncertainty and raise the costs of investment and decreases the potential of profit); Al Henderson, *Tribal Enterprises: Will They Survive?*, in *Economic Development in American Indian Reservations* 114-15 (Roxanne Dunbar Ortiz ed., 1979) (claiming that the Navajo government created enterprises wholly owned by the tribe to create employment; as of 1979 the Nation had \$ 50 million invested; many of the enterprises were “threatened with bankruptcy” and those that survived were “earning marginal profits” or operating at a loss); Alan L. Sorkin, *American Indians and Federal Aid* 144 n.16 (1971) (observing that the Navajo Nation was investing millions in “public works projects of doubtful necessity” to create jobs); Edward H. Spicer, *Cycles of Conquest* 561-63 (1962) (mentioning that several Southwest tribal councils ran tribal businesses and became insolvent; all the Southwest tribal corporations were chronically in a state of precarious existence).

n12. Christopher L. Miller & George R. Hamell, *A New Perspective on Indian-White Contact: Cultural Symbols and Colonial Trade*, in *American Encounters: Natives and Newcomers From European Contact to Indian Removal 1500-1850*, at 176 (Peter C. Mancall & James H. Merrell eds., 2000) [hereinafter *American Encounters*] (mentioning that just as European colonists misunderstood many Indian values, Indians could not conceive of owning land and the desire for furs); *Econ. Encyclopedia*, supra note 7, at 211; Spicer, supra note 11, at 343 (explaining that anglos were surprised by Southwest Indians because they were not the hunting and raiding Indians Anglos expected but were completely sedentary farming communities).

n13. See, e.g., Karin Mika, *Private Dollars on the Reservation: Will Recent Native American Economic Development Amount to Cultural Assimilation?*, 25 *N.M. L. Rev.* 23, 31 (1995) (stating that tribes were historically non-property oriented); Selden, supra note 6, at A1 (citing speakers at a tribal business conference as stating that the capitalist model does not fit many Indian people, and that business and who Indians “are” can clash).

n14. Terry L. Anderson, *Sovereign Nations or Reservations? An Economic History of American Indians* 31 (1995) (noting that the idea that Indians did not believe land could be sold began the legend that Indian cultures did not understand private ownership); Ronald L. Trosper, *That Other Discipline: Economics and American Indian History*, in *New Directions in American Indian History* 209 (Colin G. Calloway ed., 1988) (claiming that Europeans considered that Indians holding their land in common was less desirable than the European private property system); Wilbur R. Jacobs, *Dispossessing The American Indian: Indians and Whites on the Colonial Frontier* 11-12, 20-23 (1972) (generalizing that Indians saw land as being provided by the Creator and not subject to personal ownership; European/Americans viewed “wilderness” and animals as something to exploit for commercial gain).

n15. 2 Frederick Webb Hodge, *Handbook of American Indians North of Mexico* 308 (1910) (observing that all Indian assets except for land were privately owned); Julian H. Steward, *Basin-Plateau Aboriginal Sociopolitical Groups*, *Bureau of Am. Ethnology, Bull.* 120, at 253 (1938) (“Truly communal property was scant” among Indians.).

n16. Boyce Richardson, *People of Terra Nullius: Betrayal and Rebirth in Aboriginal Canada* 28 (1994) (Europeans characterized natives as wild animals whose uncultivated land was in need of improvement; these attitudes tainted all histories of North America and became the accepted ideology of the colonists.); Jacobs, supra note 14, at 111 (Ignoring “the fact that many of the tribes of eastern North America lived in populous towns and villages” the “colonials liked to regard the Indians as members of a nomadic hunting race with no fixed habitation” and used it “as an excuse for taking

Indian land.”); Thomas R. Wessel, *Agriculture, Indians and American History*, 50 *Agricultural Hist.* 14 (1976) (stating that settlers and frontiersmen could not admit that Indians were efficient farmers because they thought they were bringing civilization and farming to savages who did not know how to use land); see also Albert Memmi, *Attempt at a Definition*, in *Dominated Man: Notes Toward a Portrait 185-95* (1968) (claiming that the racist attitude stresses real or imaginary differences between the racist and the victim).

n17. Neal Salisbury, *The Indians’ Old World: Native Americans and the Coming of Europeans*, in *American Encounters*, supra note 12, at 5 (noting that there were hundreds to thousands of separate Native American cultures in 1492 with a wide array of languages, economies, and political systems, and which engaged in considerable interaction through trade of goods, ideas, resources, labor and religious practices); see also Robert F. Berkhofer, Jr., *The White Man’s Indian: Images of the American Indian from Columbus to the Present* 3 (1978); Jacobs, supra note 14, at 1 (“A dismaying amount of our history has been written without regard to Indians, and of what has been written with regard to them much treats their diverse and always changing societies as uniform and static.”).

n18. See Delos Sackett Otis, *History of the Allotment Policy: Hearings on H.R. 7902 Before the House Comm. on Indian Affairs*, 73d Cong., 2d Sess. pt. 9, at 431 (1934) (“In the vast majority of cases Indian economic pursuits were carried on directly with individual rewards in view.”); Leonard A. Carlson, *Learning to Farm: Indian Land Tenure and Farming Before the Dawes Act*, in *Property Rights*, supra note 7 (noting that the Blackfeet Tribe of Montana had a well established tradition of individual ownership); Anderson, supra note 14, at xiv-xv, 24 (explaining that the Pacific Northwest coast and Southwest Indians built, produced and sustained abundant wealth and technologies; Indian institutions evolved in response to “market conditions”). Tribes adopted “formal and informal rules (what economists call property rights) that forced individuals and small groups to confront the costs and benefits of their actions.” *Id.* at 24; see also Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-1945*, at 48 (1980) (suggesting that many tribes in the Southwest had significant differences in property ownership and wealth; it was not uncommon for a few families to dominate a tribe’s grazing lands); Walter Goldschmidt, *Ethics and the Structure of Society: An Ethnological Contribution to the Sociology of Knowledge*, 53 *Am. Anthropologist* 506-24 (1951) (commenting that many northern California tribes held property in individual private ownership; property was important for maintaining status and prestige); K.N. Llewellyn & E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* 233 (1941) [hereinafter *The Cheyenne Way*] (“A ‘private-property’ system seems to have been, in strict law, rather clearly established, as a basic aspect of organization.”); Frances Densmore, *Nootka and Quileute Music* 3 (1939) (noting that the Makah Tribe practiced property rights very similar to Americans); James L. Huffman, *An Exploratory Essay on Native Americans and Environmentalism*, 63 *U. Colo. L. Rev.* 901, 907 nn.22-23 (1992) (stating that “the concept of tenancy in common [and] of fee simple title” were not unknown to Native Americans).

n19. *Econ. Encyclopedia*, supra note 7, at 3 (noting that Indians were stereotyped as nomadic hunters but most tribes practiced agriculture); Wessel, supra note 16, at 9-10, 14 (observing that people today and the colonists dismissed the importance of Indian agriculture; few Indians lived exclusively by hunting; settlers could not admit that Indians were good farmers because they were bringing civilization and farming to savages who did not know how to use land).

n20. Salisbury, supra note 17, at 5-6, 10. By the first century A.D. some Indians lived in permanent villages after developing food economies. Indians in the Southwest were among the first societies based primarily on agriculture and lived in permanent villages with elaborate irrigation systems. By the 12th century agricultural production had spread to most of the eastern Indians. *Id.* at 10; see also Peter C. Mancall, *Valley of Opportunity: Economic Culture along the Upper Susquehanna, 1700-1800*, at 39-40, 125 (1991) [hereinafter *Mancall, Valley of Opportunity*] (explaining that Pennsylvania tribes existed on corn, beans and squash before contact with Europeans; their bountiful crops and farming abilities amazed the colonists); Wessel, supra note 16, at 9-10, 14 (stating that in southern New England in the 1600s, Indian agriculture accounted for over 65% of the natives’ diet); Jacobs, supra note 14, at 1, 5-9 (commenting that even semi-nomadic tribes planted crops of corn, beans, squash and tobacco; Iroquois women farmed fifteen varieties of corn, sixty types of beans, eight kinds of squash; many eastern tribes lived in semi-permanent towns of 600-800 people); 15 *Smithsonian Inst., Handbook of North American Indians (Northeast)* 58, 162, 324 (William C. Sturtevant et al. eds., 1978) [hereinafter 15 *Smithsonian Handbook*] (noting that Indians in Virginia, Delaware and the Carolinas had well-developed farming; European explorers from 1524, 1605, 1606 and 1614 gave full descriptions of Indian horticulture and were impressed by the extent of the farming in southern New England; corn, beans, sunflowers, tobacco and squash were found in abundance in New York dating from 1070 A.D.); Spicer, supra note 11, at 9-14, 119, 153, 541 (describing that Southwest Indians lived in fixed settlements of masonry houses and grew all their food needs before the Spanish arrived; they used intensive irrigation methods; farming was a fundamental part of their lives and the region

was basically agricultural); Econ. Encyclopedia, supra note 7, at 125-26, 200. Europeans were staggered by the surpluses tribes grew. Before the English arrived, the Pequots of Connecticut lived in sedentary villages based on farming. Id.

n21. Salisbury, supra note 17, at 5, 7-8, 9-10. Twelfth century Mississippian Indian societies built fortified political and ceremonial centers, with platform burial mounds, temples and elaborate houses. Europeans reported that Mississippian political leaders mobilized labor, redistributed agricultural surpluses and coordinated trade. Cahokia, near modern East St. Louis, was one of the largest cities in the 12th century with 20,000 people and was a center of artisans and trade. Chaco Canyon in New Mexico was a complex of villages and towns with 15,000 people and a network of straight paved roads connecting up to 5,300 villages as far as sixty miles away. Ancestral Puebloan culture mobilized labor for public works and food production, controlled and distributed water, goods and trade. Id; see also Econ. Encyclopedia, supra note 7, at 43 (stating that the Cahokia had 10,000 inhabitants and could accommodate 40,000 for ceremonies; one earthen temple was thirty meters high); Jacobs, supra note 14, at 8-9 (noting that Iroquois lived in semi-permanent towns of 600-800 people that were called castles by colonists because they were surrounded by huge ditches and log palisades).

n22. Econ. Encyclopedia, supra note 7, at 100 (stating that Indians held land in communal ownership and did not think it could be sold); James G. Swan, *The Northwest Coast, or, Three Years' Residence in Washington Territory* 166 (photo reprint 1969) (1857) (noting that Washington Indians held lands in common).

n23. See, e.g., Anderson, supra note 14, at 8 (acknowledging that Indians always held and recognized private property rights).

n24. Usufruct is “the legal right of using and enjoying the fruits or profits of something belonging to another.” Webster’s Dictionary, supra note 7, at 1299.

n25. Julian H. Steward, *Ethnography of the Owens Valley Paiute*, 33 *Am. Archaeology & Ethnology* 253 (1934) (declaring that tribal communal materials became private personal property once labor had been performed to gather or produce items); Melville J. Herskovits, *The Economic Life of Primitive Peoples* 362 (2d ed. 1952) (recognizing that among the Navajo, the first person to farm a plot of land retains permanent possession; Navajo marked their land with set boundaries and another person needed permission even to farm a plot that was next to a claimed plot).

n26. Taylor, supra note 18, at 69-70.

n27. Carlson, supra note 18, at 71; Edward A. Kennard, *Hopi Economy and Subsistence*, in 9 *Handbook of North American Indians* 554-57 (1979) (claiming that the Hopis assigned exclusive rights to land to matrilineal clans and the plots were marked by boundary stones).

n28. James E. Officer, *Arid-Lands Agriculture and the Indians of the American Southwest*, in *Food, Fiber, and the Arid Lands* 58 (William G. McGinnies et al. eds., 1971).

n29. Carlson, supra note 18, at 70-71.

n30. Angie Debo, *A History of the Indians of the United States* 13-14 (1970).

n31. 15 *Smithsonian Handbook*, supra note 20, at 84; see also Anderson, supra note 14, at 32-33. Tribes that practiced agriculture “definitely recognized exclusive land use.” Id. Eastern tribes utilized private garden plots and large community fields with plots assigned to families who kept the harvest in their own storehouses. Id. The Mahican Tribe in New England had hereditary usufruct rights to defined garden tracts. Id.

n32. Carlson, supra note 18, at 71; Herskovits, supra note 25, at 362.

n33. Anderson, supra note 14, at 34.

n34. Bruce L. Benson, *Customary Indian Law: Two Case Studies*, in *Property Rights*, supra note 7, at 27 (“Indians had well developed legal systems that emphasized individual rights and individual ownership.”); *United States v. Washington*, 384 F. Supp. 312, 353 (W.D. Wash. 1974) (“Generally, individual Indians had primary use rights in the territory where they resided.”), aff’d, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976); Robert Higgs, *Legally Induced Technical Regress in the Washington Salmon Fishery*, in *Research in Economic History* 60 (Paul Uselding ed., 1982) (positing that some tribes recognized individual ownership of river fishing spots).

n35. Higgs, *supra* note 34, at 59 (noting that fishing platforms on the Columbia River and reef locations in the ocean were inheritable individual properties passed from father to son); Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* 185 (1992).

n36. Wilkinson, *supra* note 35, at 185 (explaining that the property owner would signal by slapping his buttocks twice).

n37. The Canadian James Bay Cree Tribe recognized that individuals could own fishing sites and others did not have a property right to access these privately owned sites. Peter Collings, *The Cultural Context of Wildlife Management in the Canadian North*, in *Contested Arctic: Indigenous Peoples, Industrial States, and the Circumpolar Environment* 22 (Eric Alden Smith & Joan McCarter eds., 1997); Andrew P. Vayda, *Pomo Trade Feasts*, in *Tribal and Peasant Economies* 495-96, 498 (George Dalton ed., 1967) (claiming that some California tribes allotted sections of rivers on tribally owned land to individuals who owned all the fish caught in that section).

n38. Stephen Dow Beckham, *Ethnohistorical Context of Reserved Indian Fishing Rights: Pacific Northwest Treaties, 1851-1855*, at 40-41 (1984). “[For Oregon tribes] fishing stations were highly prized and passed by inheritance... . No one else was allowed to fish at a particular station without permission.” *Id.* (citing Edward Curtis that the fishing stations were owned by families and that a half-interest in a station might be secured for a season by paying two buffalo robes or a widow might dispose of her fishing station by sale); Vayda, *supra* note 37, at 498 (noting that some California Indians traded clam shell beads to other Indians for the right to fish at certain river sites); E. Adamson Hoebel, *The Law of Primitive Man* 52, 55 (1954) (acknowledging that California tribes on the Klamath River had exclusive use of fishing spots and would rent them out); Hodge, *supra* note 15, at 308 (recognizing that individuals in California tribes owned river bank fishing rights and the rights passed from father to son).

n39. Anderson, *supra* note 14, at 36-40 (mentioning that Eastern Canadian Cree and other tribes were noted “for the existence of hunting territories allotted to specific individuals”); Collings, *supra* note 37, at 20.

n40. Trosper, *supra* note 14, at 210, 212; John C. McManus, *An Economic Analysis of Indian Behavior in the North American Fur Trade*, 32 *Tasks Econ. Hist.* 36, 39 (1972); Eleanor Leacock, *The Montagnais’ Hunting Territory and the Fur Trade*, 73 *Am. Anthropologist* 56 (1954); Julius E. Lips, *Naskapi Law*, in *Transactions of the American Philosophical Society* 379, 379-492 (1947).

n41. 15 *Smithsonian Handbook*, *supra* note 20, at 84 (“The fur trade resulted in a greater awareness of territoriality among the Indians Native concepts of land ownership ... were used in the development of family trapping territories.”); 6 *Smithsonian Inst., Handbook of North American Indians* 181 (William C. Sturtevant et al. eds., 1981) (“With the emergence of a full-fledged trapping economy, usufructuary rights to trap in specific territories became established.”); Calvin Martin, *Keepers of the Game: Indian-Animal Relationship and the Fur Trade* 153 (1978).

n42. Phillip Drucker, *The Northern and Central Nootkan Tribes*, 144 *Bureau Am. Ethnology Bull.* 247 (1951).

n43. *Id.*; see also Alan D. McMillan, *Since the Time of the Transformers: The Ancient Heritage of the Nuu-chah-nulth, Ditidaht, and Makah* 13-14, 16, 22 (1999) (explaining that families owned territory and territorial boundaries ran even into the ocean for halibut banks and sea lion rocks; owned salmon streams, clam beds, and salvage rights to stretches of beach); Elizabeth Colson, *The Makah Indians: A Study of an Indian Tribe in Modern American Society* 4 (1953) (noting that Makah family heads held property rights in “fishing grounds,” “coastal strips” and “ceremonial privileges”); Densmore, *supra* note 18, at 3 (stating that men and families owned fishing sites and land and water rights; if a whale came ashore where someone owned the beach, they owned the whale; these rights were inherited).

n44. Kalervo Oberg, *The Social Economy of The Tlingit Indians* 35 (1973).

n45. *Id.* at 55 (describing house sites); 7 *Smithsonian Inst., Handbook of North American Indians (Northwest Coast)* 418 (William C. Sturtevant et al. eds., 1990) [hereinafter 7 *Smithsonian Handbook*] (noting that coastal Indians of Washington owned their camp and village house sites and food collection areas); Drucker, *supra* note 42, at 247.

n46. Colson, *supra* note 43, at 4 (explaining that Makah families owned berry patches); Oberg, *supra* note 44, at 55 (noting the ownership of berry patches); Carlson, *supra* note 18, at 71 (noting the ownership of peach trees); Robert H. Lowie, *Ethnographic Notes on the Washo*, in *Am. Archaeology and Ethnology* 301, 303 (1940) (observing that families owned nut trees and seed patches and marked their ownership “by lines of rocks”); Ralph M. Linton, *Land Tenure in Aboriginal America*, in *The Changing Indian* 47-48 (Oliver LaFarge ed., 1942) (noting that some California tribes

recognized property rights to berry patches; women that found sweet clover or cabbage had the exclusive harvesting rights).

n47. Linton, *supra* note 46, at 47-48 (claiming that some California tribes recognized individual rights of women to acorn trees that could pass to their daughters); Carlson, *supra* note 18, at 71 (mentioning that peach trees could be sold or willed); Omer C. Stewart, *Culture Element Distributions: XIV Northern Paiute*, 4 *Anthropological Records* 440 (A.L. Kroeber et al. eds., 1941) (including an account of an Indian trading a horse for rights to a pinon nut grove); 9 *Smithsonian Inst., Handbook of North American Indians* 554-57 (1979) (explaining that Hopi fruit and nut trees were privately owned and usually were inherited); see also 11 *Smithsonian Inst., Handbook of North American Indians* 65 (William C. Sturtevant et al. eds., 1986) [hereinafter 11 *Smithsonian Handbook*]; Daryll C. Forde, *Hopi Agriculture and Land Ownership*, 61 *J. Royal Anthropological Inst. Great Britain & Ireland* 357-405 (1931).

n48. Drucker, *supra* note 42, at 247; Colson, *supra* note 43, at 4 (noting that Makah family heads held “ceremonial privileges” and owned their wealth, songs, dances, and masks); McMillan, *supra* note 43, at 21, 33 (suggesting that house posts and beams were carved with images that were the inherited rights of chiefs; stories and legends were owned by families); 7 *Smithsonian Handbook*, *supra* note 45, at 418 (claiming that Washington state Indians owned dances, songs, and ceremonial properties); Royal B.C. Museum, Victoria B.C. Canada, visited July 16, 2001 (notes on file with author) (depicting that status and property rights were inherited in fishing grounds, songs, dances, and crests); Robert H. Ruby & John A. Brown, *The Chinook Indians: Traders of the Lower Columbia River* 11 (1976) (noting that Chinooks owned crests which were passed on to family members).

n49. Oberg, *supra* note 44, at 55.

n50. *Id.* at 62-63, 79-83, 91-94. Individuals owned as personal property their tools, weapons, small canoes, clothing, decorations and ceremonial objects. People worked together and shared ownership of large projects such as group homes and large canoes. However, handicraft production was an individual pursuit. Food caught individually was private property even though cooked at the communal fire. *Id.*; see also Benson, *supra* note 34, at 34 (noting that the Comanche Tribe observed private property ownership in horses, tools, food, weapons, clothing and ornaments); Anderson, *supra* note 14, at 40 (claiming that clothing, weapons, utensils and housing were always privately owned personal property); *Econ. Encyclopedia*, *supra* note 7, at 212 (recognizing that generally Indians personally owned all their possessions except for land); Herskovits, *supra* note 25, at 372-73, 376 (positing that Eskimos’ clothing, sleds, skin boats, weapon, etc. are privately owned; among the Havasupai of Arizona items of personal use including houses, crops, horses, and cattle are “clearly owned by the individual”).

n51. *Econ. Encyclopedia*, *supra* note 7, at 21, 54-55 (stating that the Arapaho, which means trader, and the Cheyenne were sedentary agricultural people before acquiring horses and becoming buffalo hunting tribes).

n52. *The Cheyenne Way*, *supra* note 18, at 223 (noting that horses were individually owned); Anderson, *supra* note 14, at 41, 62 (maintaining that horses were never communally owned; they were symbols of wealth and prestige); Carlson, *supra* note 18, at 71 (stating that Pueblo Indians recognized individual ownership of animals).

n53. *The Cheyenne Way*, *supra* note 18, at 225.

n54. Anderson, *supra* note 14, at 43 (observing that buffalo hunting horses would be loaned out for payment); see also Alan M. Klein, *Political Economy of the Buffalo Hide Trade: Race and Class on the Plains*, in *The Political Economy of North American Indians* 133, 142 (John H. Moore ed., 1993) [hereinafter *Political Economy*] (mentioning that horses were privately owned and would be rented out for up to one half of the game killed or loot captured); *The Cheyenne Way*, *supra* note 18, at 229 (claiming that some Indians rented their horses to other warriors or hunters).

n55. *The Cheyenne Way*, *supra* note 18, at 223, 233 (noting that in a group raiding party, the individual who first touched a captured horse gained private property ownership); Klein, *supra* note 54, at 141 (stating that individually-killed buffalo belonged to the individual; buffalo killed by collective efforts such as cliff drives were shared; raiding spoils were primarily individually owned); Benson, *supra* note 34, at 34 (suggesting that the Comanche Tribe divided the spoils of communal raiding for individual ownership based on an individual’s contribution); James G. Swan, *The Indians of Cape Flattery*, in *XVI Smithsonian Contributions to Knowledge* 20-22 (1870) [hereinafter *Indians of Cape Flattery*] (explaining that the Makah often hunted whales cooperatively and several canoes might strike and help capture it but the first to strike had the primary traditional distribution rights).

n56. 11 *Smithsonian Handbook* *supra* note 47, at 315 (“Buffalo-hunting Shoshone of the nineteenth century enjoyed some economic surplus ... and chiefs could be wealthy.”); Anderson, *supra* note 14, at 41, 62 (claiming that

buffalo hunting was lucrative; good hunters could afford many wives and lodges; an 1898 report said a Blackfoot hunter could make trade amounts of \$ 2,000 a year, which equaled \$ 500,000 a year in 1990 dollars).

n57. Colson, *supra* note 43, at 4, 249-50 (stating that Makah whalers, fishers and doctors held secret rituals to seek and receive supernatural powers for different purposes).

n58. 11 *Smithsonian Handbook*, *supra* note 47, at 315-16. Shoshone shamans and midwives “commanded important incomes” and successful gamblers and fast runners “profited significantly”; hunters, trappers and traders “likewise accumulated resources.” *Id.* The society was “commercialized to a degree” and its terminology recognized chief, master, trading partner, servant, poverty, hire, sale, debt, and gambling. *Id.* The tribe used “a decimal system of up to 100,000, supported by counting sticks” of various values; “money ... was well known.” *Id.*; see also Oberg, *supra* note 44, at 94-95 (describing a southeast Alaska tribe who paid singers, song makers, aunts and uncles caring for and naming babies; shamans were paid with furs, food, etc.); *Econ. Encyclopedia*, *supra* note 7, at 180 (noting that in Northwest coast cultures and economies professions were strictly delineated, for example, for song makers); Herskovits, *supra* note 25, at 123-24 (mentioning that California Patwin and Cherokee medicine men, Sushwap expert hunters, Wintu craftsmen, and Kwakiutl carvers were examples of specialization in labor for individuals to earn a living).

n59. Champagne, *supra* note 11, at 196-98. The Tlingits of Alaska acquired wealth and displayed good work habits to gain social rank and honor. *Id.* Tribes had wealth-based distinctions; persons of different economic status were found in Indian villages. Some burials are rich in dentalia and indications of wealth while others lack them. 7 *Smithsonian Handbook*, *supra* note 45, at 346, 493. Among the Yuroks and other northern California tribes “the accumulation of wealth [was] a passion” and many tribes used items as “depositories of value to be equated with our jewels.” Herskovits, *supra* note 25, at 251. The Mohave of southern California thought the display and destruction of property was essential for maintaining social positions. *Id.* at 478. A Washington governor stated that the Makah had prospered such that few white communities had as much wealth and as evenly distributed. 1 Hazard Stevens, *The Life of Issac Ingalls Stevens* 477 (1900).

n60. *Econ. Encyclopedia*, *supra* note 7, at 5, 43, 59. Indians mined copper and made tools and ornaments as early as 3000 B.C. Turquoise was mined by several tribes and used as a medium of trade. Copper and chert were mined in 1000 A.D. and made into tools and ornaments. One noble from the city of Cahokia was buried with 20,000 shell disks. *Id.* Chaco was the center of an extensive system including trade of turquoise mined near Santa Fe, New Mexico and traded for shells from the Pacific and macaws and copper bells from Mexico. Stephen H. Lekson et al., *The Chaco Canyon Community*, *Sci. Am.*, July 1988, at 108. “Material wealth” was “of great importance to the Tlingit”; they recognized and protected the accumulation of wealth by individuals which included accumulating furs and other items. Oberg, *supra* note 44, at 35, 56, 60-61, 132. Indians engaged in trading to acquire desirable goods and converted these into social status. 15 *Smithsonian Handbook*, *supra* note 20, at 384. The Kwakiutls “were industrious and able in the production of goods, and acute and skillful in the business manipulation of the goods they produced.” Helen Codere, *Fighting with Property: A Study of Kwakiutl Potlatching and Warfare 1792-1930*, at 4, 13-14 (1950); see also *Indians of Cape Flattery*, *supra* note 55, at 22-30 (stating that the Makah became wealthy and lived a comfortable life from the ocean); *United States v. Washington*, 384 F. Supp. 312, 363-64 (W.D. Wash. 1974), *aff’d*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. (1976) (“The Makah enjoyed a high standard of living [from] their marine resources and extensive marine trade.”).

n61. See, e.g., *supra* notes 56-60; Codere, *supra* note 60, at 4, 13-14 (“[Kwakiutls] were wealthy not only in the material necessities of everyday living but also in the possession of numerous objects, tools, utensils, houses and canoes.”); Densmore, *supra* note 18, at 3 (Makah men and families owned many different types of property and passed them on by rules of inheritance); 9 *Smithsonian Inst., Handbook of North American Indians* 82 (William C. Sturtevant et al. eds., 1979) [hereinafter 9 *Smithsonian Handbook*] (explaining that for the Hohokam, successful irrigation techniques permitted food surpluses and population increases, leading to increasing interaction with cultures to the south and increased trade); Frank Gilbert Roe, *The Indian and the Horse* 90 (1955) (stating that many Sioux became rich and had large horse herds).

n62. *Econ. Encyclopedia*, *supra* note 7, at 180, 208 (noting that potlatch societies produced goods far in excess of their daily needs and “paid intense attention to private property”); Codere, *supra* note 60, at 4 (claiming that the Kwakiutls had highly developed storage techniques which guaranteed the enjoyment of their surpluses; in the long winters they stopped almost all economic activities and were preoccupied with ceremonies); *Indians of Cape Flattery*, *supra* note 55, at 22-30 (suggesting that the Makah had an easy economic life; “they can procure, in a few hours, provisions enough to last them for several days”); Norman H. Clark, *Introduction*, in Swan, *supra* note 22, at xii, xvi-xix

(stating that the Makah Tribe became rich in resources, leisure and aesthetic sensibilities); see also Robert J. Miller, *Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling*, 25 *Am. Indian L. Rev.* 165 (2001) (discussing the wealth of the Makah); Marshall Sahlins, *Stone Age Economics* 2, 7, 14, 17, 41 (1972) (maintaining that studies of Aborigines found they have little but they are not poor because they do not want or need more; they have lots of time for naps and leisure; primitive people underproduce their economic capacity because they do not need or want more).

n63. Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920-1954*, at 239 (1977) ("The Northwest Coast Indians had cultures that valued status and wealth."); *Econ. Encyclopedia*, supra note 7, at 208, 210 (claiming that potlatches in Northwest cultures were displays of wealth and for other purposes; the ruling families of Powhatan Indian villages in Virginia flaunted their status with lavish entertainments).

n64. Linda J. Goodman, *Traditional Music in Makah Life*, in *A Time of Gathering: Native Heritage in Washington State* 224 (Robin K. Wright ed., 1991); Beth Laura O'Leary, *Aboriginal Whaling from the Aleutian Islands to Washington State*, in *The Gray Whale: Eschrichtius Robustus* 95 (Mary Lou Jones et al. eds., 1984) (claiming that whale oil possession was an indicator of wealth).

n65. 7 *Smithsonian Handbook*, supra note 45, at 493, 505, 540, 548, 551, 580, 591 (noting that dentalia were used as ornaments and were esteemed as symbols of wealth); Swan, supra note 22, at 159 (stating that dentalia were objects of wealth and that women would wear them like jewelry).

n66. Rick Rubin, *Naked Against the Rain: The People of the Lower Columbia River 1770-1830*, at 27, 69, 71 (1999) (Chinooks and other Indians buried dentalia for safety, but would dig them up to examine, count and admire) (citing Melville Jacobs, *Clackamas Chinook Texts* 490, 609 n.61 (1958)).

n67. University B.C. Anthropology Museum, Vancouver B.C. Canada, visited July 15, 2001 (notes on file with author) (depicting that hammered and shaped sheets of copper, called coppers, were used as a medium of exchange and in potlatching and were of great value; usually used to transfer rights and privileges or for ceremonies); Royal B.C. Museum, Victoria B.C. Canada, visited July 16, 2001 (notes on file with author) (illustrating that coppers were broken at potlatches to show the owner's wealth; Kwakiutl house post carving of a human figure holding a copper); *Econ. Encyclopedia*, supra note 7, at 180, 208 (claiming that copper plates were used as "currency of very high denominations" by Northwest tribes and were worth thousands of U.S. dollars; at potlatches slaves were killed, freed or given away and coppers were destroyed or given away).

n68. Champagne, supra note 11, at 196-200. Potlatches were a ceremonial exchange of labor and ceremonial gifts. The Tlingit of Alaska gave away wealth at potlatches to honor ancestors, repay other groups for services, gain new titles, honor and prestige. Gifts were kept track of and paid back at future potlatches. *Id.* Alaska tribes also held feasts with social meaning and as a mechanism of consumption. Social aspects avoided war, stopped poaching and appeased enemies. Oberg, supra note 44, at 35, 56, 60-61, 93-96, 99, 101, 132. "Wealth has far wider functions in Tlingit society. It is difficult to say at times which is more important, its purely economic functions or its social functions." *Id.* at 132. The gifting away of goods could have been a method of payment and was in reality an economic transaction that exchanged one item for another. *Id.* at 94. The gifting of food and goods might have been more important economically than socially because it was a current investment of surplus foods that ensured a return gift and thus was a distribution of economic surplus in a system that evened the risks of an uncertain food gathering economy. *Id.* at 98.

n69. Robert Sullivan, *A Whale Hunt* 67 (2000) ("Wealth was everything, though a person was known not so much for his private wealth as the wealth he distributed."); Codere, supra note 60, at 13 (claiming that production and business ability were necessary to sustain potlatches); Champagne, supra note 11, at 196-98 (noting that wealth given away at potlatches honored ancestors, repaid other groups for services; gained new titles, ranks and prestige according to value of contributions); 11 Edward S. Curtis, *The North American Indian* 67 (1916) (same); 7 *Smithsonian Handbook*, supra note 45, at 469 (explaining that some tribes did not potlatch for the purpose of receiving later exchanges, but rather to invest in their own fame).

n70. Oberg, supra note 44, at 132-33 (suggesting that potlatches made people famous, made friends, consolidated clans and was all accomplished with wealth); Champagne, supra note 11, at 196-198.

n71. McMillan, supra note 43, at 13-14, 22, 42. Makah potlatching evolved from resource distribution principles but was also "a mechanism for validating ownership rights to resource locations. An 'ideology of extravagant giving and consumption' was generated, based on extensive resource surpluses." *Id.* Rich chiefs accumulated lots of goods from the service of the commoners and would distribute them to the people at potlatches. *Id.*; see also 7 *Smithsonian*

Handbook, *supra* note 45, at 84-86 (maintaining that some identify potlatching as competitive gift giving, which also may have stimulated production and acquisition); Codere, *supra* note 60, at 69, 118-29 (citing Franz Boaz that potlatching was like life insurance, an investment in which goods once given away would come back in cycles of giving and receiving); George Gibbs, Tribes of Western Washington and Northwestern Oregon, in 1 Contributions to North American Ethnology 185 (Dept. of Interior 1877) (“Wealth gives a certain power among them and influence is purchased by its lavish distribution.”); Econ. Encyclopedia, *supra* note 7, at 180, 208 (stating that potlatch societies produced goods far in excess of their daily needs; potlatch cultures “paid intense attention to private property”).

n72. See, e.g., The Cheyenne Way, *supra* note 18, at 213-14, 216-20 (noting that the Cheyenne Tribe had well-established unwritten laws regarding inheritance of property and various private property rights).

n73. However, the Cherokee Tribe wanted to establish its own railroad in the 1860s and enacted legislation regulating coal leasing and providing for tribal royalties, and in 1891 the Osage Tribe passed legislation allowing mineral leases. H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907*, at 23-27, 58, 164 (1976).

n74. Except for the communal ownership of lands discussed above, tribal governments did not own or control the economic means of production. Individual Indians and families did as they wished economically under private subsistence and profit-driven motivations and invested their human capital to produce food and market goods. For the most part, tribal governments did not force anyone to do anything or control their economic pursuits. See Econ. Encyclopedia, *supra* note 7, at 89 (quoting Franklin, Jefferson and Frederick Engels that Indians lived free of government and laws); Carl A.L. Binger, *Thomas Jefferson: A Well Tempered Mind* 26 (1970) (claiming that Jefferson thought Indians lived without governments controlling their actions). Thus, tribal economies operated under private free market scenarios.

n75. Economy and political economy deal with the production, distribution and consumption of goods and services. Webster’s Dictionary, *supra* note 7, at 395, 911. Economy is defined as the “administration of the concerns and resources of any community or establishment with a view to orderly conduct and productiveness.” The Compact Oxford English Dictionary 494 (2d ed. 1991). Political economy is “managing the resources of a nation so as to increase its material prosperity.” *Id.*

n76. See, e.g., *supra* notes 21-28; Jacobs, *supra* note 14, at 9 (claiming that eastern tribes controlled land purchases); Econ. Encyclopedia, *supra* note 7, at 18 (suggesting that even nomadic hunting tribes had their own territories); Anderson, *supra* note 14, at 35, 62 (stating that all tribes defended their territory).

n77. See *supra* notes 21, 26-28, 40-41; see also Cornell & Kalt, *What Can Tribes Do?*, *supra* note 8, at 33 (noting that tribes had chiefs or elders who made planting decisions); Econ. Encyclopedia, *supra* note 7, at 123, 213 (commenting that Iroquois elected clan mothers to direct crop planting; Anasazi built extensive irrigation systems of canals, reservoirs and dams; one dam, for example, was 120 feet long and twenty feet wide; some are still used today); Herskovits, *supra* note 25, at 342, 435 (maintaining that in some Canadian tribes a clan chief supervised berry picking; the Omaha council of chiefs organized buffalo hunts).

n78. See, e.g., Trosper, *supra* note 14, at 210, 212 (noting that Canadian Indians controlled overhunting by assigning tribal hunting territories to individuals); Am. Friends Services Comm., *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians* 3-4 (1970) (explaining that tribes prevented overfishing by controlling the number of fishing days); 15 Smithsonian Handbook, *supra* note 20, at 84 (arguing that fur trade caused a greater awareness of territoriality among Indians; the risk of over hunting arose and native concepts of land ownership were used to develop family trapping territories); Robert Spencer & James Jennings, *The Native Americans* 219-20 (1965) (detailing that many Northwest tribes had a salmon chief that supervised the fishing, the religious services and the distribution of the catch); Econ. Encyclopedia, *supra* note 7, at 234 (noting that the Spokane Tribe had a salmon chief who started fishing season with proper ceremonies and ended it so sufficient spawners could survive).

n79. Salisbury, *supra* note 17, at 5, 7-10. Twelfth century Mississippian Indian societies built fortified political and ceremonial centers holding 20,000 people, with burial mounds, temples and elaborate houses. *Id.* The Anasazi or Ancestral Puebloans, the ancestors of the modern day Hopi of Arizona and the Pueblos of New Mexico, lived in Mesa Verde, Colorado from about 450 A.D. to 1300 A.D. From about 1100 A.D. forward they lived in stone houses, some of which were built into alcoves on the side of sheer cliffs, and farmed corn, squash and beans. Mesa Verde National Park Museum, visited May 2, 2001 (notes on file with author).

n80. Michele Strutin, *Chaco: A Cultural Legacy* 34-35, 50 (1994); Lekson et al., *supra* note 60, at 108.

n81. Salisbury, *supra* note 17, at 6, 10; Strutin, *supra* note 80, at 51.

n82. Strutin, *supra* note 80, at 51.

n83. Salisbury, *supra* note 17, at 5-10; *Econ. Encyclopedia*, *supra* note 7, at 43 (claiming that a Cahokia city in 900-1100 A.D. built earthen temple mounds; one was thirty meters high and 316 meters by 240 at the base).

n84. Debo, *supra* note 30, at 13-14 (noting that Indians contributed voluntarily to a public storehouse controlled by the town chiefs for public needs in the Creek and Cherokee Tribes of the Southeast); 15 *Smithsonian Handbook*, *supra* note 20, at 384 (explaining that some clans and villages established a “public treasury” to which everyone would contribute; the goods and accumulation of capital was administered by a chief and were used for various public purposes).

n85. David Murray, *Indian Giving: Economies of Power in Indian-White Exchanges 119-20* (2000) (claiming that some tribes began staying on the Atlantic coast to make wampum and thus turned it into a trade and capitalistic market exchange item); *Econ. Encyclopedia*, *supra* note 7, at 247 (stating that certain bands specialized in “various modes of economic production”); 15 *Smithsonian Handbook*, *supra* note 20, at 83 (noting that some tribes specialized in manufacturing trade goods like Nanticoke beads and Iroquois pipes); 9 *Smithsonian Handbook*, *supra* note 61, at 305 (explaining that the Santa Clara Pueblo manufactured woven fabrics which were traded to Plains tribes); 10 *Smithsonian Inst., Handbook of North American Indians (Southwest)* 153 (William C. Sturtevant et al. eds., 1983) [hereinafter 10 *Smithsonian Handbook*] (arguing that Pimas grew wheat because it was more marketable to Americans than corn).

n86. 15 *Smithsonian Handbook*, *supra* note 20, at 85, 204-06, 344-47, 430 (Mahicans grew in power and changed their tribal structure in reaction to the economic factors of the fur trade. Trading wars developed among Indians competing for European trade; many tribes fought to protect trade goods or access to trade with Europeans and this transformed “the largely ritual warfare of prehistoric times into economic warfare.”); 7 *Smithsonian Handbook*, *supra* note 45, at 208-09 (In 1852, a Chilkat chief led a war party over 300 miles to destroy a Hudson’s Bay Company post to prevent trade competition.).

n87. 15 *Smithsonian Handbook*, *supra* note 20, at 202-03 (Mahicans relocated their village “to control the Indians trading at the fort ... as middlemen in the fur trade.”). Indians were quick to exploit opportunities that forts presented and would settle around the posts as “home guards” seeking to benefit from the strategic trade location. 7 *Smithsonian Handbook*, *supra* note 45, at 125.

n88. See, e.g., 7 *Smithsonian Handbook*, *supra* note 45, at 125, 131, 150. Indians knew the benefits to be gained by being middlemen and they favored the establishment of trading posts in their areas and offered land for the building of forts. The Tsimshian Tribe was able to limit trade access by other groups by preventing others from coming to the fort to trade, forcing them to trade through the Tsimshian. The Tsimshian protected their potato trade by plundering the Fort’s own potato garden on a regular basis. The Chilkat Tlingits had exclusive control over northern trade routes into the Alaska interior and derived most of their wealth from this monopoly. *Id.*; see also *infra* Section II.B.2 (regarding tribal trading practices).

n89. 15 *Smithsonian Handbook*, *supra* note 20, at 85, 204-06, 344-47. “Each tribe continued to seek a policy that would give it an advantage in the fur trade.” *Id.* at 430. Middlemen and “monopolistic positions” were taken by the Iroquois, Penobscots, Abenakis, and Narragansett in Rhode Island, Pequots in Connecticut, Woronocos on the Connecticut River, Mahicans on the Hudson River, Susquehannocks in Pennsylvania, and the Weanocks in Virginia. Intertribal wars resulted from the fur trade. *Id.*; see also *infra* Section II.B.2.

n90. Klein, *supra* note 54, at 148 (stating that Plains tribes would threaten war to keep their monopoly on the buffalo hide trade and would keep the buffalo away to convince traders there was a shortage); 7 *Smithsonian Handbook*, *supra* note 45, at 119-20, 123-25. The Chinooks controlled commerce northward to Puget Sound as well as to the west and south by nourishing misunderstandings between traders and distant tribes thereby “monopolizing all the trade themselves.” *Id.* at 123-25. “They represented [whites] as cannibals and every thing that is bad” and were tenacious to protect their monopoly and pillaged and murdered to protect it. *Id.* Nootkans attempted to retain their middleman trading position and gave Europeans incorrect directions to find other tribes, telling them outlandish tales of sea monsters and hostile tribes and resorting to force to prevent other Indian groups from reaching the Europeans. *Id.*

n91. Salisbury, *supra* note 17, at 13 (noting that in the 13th to 16th centuries, Plains tribes, Apaches and Navajos traded at semiannual trade fairs at Taos, Pecos and Picuris Pueblos for maize, cotton blankets, obsidian, turquoise,

ceramics and shells); Peter C. Mancall, *Deadly Medicine: Indian and Alcohol in Early America* 24 (1995) [hereinafter Mancall, *Deadly Medicine*] (describing how an etching from 1595 entitled “How Indians Conduct Their Commerce” showed dozens of New England Indians at a market trading and selling crops and goods); 15 *Smithsonian Handbook*, supra note 20, at 45, 83 (claiming that long-distance trade of pottery, shell beads, and native copper is evident during 300 B.C.-1000 A.D.; more perishable goods were exchanged as well); Mancall, *Valley of Opportunity*, supra note 20, at 47-48 (proposing that evidence exists of trade among Indian tribes in eastern Pennsylvania since 500 B.C.); 5 *Smithsonian Inst., Handbook of North American Indians (Arctic)* 374 (William C. Sturtevant et al. eds., 1984) [hereinafter 5 *Smithsonian Handbook*] (stating that lamps and pots carved from soapstone from the central Canadian Arctic were traded to the North Alaska coast after 1200 A.D.); 9 *Smithsonian Handbook*, supra note 61, at 25-26, 71-72, 127-28, 149. The Southwest was knit together by economic networks. Trade and travel in prehistoric times are evidenced by the wide distribution of marine shells and, in historic times, by the extensive trade in salt. After 500 A.D., the Mogollons of Arizona and New Mexico made bracelets out of shells traded from the Pacific Ocean and the Gulf of California. Prehistoric Anasazi pottery reached distant regions through widespread exchanges. The Anasazi at Chaco Canyon developed techniques for surface storage structures and established small-scale trade networks prior to 900 A.D. An abundance of imported ceramics suggests that Chaco developed a formalized trade network. *Id.*

n92. Oberg, supra note 44, at 105 (stating that trade was “an important feature of the Tlingit economy”; remains of their culture show a wide variety of tools, weapons, clothing and ceremonial gear); Weiss, supra note 7, at 29, 33, 109 (claiming that Navajo weavers and silversmiths produced goods for their own use and traded or sold the surplus).

n93. Patricia C. Albers, *Symbiosis, Merger, and War: Contrasting Forms of Intertribal Relationship Among Historic Plains Indians*, in *Political Economy*, supra note 54, at 94, 99, 101 (noting that sedentary and nomadic Plains tribes met at fairs to trade specialized food products and to trade for other goods); 5 *Smithsonian Handbook*, supra note 91, at 207 (stating that groups of Eskimos had their “special products” and “the products of one were in demand” by others); 7 *Smithsonian Handbook*, supra note 45, at 418 (Washington state Indians were skilled technicians and artisans and produced a wide variety of utilitarian and decorative goods.); *Indians of Cape Flattery*, supra note 55, at 36 (maintaining that the Makah made some of their own canoes and purchased others from Vancouver Island tribes).

n94. See, e.g., 15 *Smithsonian Handbook*, supra note 20, at 45 (proposing that widespread distribution of goods, minerals, etc. “makes it clear that some network, either social or religious, must have existed for this exchange to take place”); Weiss, supra note 7, at 29, 33, 109 (noting that Navajo weavers and silversmiths owned the means of production and the goods they produced).

n95. Bruce G. Trigger & William R. Swagerty, *Entertaining Strangers: North America in the Sixteenth Century*, in 1 *The Cambridge History of The Native American Peoples of North America* 329 (1996) [hereinafter *Cambridge History*] (observing that eastern North America was crisscrossed with Indian trade routes); *Indians of Cape Flattery*, supra note 55, at 30-32, 36 (explaining that the Makah were well-located as a market for southern to northern exchange; they purchased canoes, dentalium shells, cedar bark, slaves, salmon, blankets, guns, and beads which they paid for with halibut, whale blubber and oil, and then traded these goods south with the Chinooks at the Columbia River and with tribes even further south and east into Oregon; the tribe’s whale oil trade was 5,000 to 16,000 gallons annually); 7 *Smithsonian Handbook*, supra note 45, at 560, 580 (acknowledging that Oregon coast tribes had an active trade network across the whole region; the Tillamooks traveled up to 100 miles inland to purchase wapato roots and other items).

n96. *Econ. Encyclopedia*, supra note 7, at 247 (recognizing that Indians traded across the United States before Europeans arrived; turquoise from New Mexico is found in the East Coast; Lake Superior copper and pipestone from Minnesota was carried thousands of miles); Mancall, *Deadly Medicine*, supra note 91, at 24; Jacobs, supra note 14, at 42 (observing that tribes from as far as the Dakotas traveled to the northeast coast tribes to trade for wampum); 7 *Smithsonian Handbook*, supra note 45, at 150, 208-09 (commenting that Tlingits were middlemen in extensive intertribal trade of walrus ivory, hides, native copper, dentalia, Haida canoes, Tsimshian carvings, slaves, spruce chewing gum, berries, muskets, etc.); George Quimby, *Indian Culture and European Trade Goods* 29 (1966) (noting that necklaces of Michigan Indians in the 1600s contained shells from the southeastern United States); 9 *Smithsonian Handbook*, supra note 61, at 79, 201 (indicating that Southwest Puebloan tribes traded with the Plains and Great Basin tribes of Utah to prehistoric times; shells used by tribes in New Mexico and Arizona originated from the Gulf of California and Pacific Coast; long-distance trade was also evidenced in road construction, an abundance of turquoise and the debris from manufacturing items of turquoise); Oberg, supra note 44, at 105, 111-12 (stating that the Tlingit Tribe traded up to 1,000 miles away at Victoria, Canada and Washington trading posts; had established exchange values on most goods; supply and demand influenced values); Anderson, supra note 14, at 63-64 (observing that Spanish goods traded to southwest tribes ended up in Canada and moved west to east along the extensive Indian trading network); 10

Smithsonian Handbook, *supra* note 85, at 8, 712-13 (noting that Southwest and Plains tribes regularly traded goods that were not locally available).

n97. 15 Smithsonian Handbook, *supra* note 20, at 45 (commenting that Gulf coast conch shells are found in Michigan and Wisconsin, sharks' teeth in mounds in Illinois, and an effigy alligator pipe dating to 300 B.C.-1000 A.D. in western Michigan); John C. Ewers, *Plains Indian History and Culture* 24-25 (1997) (noting that shells were traded from the Gulf of Mexico to Missouri tribes).

The Anasazi, the ancestors of the Hopi of Arizona and Pueblos of New Mexico, lived in Mesa Verde, Colorado into 1300 A.D. They engaged in extensive trade with peoples far away based on the fact that ocean shell necklaces have been found at Mesa Verde which came from the Pacific Coast, the Gulf of California and the Gulf of Mexico. Turquoise was also found as beads and in pendants but is not original to Mesa Verde. Museum Mesa Verde National Park, visited May 2, 2001 (notes on file with author). Bowls were found at Chaco that were traded from the Mogollon people over 200 miles away. Also found were twenty types of seashells from the Gulf of California and copper bells, parrot and macaw feathers from northern and middle Mexico. Museum Chaco Canyon National Historical Park, visited May 4, 2001 (notes on file with author).

n98. *Econ. Encyclopedia*, *supra* note 7, at 74, 136-37, 190.

n99. Salisbury, *supra* note 17, at 6; Bruce D. Smith, *Agricultural Chiefdoms of the Eastern Woodlands*, in *Cambridge History*, *supra* note 95, at 285 (1996) (claiming that copper from the Great Lakes and Appalachia was exchanged across eastern North America and crafted into ritual objects; mica from North Carolina and galena from Illinois and Missouri were widely exchanged in eastern North America); Kathleen J. Bragdon, *Native People of Southern New England* 91-92 (1996) (noting that copper and goods from the Great Lakes and shells from the Atlantic are found in eastern sites); 10 Smithsonian Handbook, *supra* note 85, at 8, 712-13 (stating that numerous Southwest and Plains tribes regularly traded salt); 15 Smithsonian Handbook, *supra* note 20, at 45 (observing that copper from Lake Superior was traded far south; far western obsidian and grizzly bear teeth were traded into Illinois and Ohio; mica and flint were traded to villages over much of eastern North America; this "distribution of goods makes it clear that some network, either social or religious, must have existed for this exchange to take place"); *Econ. Encyclopedia*, *supra* note 7, at 214, 247 (explaining that Pueblos mined turquoise and traded it and salt to other tribes; the Hopewell culture of the Midwest traded for Lake Superior copper, Gulf of Mexico shells, North Dakota flint, Wyoming obsidian, quartz from Arkansas and silver from Canada; these groups had well-formed trade patterns over 2,300 years ago).

n100. Salisbury, *supra* note 17, at 10; Strutin, *supra* note 80, at 50-51 (1994) (noting that trade with Mexico brought live macaws and feathers, copper bells, and seashells to Chaco Canyon which traded turquoise, jewelry, shields and masks made in Chaco for trade); Lekson et al., *supra* note 80, at 108.

n101. Ewers, *supra* note 97, at 24-25 (noting that trading networks spread horses to western plains before white people arrived); 7 Smithsonian Handbook, *supra* note 45, at 120-21 (stating that muskets and other goods moved rapidly through the "extensive network of intertribal trade" to tribes who had yet made contact with Europeans); *Econ. Encyclopedia*, *supra* note 7, at 21, 265 (claiming that Arapaho, Cheyenne and Huron acquired horses and European goods long before their first contact with Europeans).

n102. 15 Smithsonian Handbook, *supra* note 20, at 763-64 (explaining that around 1800 the Ojibwa sold the white people of Kingston, Niagara, and other towns fish and game, and maple sugar manufactured by the tribe); Spicer, *supra* note 11, at 9, 147, 543 (noting that Southwest tribes had a wide trade network; in the 1820s they traded with American fur trappers, in the 1840s with California gold rushers and in the 1850s with the stage lines; in the 1850s Pimas began an important new economic activity of supplying food to incoming Anglos). The Chinook Tribe worked with the Hudson's Bay Company at Ft. Vancouver Washington in the 1820s and employed other tribes to trap furs. Ft. Vancouver, U.S. Park Service, visited July 29, 2001 (notes on file with author).

n103. See, e.g., 10 Smithsonian Handbook, *supra* note 85, at 8, 714-15 (suggesting that various tribes had to "trade" marital partners to avoid incest violations; shamans and dancers aided neighbor villages with ceremonies and doctors, midwives and medicine men assisted in neighboring villages).

n104. *Id.* (commenting that song and dance instruction was provided to neighboring villages upon agreement and at a price); Oberg, *supra* note 44, at 94-95 (noting that an Alaska tribe paid singers and song makers, aunts and uncles caring for and naming babies; shamans were paid with furs, food, etc.; shamans would inspect the pile of offered gifts for payment and if they thought sufficient would perform the service); Herskovits, *supra* note 25, at 209, 252-53 (stating that California Indian doctors and marriage payments were made with strings of "good money" or dentalia).

n105. Econ. Encyclopedia, supra note 7, at 30, 35, 180, 229 (stating that the price for a young male slave at The Dalles, Oregon tribal market in 1830 was ten blankets; in the 1850s the Haidas paid 200 blankets per slave); 11 Smithsonian Handbook, supra note 47, at 240 (mentioning that Eastern Shoshone Tribe engaged in “long distance slave trade”); Herskovits, supra note 25, at 209 (noting that a Canadian tribe had established prices in goods for copper; ten sheets of copper was the price for a slave); Indians of Cape Flattery, supra note 55, at 10-11 (commenting that Makah purchased slaves at the price of 50-100 Hudson’s Bay Company blankets in the 1850s).

n106. Lekson et al., supra note 60, at 108 (arguing that Chaco Canyon appears to have been the center of an extensive regional trade system); Daniel H. Usner, Jr, *The Frontier Exchange Economy of the Lower Mississippi Valley in the Eighteenth Century*, in *American Encounters*, supra note 12, at 218 (noting that in the 1700s, Indian villagers and European settlers created a regional economy in the lower Mississippi valley characterized by regular trade). Alaskan Eskimos operated markets at Kotzebue and Point Spencer which drew Siberian and Alaskan traders and others. Kotzebue Eskimos held “fairs” for centuries, during which they celebrated, traded, intermarried, etc. Interior Alaska Eskimos established “trading partnerships” and often met at trading fairs. 5 Smithsonian Handbook, supra note 91, at 286-87, 305-06, 339.

n107. See, e.g., 5 Smithsonian Handbook, supra note 91, at 286-87, 305-06 (proposing that besides trade, markets and fairs had for centuries provided tribal interaction and intermarriage and enabled individuals to benefit from the entire resource base and thus to have a higher material standard of living).

n108. Mancall, *Valley of Opportunity*, supra note 20, at 47-48.

n109. Anderson, supra note 14, at 63-64 (claiming that as described to Lewis and Clark, tribes engaged in lots of trade across complex and extensive networks and traveled great distances to trading fairs); Rubin, supra note 66, at 69 (citing the journals of Lewis and Clark for the proposition that Chinook people up and down the Columbia and Willamette Rivers operated extensive and economically sophisticated markets).

n110. Herskovits, supra note 25, at 223-24. “The market at The Dalles, described by many of the early explorers, was a center where commodities were exchanged on a considerable scale.” Id. The Wishram, who were “‘wholly middlemen,’ controlled this market” and had a unique way of storing fish that would last for years; they traded thousands of pounds of fish from The Dalles to the mouth of the Columbia River. Id.

n111. Salisbury, supra note 17, at 13 (noting that in the thirteenth to sixteenth centuries, Plains tribes, Apaches and Navajos traded their products at semiannual trade fairs at Taos, Pecos and Picuris Pueblos); Preston Holder, *The Hoe and the Horse on the Plains* 97 (1970) (stating that early nineteenth century accounts mention regularly scheduled trade fairs on the Plains at which many different tribes gathered).

n112. Holder, supra note 111, at 97 (“They were considerable affairs at which horses and products of the chase were exchanged for garden produce and European trade goods.”).

n113. 9 Smithsonian Handbook, supra note 61, at 189 (“At fixed periods during the late summer and [early] fall” the Pueblos, many other tribes and even the Spanish submitted to truces for the trading fairs.).

n114. *The Cheyenne Way*, supra note 18, at 228-29 (citing a report of Cheyenne women making “contracts” for services which involved sustained production work and payment for that work); Oberg, supra note 44, at 36, 55 (mentioning the individual ownership of right to passes to travel into the interior to trade; payments made for ceremonial labor of house building and burials); Herskovits, supra note 25, at 86, 93-94 (1940) (noting that in the Hidatsa Tribe of North Dakota individual farmers hired men for cornhusking and paid them with a feast and meat, and hired older women to preserve squashes for which the women were paid with part of the squash harvest).

n115. Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan’s Native Americans* 109 (4th ed. 1992) (stating that in the fur trade Indians were “quick and efficient as market entrepreneurs”); Oberg, supra note 44, at 105 (noting that Russian, American, and English traders all attested to Indian established trading procedures and keen trading sense); 7 Smithsonian Handbook, supra note 45, at 119 (claiming that Indians were good and experienced traders; explorers and early traders reported the hard bargaining of Indians; La Perouse observed in 1786 that the Tlingits were “well accustomed” to trade and “bargained with as much skill as any tradesman of Europe”; Meriwether Lewis described the Chinooks as “great hagglers in trade”).

Some Europeans thought, and some people think today, that Indians were taken advantage of because of the subjective and relative cultural values placed on some of the items Europeans traded for furs. However, the Indians had

a similar cultural perspective. James Axtell, *After Columbus: Essays in the Ethnohistory of Colonial North America* 161 (1988) (observing that one person's trash is another's treasure); Trosper, *supra* note 14, at 205; Calvin Martin, *Keepers of the Game: Indian-Animal Relationship and the Fur Trade* 153 (1978) (quoting an Indian who thought the English were crazy for trading twenty beautiful steel knives for one silly beaver fur).

n116. Codere, *supra* note 60, at 4, 18, 20 (stating that Kwakiutl manufacturing was very precise, using exact functions and measurements; they were astute business people and could manipulate economic goods to their advantage); 7 *Smithsonian Handbook*, *supra* note 45, at 119-20, 123-24, 131 (noting that Indians played traders against each other and shopped for better prices for furs and goods; tribes cultivated trade advantages).

n117. Klein, *supra* note 54, at 146 (claiming that trade goods that Plains tribes did not want were passed over and the traders suffered); Trigger & Swagerty, *supra* note 98, at 375 (declaring that tribes learned of the low value of European goods in America because they could not be returned to Europe so Indians raised the exchange rate for their own goods); Oberg, *supra* note 44, at 110 (proposing that Indians engaged in a great deal of haggling, sharp dealing and even cheating); 7 *Smithsonian Handbook*, *supra* note 45, at 119-20, 123-24, 131 (arguing that Indians had the choice to trade; Europeans could not return untraded goods to Europe and they had to adapt to native customs and preferences; Indians refused to trade if what they wanted was unavailable); Jacobs, *supra* note 14, at 34-35 (commenting that a French monopoly led to low prices for furs, so the tribes traded with the English for better prices).

n118. 10 *Smithsonian Handbook*, *supra* note 85, at 721 (noting that the Papago made measuring baskets with designs of three parallel lines used to measure and sell cornmeal, beans, and other items); Rubin, *supra* note 66, at 71 (observing that various Indians sold products such as berries, nuts and tobacco in standardized basket sizes).

n119. 7 *Smithsonian Handbook*, *supra* note 45, at 585 (noting that some tribes refunded the bride price in the event of divorce, with adjustments made for any children born); Rubin, *supra* note 66, at 69-71 (commenting that Chinook along the Columbia and Willamette Rivers allowed deals to be called off in an hour or two and had "well established" rules of trade (citing Lewis and Clark Journals); slaves, wives and canoes were guaranteed for some months (citing George Gibbs, *Tribes of Western Washington and Northwestern Oregon*, in 1 *Contribution to North American Ethnology* 187 (1887))).

n120. Rubin, *supra* note 66, at 70 (claiming that the Chinook offered credit and deferred payments and sold futures in spring sturgeon and awaited payment until the fish run ended (citing Alexander Henry, *The Manuscript Journals of Alexander Henry, Fur Trader of the Northwest Company*, in *New Light on the Early History of the Greater Northwest* 833 (Elliott Coues ed., 1897)); Usner, *supra* note 106, at 220-26 (In the 1700s, Indian villagers and European settlers in the Mississippi valley established regular trading and relied on deerskins as a medium of exchange; the deerskin trade largely operated on credit.); Arthur J. Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay 1660-1870*, at 51-71, 125, 131-34, 138 (1974) (noting that trading posts extended credit to Indians).

n121. Codere, *supra* note 60, at 69-75 (maintaining that the Kwakiutls charged interest on loans of goods for potlatching and other loans); 7 *Smithsonian Handbook*, *supra* note 45, at 369 (observing that Hudson Bay blankets were loaned out at interest); Philip Drucker, *The Potlatch*, in *Tribal and Peasant Economies* 487-88 (George Dalton ed., 1967) (explaining that Pacific coast tribes made "loans at interest [which] were strictly commercial transactions" of money and trade blankets with very high interest rates).

n122. 7 *Smithsonian Handbook*, *supra* note 45, at 123-25, 208, 319, 407-08, 471. Tribes sought to gain monopolies. Clans that "owned" the trails into the interior thereby held monopolies in dealing between whites and other Indians; they forbade direct contact between traders and other tribes. By 1824, Hudson's Bay Company knew most of its furs had passed through Chinook hands. The Chinook did little trapping but they made a good living trading. In addition to the Chinook, the Bella Bella, Salish, Tlingits, Tsimshians, and Nootkas established themselves as middlemen in the fur trade. *Id.* The Makah "were the middlemen in an extensive coastwide trade" which ran from Canada to the Columbia River and the interiors of Oregon and Washington. Colson, *supra* note 43, at 5. The Mahicans were the "middlemen in the trade of native shell beads from the coast to the Saint Lawrence valley." 15 *Smithsonian Handbook*, *supra* note 20, at 199. The Santa Clara Pueblo acted as middlemen for southern Pueblo villages and Plains tribes. 9 *Smithsonian Handbook*, *supra* note 61, at 305.

By 1630, the Huron Nation controlled the fur and agriculture trade in the eastern Great Lakes area. They traded with agricultural tribes and kept them separate from the French fur traders. In fact, the Iroquois wars against the Hurons in the 1640s and Illinois tribes in 1680 were fought for trade domination. The Mandan, Arikara and Hidatsa in North

Dakota had flourishing agricultural economies and were the middlemen in fur trade between whites and hunting tribes. However, the Hidatsa were hostile to white traders who were trying to move up river and bypass the Hidatsa trading centers. Wessel, *supra* note 16, at 11-13; see also Holder, *supra* note 111, at 16-17 (noting that tribes acted as middlemen for more remote tribes).

n123. 15 *Smithsonian Handbook*, *supra* note 20, at 85, 204-06, 344-47, 430 (arguing that tribes pursued policies that gave them “an advantage in the fur trade” and many tribes sought “monopolistic positions” like the Penobscots, Eastern Abenakis, Narragansetts in Rhode Island, Pequots and Woronocos in Connecticut, Mahicans, Susquehannock in Pennsylvania, and Weanocks in Virginia and all engaged in “intertribal wars resulting from the fur trade”); Mancall, *Valley of Opportunity*, *supra* note 20, at 50-51, 83, 91-94 (noting that tribes tried to attract traders to their villages to ensure access to goods; in a 1768 treaty, tribes wanted to protect trade and their economies and would only give up lands after receiving guarantees that the roads and rivers stayed open to them for trade with colonists; Iroquois used control over their territory to limit economic options of other Indians); Oberg, *supra* note 44, at 106 (observing that clans held monopolies on trade routes into the interior and on certain items like copper); Jacobs, *supra* note 14, at 9 (commenting that eastern tribes controlled trading privileges).

n124. Ewers, *supra* note 97, at 17, 28 (proposing that large profits from intertribal trade encouraged individual Indians to trade with foreign tribes rather than with their own tribe). When the fur trade became profitable, tribes turned more to hunting sea otter and beaver. The Tlingits entered the economy by selling their goods or services as individuals. Many Tsimshian people developed businesses and worked for wages during the nineteenth century. The Bella Bella were able to manipulate the fur trade competition between the British-owned fort and American ships. 7 *Smithsonian Handbook*, *supra* note 45, at 130, 153, 282, 319-20. Tribes would burn the grass around trading posts so that bison would not come close and the Indians would be paid for hunting meat for the whites. Tribes knew how to exercise economic power and threatened to boycott trading and stop providing meat to the posts. Ray, *supra* note 120, at 51-71, 125, 131-34, 138.

n125. Jacobs, *supra* note 14, at 9-10; Ray, *supra* note 120, at 51-71, 125, 131-34, 138 (declaring that Indians’ participation in the fur trade influenced their evolving tribal economies); Oberg, *supra* note 44, at 35, 56, 60-61, 132 (proposing that with the arrival of the fur trade the Tlingit Tribe gave trading “a central place in the economy” and fur trapping created a change in the tribal means of production).

n126. 15 *Smithsonian Handbook*, *supra* note 20, at 84. Indians changed to meet the new conditions caused by fur trading. When value and prices for beaver rose, the risk of overhunting began as Indians took up the trade. “The fur trade resulted in a greater awareness of territoriality among the Indians Native concepts of land ownership ... were used in the development of family trapping territories.” *Id.* See 7 *Smithsonian Handbook*, *supra* note 45, at 119, 130 (claiming that Indians exercised control over the maritime fur trade, not the Europeans; when the fur trade became so profitable, tribes turned more to hunting sea otter and beaver); John H. Moore, *The Myth of the Lazy Indian: Native American Contributions to the U.S. Economy*, 2 *Nature, Soc’y, & Thought* 2, at 198-201 (Apr. 1989) (stating that many Indians voluntarily took up the arduous fur trade work); 6 *Smithsonian Inst., Handbook of North American Indians* 181 (William C. Sturtevant et al. eds., 1981) (claiming that when the commercial fur trapping economy arrived “usufructuary rights to trap in specific territories became established”).

n127. Klein, *supra* note 54, at 143 (Ten years after the Blackfeet got British iron pots they had forgotten how to make pottery, “in short order, trade items went from being desirable luxuries to necessities.”); Jacobs, *supra* note 14, at 32-33.

n128. Murray, *supra* note 85, at 119-20 (noting that wampum became a trade and market exchange item); Michael Leroy Oberg, *Dominion and Civility* 96, 152 (1999) (declaring that wampum was used as means of exchange, like money). Hudson Bay Company blankets were a standard for value. In addition, dentalia was money to northwest Indians. However, “blue beads were ... extremely valuable... [and] partially replaced dentalium shells as currency.” 7 *Smithsonian Handbook*, *supra* note 45, at 122, 369, 505, 537; see also Swan, *supra* note 22, at 158, 166-67 (arguing that dentalia shells passed as money for northwest Indians; Makahs bought slaves at a price of twenty to 100 Hudson Bay Company blankets valued at five dollars per blanket); Indians of Cape Flattery, *supra* note 55, at 30-32 (explaining that for the Makah, Hudson’s Bay Company blankets were the principal item of wealth and prices were fixed by the number of blankets).

The Ancestral Puebloans of Chaco Canyon in New Mexico used turquoise as money; it was mined near Chaco and processed into items. “Archeologists believe turquoise may have been a medium of intercultural trade, with Chaco as ‘the mint.’” Strutin, *supra* note 80 at 50-51; see also 9 *Smithsonian Handbook*, *supra* note 61, at 149 (claiming that after

900 A.D., Chaco Canyon became a distribution center for turquoise, which may have served as a medium of exchange); Rubin, *supra* note 66, at 71 (arguing that dentalia shells were used as a medium of transaction through the Northwest; they were “money beads”); Oberg, *supra* note 44, at 112 (“Abalone shells, dentalium shells and furs formed media of exchange before European contact.”); 10 Smithsonian Handbook, *supra* note 85, at 720-21 (noting that strings of shell beads were convertible into any good at any time among the Navajo and Pueblo peoples and was a form of money; by the end of the nineteenth century Navajo blankets were highly esteemed and published data on equivalent values state them in terms of blankets); see also Usner, *supra* note 106, at 223 (observing that in the 1700s, Indian villagers and European settlers established an exchange rate for deerskins to buy European trade goods); Econ. Encyclopedia, *supra* note 7, at 30, 35, 180, 229. Beaver furs were the unit of exchange in trading and buying Hudson Bay Company goods and the prices were listed in furs. In fact, the American slang word “buck” for a dollar comes from buckskins, when deerskins were a monetary unit of exchange between Indians and whites. Copper plates were used as “currency of very high denominations” by northwest tribes and were worth thousands of U.S. dollars. Slaves were bought for blankets at The Dalles, Oregon, tribal market in the 1830s and the Haidas in the 1850s. *Id.*; see also Vayda, *supra* note 121, at 495-96 (noting that the California coast Indians used clam shell beads, the “standard of value,” to buy salt cakes and settle intervillage feuds; “some well-to-do persons hired their work done” with payments of beads).

n129. Econ. Encyclopedia, *supra* note 7, at 261.

n130. 7 Smithsonian Handbook, *supra* note 45, at 369 (mentioning that Hudson Bay blankets were loaned out at interest); see generally *supra* note 121.

n131. See generally *supra* note 128; Econ. Encyclopedia, *supra* note 7, at 167, 260-61 (noting that wampum was a “medium of exchange” and a standard unit of value in New England and was used to pay damages in cases of murder; Cherokees held ceremonies where gifts of wampum and silver would be divided for the poor and to pay the performing musicians); Oberg, *supra* note 44, at 50-51, 132 (observing that payments of goods were often used to avoid warfare and disputes; Tlingits used wealth for bride gifts, indemnity, settling disputes, buying clothes, food and shelter); Marshall Sahlins, *Stone Age Economics* 219 (1972) (stating that the California Pomo Tribe “did ‘buy’--at any rate gave beads for--acorns, fish and like necessities from other communities”); 7 Smithsonian Handbook, *supra* note 45, at 565 (mentioning that the Tillamook and Salish Indians settled inter-community disputes by arbitration and monetary payments; avengers of murders expected to obtain money in the form of dentalia); *Ex parte Crow Dog*, 109 U.S. 556 (1883) (stating that after a murder, families agreed on a payment of \$ 600, eight horses, and a blanket); 15 Smithsonian Handbook, *supra* note 20, at 384 (acknowledging that to prevent wars after murders, heavy payments were made to the families of the deceased; such payments could not be made by an individual and thus clans and villages established a “public treasury” to pay these costs and for treaties and exchanging prisoners).

n132. Oberg, *supra* note 44, at 96 (recognizing that the Dutch used wampum as money as early as 1622); 15 Smithsonian Handbook, *supra* note 20, at 166, 202-03 (commenting that the Dutch used “wampum as currency in their trade with the Indians as well as among themselves”; wampum was produced by Indians of Long Island, Connecticut, and Rhode Island; Dutch and English traders took wampum in trade and traded it with inland and northern Indians for furs; “wampum became a true medium for exchange”); Jacobs, *supra* note 14, at 41, 48 (stating that wampum was “a form of money ... a common medium of exchange”).

n133. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* 20 (1995 ed.) [hereinafter Prucha, *The Great Father*].

n134. Murray, *supra* note 85, at 119-20. English triumph over the Pequots and the large tributes exacted in wampum established English trade supremacy. Some tribes began staying on the coast to make wampum and were no longer able to produce their own necessities, becoming increasingly dependent on European goods. This development turned wampum into a trade and capitalistic market exchange item. *Id.*

n135. Oberg, *supra* note 44, at 152 (suggesting that wampum devalued with the influx of European currency and was ultimately replaced as a form of money by European currency).

n136. 7 Smithsonian Handbook, *supra* note 45, at 29, 493, 505, 540, 548, 551, 580, 591 (observing that dentalium was a unit of value with set exchange rates that served as a medium of exchange to buy goods; dentalia were traded in western North America and used as ornaments and symbols of wealth by many tribes; beads and blankets also served as currency); Herskovits, *supra* note 25, at 251 (stating that dentalia shells were “recognized by the Indians as money and “are readily equated with American coins”); Swan, *supra* note 22, at 159 (noting that dentalia were objects of wealth and that women would wear them as jewelry).

n137. 7 Smithsonian Handbook, supra note 45, at 417, 537, 585. An Athapaskan bride brought up to 100 long dentalia as a price. Chinooks and others used dentalia as an economic standard; they were strung in lengths of fathoms, with the value dependent upon the number of shells per fathom. Larger shells were more valuable although exchange rates were subject to market fluctuations. Shells were very valuable and were also worn as ornamentation. Excavation of the Makah village of Ozette shows dentalia trade existed in the 1500s. Id.

n138. Rubin, supra note 66, at 27, 69, 71 (citing Franz Boaz, Physical Characteristics of the Indians of the North Pacific Coast, in *Am. Anthropologist* 4 (1891)). Chinooks and other Indians buried them for safety, but would dig them up to examine, count and admire them. Id. (citing Jacobs, supra note 66, at 490, 609 n.61).

n139. 7 Smithsonian Handbook, supra note 45, at 548, 562, 573 (noting that wealthy Kalapuyans, Siuslawans, Coosans and Tillamooks of Oregon and the Salish gauged the values of bead and dentalia strings with reference to tattooed lines on their arms; men had one arm tattooed to measure strings of dentalia).

n140. 7 Smithsonian Handbook, supra note 45, at 505 (claiming that beads, blankets and dentalia shells served as currency in sales of durable goods between Indians and Whites); Herskovits, supra note 25, at 209, 252-53 (explaining that the Yurok Tribe in California bought tobacco with dentalia shells; Indian doctors and marriage payments were made with strings of dentalia, "good money").

n141. Pub. L. No. 73-383, 48 Stat. 984 (June 18, 1934) (codified as amended in scattered sections 25 U.S.C. 461-479).

n142. See supra note 11; Selden, supra note 6, at A1 (quoting a former Montana tribal chair as saying that governments should not run businesses and that he does not know any that succeeded); Anderson, supra note 14, at xv, 140, 153-58 ("Top down dictation of institutions has resulted in inappropriate institutions and has been primarily responsible for the plight of American Indians."); Spicer, supra note 11, at 561-63 (suggesting that all the Southwest tribal corporations and businesses were chronically in a state of precarious existence or insolvency).

n143. See supra notes 11, 142; Telephone Interview with Patrick Borunda, Principal, Navigator Group Strategic Management Counsel (Sept. 13, 2001) [hereinafter Borunda 2001 interview] (stating that tribal governments are "neither trained nor rewarded for operating a profitable business"); Indian Self-Rule: First Hand Accounts of Indian-White Relations from Roosevelt to Reagan 90-91 (Kenneth R. Philp ed., 1986) [hereinafter Indian Self-Rule] (According to a former Assistant Commissioner of Indian Affairs, political organizations are not "able to run a business. No state has been able to run a business, and the federal government has never been able to operate a business of any kind very successfully. Yet everyone expects a tribal political organization to operate a business.").

n144. Thomas L. Friedman, *The Lexus and the Olive Tree* 110 (1999).

n145. William Ebenstein & Edwin Fogelman, *Today's Isms: Communism, Fascism, Capitalism, Socialism* 128 (9th ed. 1985); see also Paul A. Samuelson & William D. Nordhaus, *Economics* 31 (14th ed. 1992); Donald W. Moffat, *Economic Dictionary* 37 (2d ed. 1983).

n146. "[Self-interest] guides people to serve the common interest as though, Adam Smith said, by an invisible hand." John Kenneth Galbraith & Nicole Salinger, *Almost Everyone's Guide to Economics* 14 (1978). The potential for individual profit is "another basic characteristic of the capitalist system." Ebenstein & Fogelman, supra note 145, at 131. Self-interest directs everyone in a capitalist system to work for their own best interest which in turn ultimately works for the betterment of the overall economy by creating new jobs, wealth, capital, and businesses. Samuelson & Nordhaus, supra note 145, at 198-99.

n147. Galbraith & Salinger, supra note 146, at 14-15; see also Ebenstein & Fogelman, supra note 145, at 131.

n148. Galbraith & Salinger, supra note 146, at 15.

n149. Id.

n150. Moffat, supra note 145, at 277; see also Samuelson & Nordhaus, supra note 145, at 386 (arguing that socialist governments own key industries such as railroads, coal and steel, and plan and direct economic activity, and attempt to redistribute wealth by heavy taxation).

n151. Moffat, supra note 145 at 41.

n152. See generally supra note 7; Robert H. White, *Tribal Assets: The Rebirth of Native America* 105, 217 (1990) (noting that the Mississippi Choctaw is the largest employer on its reservation; Warm Springs Reservation's largest enterprise is government administration providing 600 of the 1200 jobs at Warm Springs).

n153. Weiss, supra note 7, at 120 (proposing that in the 1940s the BIA set up Navajo tribal businesses but they all failed because they were designed just to create jobs and not profits); Borunda 1999 Interview, supra note 11 (commenting that too many tribal businesses are designed just to create employment); Pommersheim, supra note 11, at 170 (suggesting that tribes are under great pressure to provide jobs and "often emphasize maximizing employment without sufficient concern for profitability and sustainability"; tribes must do more than just think about any job); Wilson, supra note 5, at 124 (suggesting that the federal government support "tribally based industries which should not necessarily have to show a profit"); Levitan & Hetrick, supra note 2, at 109-10 (stating that BIA program encouraged tribal governments to develop work programs in the 1960s that were "not a commercially profit-making activity").

n154. See, e.g., *Across the Big Sky: Fort Peck Tribes Win High-Tech Grant*, *Great Falls Tribune*, May 30, 2001 (on file with author) (reporting that tribes will use federal grants to expand their manufacturing operation and create more good paying jobs; tribal chairman said "jobs are our priority"); Jeff Hinkle, *Following the Leaders*, *Am. Indian Rep.*, May 14, 2000, at 12 (quoting Chief Martin of the Mississippi Choctaws as saying that "jobs come first ... job creation is the priority"); David Knutson, *From a Trickle to a Flow: Red Lake Reservation Development Includes Bottling Plant*, *Grand Forks Herald*, Feb. 9, 2001 (on file with author) (reporting that the tribe entered a joint venture with Coca-Cola to bottle reservation water; tribal chairman stated that "we have to concentrate on ventures that create jobs"); *What Can Tribes Do?*, supra note 8, at 37, 183, 199-200 (proposing that private business ownership provides profit motivation that is missing when governments operate reservation businesses); White, supra note 152, at 217 (observing that the Confederated Tribes of the Warm Springs Reservation operate a resort which from 1966-1989 had broken even only once in 1967; the tribal government had to put other funds into the resort).

n155. The United States relationship with Indian tribes and Indian people is based on a political, government-to-government status and is not racially based. *United States v. Antelope*, 430 U.S. 641, 645-46 (1977); *Morton v. Mancari*, 417 U.S. 535, 551-54 (1974). Thus, federal legislation that might benefit or harm tribes and Indians does not violate the Equal Protection Clause. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 304 n.42 (1978); *Fisher v. Dist. Ct.*, 424 U.S. 382, 390 (1976).

n156. Vine Deloria Jr., *Trouble in High Places: Erosion of American Indian Rights to Religious Freedom in the United States*, in *Native American Cultural and Religious Freedoms* 354, 358 n.29 (John R. Wunder ed., 1999) (noting that Britain, Holland, and Spain entered Indian treaties; France and Russia engaged in legal formalities with Indians); *Dorothy v. Jones*, *British Colonial Indian Treaties*, 4 *Smithsonian Inst., Handbook of North American Indians* 185-87 (Wilcomb E. Washburn ed., 1988); 1 *American State papers: Foreign Affairs* 278-79 (1793) (commenting on the treaty between Spain and the Creek confederacy on May 20, 1784); Stanislaus F. Belch, *Paulus Vladamiri and His Doctrine Concerning International Law and Politics* (1965) (describing Russian treaties with Alaskan tribes); *European Treaties Bearing on the History of the United States and Its Dependencies* (Francis Gardener Davenport ed., 1917) (detailing English and French treaties with tribes); Cohen, supra note 11, at 51-55 (stating that European governments would only buy Indian lands with consent and by agreement; Spanish, Dutch, and the English colonies adopted laws requiring this and treated Indians as sovereign possessing ownership rights).

n157. Deloria Jr., supra note 156, at 354, 358 n.29; Robert J. Miller, *American Indian Influence on the United States Constitution and Its Framers*, 18 *Am. Indian L. Rev.* 133, 138, 150-55 (1993).

n158. David H. Getches et al., *Federal Indian Law* 1, 61-63, 73-83 (4th ed. 1998); Francis Paul Prucha, *American Indian Policy in the Formative Years: Indian Trade & Intercourse Acts 1790-1834*, at 1-3, 43-50 (1962) [hereinafter Prucha, *Formative Years*]; see generally Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (1994). Various American colonies and states also entered treaties with tribes. See, e.g., *Oneida Indian Nation of N.Y. v. County of Oneida, N.Y.*, 199 F.R.D. 61, 66 (N.D.N.Y. 2000) (pointing to the existence of up to thirty treaties between New York and Oneida Tribe for land cessions).

n159. U.S. Const. art. I, 8 ("Congress shall have Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ..."). The inability of the Congress of the Articles of Confederation to control Indian affairs and to end state meddling with tribes led to the formation of the United States constitutional government. Miller, supra note 157, at 133, 151-54 nn.145-62 (quoting John Jay, Benjamin Franklin, and James Madison regarding the need for a stronger central government with complete power over Indian affairs).

n160. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989); accord *Lone Wolf v. Hitchcock*, 187 U.S. 553, 556-57 (1903).

n161. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831); Cohen, *supra* note 11, at 220-28.

n162. *United States v. Mitchell*, 463 U.S. 206, 224-26 (1983); *Cherokee Nation*, 30 U.S. (5 Pet.) at 17.

n163. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). The conduct of the United States towards tribes is “judged by the most exacting fiduciary standards.” *Id.*

n164. *Mitchell*, 463 U.S. at 224-26; *Cherokee Nation*, 30 U.S. (5 Pet.) at 17; Cohen, *supra* note 11, at 207-57.

n165. *Mitchell*, 463 U.S. at 224-26; *Seminole Nation*, 316 U.S. at 296; *Brown v. United States*, 86 F.3d 1554, 1561-63 (Fed. Cir. 1996) (proposing that the Secretary of Interior was a fiduciary for individual Indians on allotted land on-reservation when Congress gave Secretary control over leasing of the lands); *Navajo Tribe of Indians*, 364 F.2d 320 (Ct. Cl. 1966) (Bureau of Mines).

n166. The United States directly oversees and approves many aspects of economic dealings with Indian tribes. See, e.g., 25 U.S.C. 81, 84, 464 (2000). The United States has repeatedly recognized its trust duty to manage tribal natural resources, for example. See, e.g., 25 U.S.C. 406 (2000) (noting a duty to manage reservation timber by sustained yield principles); *Indian Energy Resources Act*, 25 U.S.C. 3501 (2000); *American Indian Agricultural Resource Management Act*, 25 U.S.C. 3701 (2000).

n167. Prucha, *The Great Father*, *supra* note 133, at 1202-06 (“You cannot have trusteeship without paternalism”; “The government has to approve proposed uses and disposition of the assets under its trust responsibility. To do otherwise is to violate the trust.”); Presidential Commission, *supra* note 9, at 924 (acknowledging that the United States is the legal owner of tribal and Indian trust assets).

n168. Presidential Commission, *supra* note 9, at 924 (arguing that tribes can not use trust assets as collateral because the United States is the legal owner).

n169. See *infra* note 239; see also Klaus Frantz, *Indian Reservations in the United States: Territory, Sovereignty, and Socioeconomic Change* 180 (1999) (arguing that the BIA’s veto power has a negative effect).

n170. Cf. *What Can Tribes Do?*, *supra* note 8, at 15, 182-83, 199-200 (proposing that BIA bureaucratic standards carry more weight than tribal standards; tribes taking control over reservation forestry from BIA and tribal economic motivations led to dramatic improvements in productivity, up to a 40% increase, and with better forest management); Presidential Commission, *supra* note 9, at 921-22 (arguing that BIA non-cost effective, bureaucratic, underqualified, and incompetent management of Indian trust resources causes numerous obstacles to reservation economic development).

n171. See *infra* note 239; Presidential Commission, *supra* note 9, at 921-24 (claiming that BIA management of Indian trust assets creates obstacles to economic development; BIA employees are underqualified or unable to provide expert advice; bureaucratic approvals slow down the process; overregulation deters investment by raising the costs and uncertainty); Fred McChesney, *Government as Definer of Property Rights: Indian Lands, Ethnic Externalities, and Bureaucratic Budgets*, in *Property Rights*, *supra* note 7, at 109 (“Government retention of trustee responsibilities ... weakened property rights.”); Champagne, *supra* note 11, at 205 (proposing that the constraints of the federal trust responsibility and the subordination of economic development to political and cultural goals inhibits sustained economic enterprises); Ewers, *supra* note 97, at 134 (explaining that the costs associated with the trust arrangement reduce the value of output and constrain Indians’ ability to make their own decisions).

n172. Prucha, *The Great Father*, *supra* note 133, at 18, 23 (“The fundamental policy in Indian affairs was to make the Indians dependent on the English in their trade.”); Mancall, *Deadly Medicine*, *supra* note 91, at 13-14, 23, 29, 128, 156 (noting that the English colonial goal was to trade with Indians, create a market for English goods and integrate Indians into the marketplace and civilized society; trade would be the common ground); Cohen, *supra* note 11, at 56-57; Prucha, *Formative Years*, *supra* note 158, at 9-10.

n173. Prucha, *The Great Father*, *supra* note 133, at 18, 23-24 (suggesting that fraud and illegal trading activities made Indians retaliate; King George III issued the Royal Proclamation of 1763 to set a boundary between Indian country and the colonies so that settlers and frontiersmen would stop invading tribal territories and stirring up military problems for England and the colonial governments; “conciliation of the Indians was of prime importance to the British government”); Mancall, *Deadly Medicine*, *supra* note 91, at 157 (noting that colonial and English officials recognized

that traders' actions with Indians had political and military consequences); Prucha, *Formative Years*, supra note 158, at 11-25.

n174. Prucha, *The Great Father*, supra note 133, at 18-19, 26-27 (mentioning that England licensed traders, set territories, and tried to control the arms and liquor trade with Indians); Mancall, *Deadly Medicine*, supra note 91, at 96-97, 103-09 (observing that the majority of colonial governments enacted regulations from the 1630s to the early 1700s to control alcohol sales to Indians); Cohen, supra note 11, at 109 n.387.

n175. Prucha, *Formative Years*, supra note 158, at 36, 44; Ewers, supra note 97, at 173 (stating that trade with tribes was profitable whereas war was costly); Larry C. Skogen, *Indian Depredation Claims, 1796-1920*, at 13, 20-22 (1996) (proposing that different philosophies of Indians and whites regarding property led to conflicts; to protect its economic interests America needed to stop violence between colonists and Indians; the desire to reduce the threat of conflicts led to treaties restricting trade); Letter from George Washington to James Duane (Sept. 7, 1783), in *27 The Writings of George Washington From the Original Manuscript Sources, 1745-1799*, at 2 (John C. Fitzpatrick ed., 1931) ("The Settlement of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the other."); Report of Comm. on Indian Affairs (Oct. 15, 1783), in *25 Journals of the Continental Congress, 1774-1789*, at 4, 681-83, 693 ("The trade with the Indians ought to be regulated ... so that violence, fraud and injustice towards the Indians, may be guarded against, and prevented, and the honor of the federal government and the public tranquility thereby promoted."); Prucha, *The Great Father*, supra note 133, at 35, 42, 46, 49, 53-54, 89, 118 (during the Revolution the colonies were very concerned about Indians; after the War, "Indian problems remained an important business in the establishment of the new nation"; "it was imperative that the Indians remain at peace"); Cohen, supra note 11, at 58-59; Proclamation of the Continental Congress (Sept. 22, 1783), in *25 Journals of the Continental Congress*, supra, at 3, 602 (noting that the Articles of Confederation Congress prohibited settling on Indian lands and from purchasing lands without the express approval of the United States).

n176. George Washington, *Fifth Annual Address* (Dec. 3, 1793), in *1A Compilation of Messages and Papers of the Presidents 16, 133* (James D. Richardson ed., 1910) [hereinafter *Messages and Papers*] (stating that "the establishment of commerce with the Indian nations" was most likely to create permanent ties and it "ought to be conducted without fraud, without extortion"). Washington sought to protect trade with the Indians after the Revolution by controlling trade to "supply the Indians upon much better terms than they usually are; engross their Trade, and fix them strongly in our Interest." Washington Letter to Duane, supra note 175, at 133-40. Traders were controlled by obtaining licenses and giving security to follow the government regulations. *Id.* U.S. policy included keeping on good terms with Indians because if they did not, the Indians "would find a welcome reception from the British government in Canada, which ... would secure to its own subjects the entire benefit of the fur trade." Report of Comm. on Indian Affairs, supra note 175, at 3-4, 681-83, 693.

n177. See, e.g., Act of Aug. 7, 1789, ch. 7, 1 Stat. 49 (establishing a Department of War with responsibility over Indian affairs); Act of Aug. 20, 1789, ch. 10, 1 Stat. 54 (appropriating funds to negotiate Indian treaties and appointing treaty commissioners).

n178. Trade and Intercourse Act of July 22, 1790, ch. 23, 1 Stat. 137, 137-38.

And be it enacted and declared, that no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, ... unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

Id. This temporary Act was amended, strengthened and renewed to protect Indians in 1793, 1796, and 1799. In 1802 a permanent statute was enacted and it was replaced in 1834 with the statute that we have today with some very minor changes. 25 U.S.C. 177 (2000); Prucha, *The Great Father*, supra note 133, at 91-93; Cohen, supra note 11, at 109-17.

n179. Prucha, *The Great Father*, supra note 133, at 89-90, 92. The Act prevents states from dealing with tribes without federal approval. George Washington's Third Annual Address (Oct. 25, 1791), in *Messages and Papers*, supra note 176, at 15, 96-97 (stating that the alienation of Indian lands was the "main source of discontent and war" and "should be so defined and regulated").

n180. Prucha, *The Great Father*, supra note 133, at 94; Prucha, *Formative Years*, supra note 158, at 36, 44-49, 66-73, 262 (observing that bonds up to \$ 5,000 were required in the 1830s).

n181. Prucha, *Formative Years*, supra note 158, at 57; Prucha, *The Great Father*, supra note 133, at 116, 120. One of the ulterior motives of the federal government was to get Indians indebted so they would sell land to pay their debts. *Id.* at 120. President Jefferson wrote in 1803 that the government wanted to draw Indians “to agriculture, to spinning and weaving” and into debt so they would sell land for debts. *Id.*

n182. Prucha, *The Great Father*, supra note 133, at 117-24. Ultimately the opposition of private traders ended congressional support for the government trading houses because of the competition to their capitalist private interests and they were all finally closed in 1824. *Id.* at 130-34.

n183. *Id.* at 119 (mentioning that government trading houses sold nearly at cost and undersold and drove the private Indian traders out of business).

n184. Ordinance for the Regulation of Indian Affairs (Aug. 7, 1786), in 31 *Journals of the Continental Congress*, supra note 175, at 8, 490-93 (noting that ordinance restricted residency and trade with Indians to those who were licensed by the government; traders and agents had to put up a \$ 3,000 bond); President Jefferson on Indian Trading Houses, Message to Congress (Jan. 18, 1803), in *Messages and Papers*, supra note 176, at 22, 340-41. Jefferson wanted Indians to become farmers because they would be willing to sell more hunting land. He encouraged continuing the government trading houses, where the government “directs that the commerce shall be carried on liberally We consequently undersell private traders, foreign and domestic, drive them from the competition.” *Id.*

n185. Vine Deloria, Jr., *The Evolution of Federal Indian Policy Making*, in *American Indian Policy in the Twentieth Century* 243-44 (Vine Deloria, Jr. ed., 1985)

Vesting the [federal] agents with a discretionary power to control the flow of trade, which should have been a function of the free market or of the real needs of the Indians, meant that Congress had become a surrogate for Indian decision making in the important area of cultural and economic relations with the settlers. Once this barrier had collapsed, future policy had to be shaped around the proposition that Indians could not or would not make the proper decisions respecting their best interests.

Id.

n186. See, e.g., Treaty with the Cherokee, Nov. 28, 1785, art. IX, 7 Stat. 18; Treaty with the Comanche, May 15, 1846, art. II, 9 Stat. 844, reprinted in 2 *Indian Affairs: Laws and Treaties* 10, 225 (Charles J. Kappler ed., 1904) [hereinafter *Indian Affairs*]. The Makah trade with Canadians was ended by its treaty, Treaty with the Makah, Jan. 31, 1855, art. XIII, 12 Stat. 939. Further, the Sauk and Fox were limited from subjecting traders or other persons “to any toll or extraction.” Treaty with the Sauk and Foxes, Nov. 3, 1804, art. XI, 7 Stat. 84, reprinted in *Indian Affairs*, supra, at 100, 682.

n187. See Treaty with the Cherokee, Oct. 25, 1805, art. IV, 7 Stat. 93; Treaty with the Creeks, Nov. 14, 1805, art. II, 7 Stat. 96; Treaty with the Chippewa, Nov. 25, 1808, art. I, 7 Stat. 112, reprinted in *Indian Affairs*, supra note 186, at 82, 85, 98.

n188. See Clinton, supra note 5, at 915-16 (commenting that Indian lands were set apart for the exclusive use of Indians, to keep separate Indian and non-Indian societies, economies and markets; later Congress decided to open Indian lands to markets); Cohen, supra note 11, at 528 (observing that the Trade and Intercourse Act prevented the leasing of tribal lands); *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 665 (1979) (mentioning that the Trade and Intercourse Act was designed to regulate trade and other forms of intercourse between the tribes and non-Indians).

n189. See, e.g., Prucha, *The Great Father*, supra note 133, at 650-51, 671-73, 887-89 (noting that Congress only allowed leasing of Indian allotments in 1891 and only allowed any logging of reservation timber to begin in 1889).

n190. Without altering the Trade and Intercourse policy of isolating tribal economies, Congress adopted the Removal and Reservation policies in the 1800s which had extremely negative impacts on tribal economies. The Removal policy was the attempt in the 1820s and 1830s to move the tribes from east of the Mississippi River to the “Indian Territory” in what is now eastern Oklahoma and states northward. See generally Prucha, *The Great Father*, supra note 133, at 179-279 (stating that “the land hunger of the whites” was the main reason for removal); Rennard Strickland, *Fire & the Spirits: Cherokee Law from Clan to Court* 65-67 (1975). After removal, tribes were still kept separate from the American economy. Even worse for tribes was that removal destroyed their economies and uprooted

them from the lands and resources that had sustained them for centuries. Econ. Encyclopedia, supra note 7, at xiii (noting that Indian economies were destroyed by diseases which nearly wiped out tribes and by removal).

Starting in the 1850s, the government adopted the Reservation policy which placed tribes in small and remote areas to separate them from settlers. Prucha, *The Great Father*, supra note 133, at 317; S. Lyman Tyler, *A History of Indian Policy* 71-88 (1973). This policy severely restricted tribal hunting, fishing, and gathering lifestyles and often moved them from the resources of their ancestral lands. Hence, it helped to destroy tribal economies. They were replaced, if at all, with socialist economies imposed by the United States. Weiss, supra note 7, at 23, 29, 37, 69, 123-27, 132-35, 148, 151, 157-58 (arguing that traditional Indian economies were destroyed by the United States taking their lands, moving tribes, putting them on reservations, promising rations, and making tribes dependent).

The Federal Indian policy called the Termination Era also had a detrimental effect on Indian economies. From roughly 1945 to 1961, Congress sought to end the federal/tribal relationship by terminating the legal existence of tribes. Getches, supra note 158, at 204. Over 100 tribes were terminated. Charles F. Wilkinson & Eric R. Biggs, *The Evolution of the Termination Policy*, 5 *Am. Indian L. Rev.* 139, 151-54 (1977). Such actions certainly injured the economies of these tribes. In addition, rather than working to improve the economic situation in Indian country during this period, the government moved over 100,000 Indians off the reservations to big cities. Econ. Encyclopedia, supra note 7, at 244 (explaining that between 1953 and 1972 the BIA moved more than 100,000 Indians to urban areas); Robert G. Ainsworth, *Nat'l Comm'n for Employment Pol'y, An Overview of the Labor Market Problems of Indians and Native Americans* 5 (1989).

n191. General Allotment Act, ch. 119, 24 Stat. 388 (1887) (codified as amended at 25 U.S.C. 331-334, 339, 341, 342, 348, 349, 354, 381 (1994)); see generally Cohen, supra note 11, at 128-17.

n192. Prucha, *The Great Father*, supra note 133, at 129, 139-51, 179-208, 283-92, 412, 465, 500, 510, 609-10, 689-92, 814-22 (noting that the Continental Congress encouraged teaching the gospels and civil arts to Indians; Washington and Jefferson encouraged missionary and civilizing activities; Indians were encouraged to give up their tribes and take up civilization; 1869 Report of the Board of Indian Commissioners said Indians should be educated in industry, civilization and Christianity; schools were primarily to be operated by missionaries to teach Indians a civilized and Christian white way of life; when compulsory education commenced for Indians only English was taught and boarding schools worked to eradicate tribal influence on children); Ewers, supra note 97, at 92-93 (explaining that allotment was designed to fight communal living); Delos Sacket Otis, *The Dawes Act and the Allotment of Indian Lands* 11-12 (1973) (arguing that allotment fought the cooperativeness and clannishness of tribal life); Prucha, *Formative Years*, supra note 158, at 213-24.

n193. Otis, supra note 18, at 430-34; Prucha, *The Great Father*, supra note 133, at 609-10.

n194. *Hagen v. Utah*, 510 U.S. 399, 425 (1994) (Blackmun, J., dissenting) (arguing that allotment was “intended to assimilate the Indians by transforming them into agrarians and opening their lands to non-Indians”); Cohen, supra note 11, at 128 (explaining that assimilation was the justification for allotment and proponents “maintained that if Indians adopted the habits of civilized life they would need less land, and the surplus would be available for white settlers”); Getches, supra note 158, at 141, 166; Prucha, *The Great Father*, supra note 133, at 140-43, 659 (noting that allotment was part of the drive to individualize Indians by nineteenth-century Christian reformers and to breakup tribalism by a government educational system and by extending American law over Indians); *Montana v. United States*, 450 U.S. 544, 560 n.9 (1981) (“[The] avowed purpose of the allotment policy was the ultimate destruction of tribal government.”); Richard Wilson, *Land Use and Economy on Indian Reservations*, in *Native American Today* 118-19 (1974) (positing that the allotment policy was meant to destroy traditional forms of tribal governments).

n195. See, e.g., Prucha, *The Great Father*, supra note 133, at 577, 580-81, 659, 661-62, 665, 864-65 (observing that Department of Interior reports from 1880, 1881, 1882, and 1884 all emphasized the necessity to reduce the size of reservations so that “industrious” white farmers could utilize the lands; the minority report of an 1880 House committee attacked allotting reservations because the “main purpose” was “to get at the valuable Indian lands and open them up to white settlement”); Otis, supra note 18, at 435 (explaining that the primary motivation of allotment was pressure from “land-hungry western settlers”).

n196. Prucha, *The Great Father*, supra note 133, at 140-43, 659 (stating that many felt that the government should “encourage Indians to adopt individual ownership of property [and] assist them in opening farms”).

n197. *Id.* at 667-68; Cohen, supra note 11, at 128-34, 613, 617.

n198. 25 U.S.C. 348 (2000) (establishing twenty-five year trust periods); Prucha, *The Great Father*, supra note 133, at 873.

n199. 25 U.S.C. 348; *Econ. Encyclopedia*, supra note 7, at 15 (noting tribes lost sixty million acres).

n200. Prucha, *The Great Father*, supra note 133, at 650-51, 671-73, 887-89 (observing that Congress made leasing of Indian allotments possible in 1891; mineral leasing acts were enacted; Congress allowed reservation timber to be logged starting in 1889); Cohen, supra note 11, at 134-35, 528-29, 533-34, 539-41 (same); 25 U.S.C. 403, 406-407 (leasing of trust allotments allowed; timber sales on allotted and unallotted trust lands allowed).

n201. 25 U.S.C. 312, 319-320, 357 (opening reservations to telegraph, telephone, and railroad right of ways); Prucha, *The Great Father*, supra note 133, at 738, 740 (commenting that the United States pressured some tribes to agree to railroads crossing their land in treaties in the 1860s); Cohen, supra note 11, at 542-43 (allowing railroad rights of way and state or local highways through Indian lands after 1901).

n202. Prucha, *The Great Father*, supra note 133, at 891, 894 (suggesting that tribal lands taken for dams and irrigation projects not to benefit Indians but for non-Indians); Laurence M. Hauptman, *The Iroquois and The New Deal* 102-03 (1981) (observing that United States took Indian land for dams); *South Dakota v. Bourland*, 508 U.S. 679 (1993) (noting that large area of Cheyenne River Sioux Reservation taken for Oahe Dam and Reservoir Project).

n203. Allotment did not create a private free market economy in Indian country. Cf. Leonard A. Carlson, *Land Allotment and the Decline of American Indian Farming*, 18 *Explorations in Econ. Hist.* 128-54 (1981) (explaining that Indians had a private property rights system before the allotment policy). Most observers call allotment a disaster for tribes because it broke up the tribal land mass and the ability to coordinate the use of property on reservations. Prucha, *The Great Father*, supra note 133, at plate 42, 686, 895-96 (arguing that allotment did not turn Indians into farmers or make them self-sufficient; Indian farming actually declined under Allotment).

n204. The federal policy was to civilize “savage” nomadic Indians and turn them into farmers. Getches, supra note 158, at 184-85; *Winters v. United States*, 207 U.S. 564, 576-77 (1908); Prucha, *The Great Father*, supra note 133, at 493, 609-10 (noting that treaties with Plains tribes were intended to turn the nomadic warriors into farmers).

n205. Prucha, *The Great Father*, supra note 133, at 811, 883, 896 (stating that Indians often agreed to sell the land before receiving their patents; “a very high percentage of patentees quickly sold or mortgaged their land”; twenty-three million acres were sold by Indians after receiving their patents); Getches, supra note 158, at 174; *The Purposes and Operation of the Wheeler-Howard Indian Rights Bill: Hearing on H.R. 7902 Before the Senate and House Comms. on Indian Affairs*, 73d Cong. 2d Sess. 15, 15-18 (1934) (statement of John Collier) [hereinafter *Collier Statement*].

n206. Cohen, supra note 11, at 137; Prucha, *The Great Father*, supra note 133, at 873-74 (arguing that fractionalization made a mockery of the idea of turning Indians into landowning farmers; by 1910 there were too many heirs, no way to unify and make their pieces of allotments into economically viable parcels); Ewers, supra note 97, at 120-21, 126-27 (commenting that under the original Act Indians could not will their allotments; heirship problems grew and made owners helpless to make effective use of the land; by 1960, six million acres of allotted land were owned by six or more heirs; divided ownership hurts agricultural productivity; trust lands produce about half the value of fee simple lands); Ethel J. Williams, *Too Little Land, Too Many Heirs - The Indian Heirship Land Problem*, 46 *Wash. L. Rev.* 709 (1970) (stating that allotment created heirship problems and BIA probate delays).

n207. Prucha, *The Great Father*, supra note 133, at 873-74 (explaining the impossibility of creating economically-sized parcels); Wilson, supra note 5, at 118-19 (suggesting that allotment has hampered attempts to develop what remained of the reservation land base).

n208. *Collier Statement*, supra note 205, at 15, 16-18.

n209. *Indian Land Consolidation Act*, Pub. L. No. 97-459, 96 Stat. 2517 (Jan. 12, 1983) (codified as amended at 25 U.S.C. 2201-2211 (2000)). The Supreme Court has invalidated provisions of the original Act and its amendment because they violated the Fifth Amendment. *Hodel v. Irving*, 481 U.S. 704, 718-19 (1987); *Babbitt v. Youpee*, 519 U.S. 234 (1997). Congress again passed legislation in 2000 trying to solve this problem. Pub. L. No. 106-462, 114 Stat. 1992 (Nov. 7, 2000).

n210. Getches, supra note 158, at 20 (stating that as of 1996, BIA statistics record 45.2 million acres of tribal trust land and 10.1 million acres of individual trust allotments).

n211. Terry L. Anderson & Dean Lueck, *Agricultural Development and Land Tenure in Indian Country*, in *Property Rights*, supra note 7, at 154-56, 163 (noting that trust constraints and heirship problems increase the costs of using trust land for agriculture or resource development over fee simple land; neither tribe nor individual can use trust land for collateral).

n212. Carlson, supra note 18, at 75 (observing that Indian farming reached a peak in the mid-1890s; allotment discouraged or injured Indian farming); Leonard A. Carlson, *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming* 174 (1981) (arguing that allotments were an economic disaster to Indian farmers; the “heavily supervised property right that emerged from allotment led to inefficiencies, corruption, and losses for both Indians and society”); Ewers, supra note 97, at 113-14 (suggesting that before Allotment, tribes were effectively using land for farming); Trosper, supra note 14, at 209, 219; Prucha, *The Great Father*, supra note 133, at 895.

n213. The sale of Indian allotments and “surplus” lands resulted in a major loss of tribal lands and created a “checkerboard” effect of non-Indian land ownership on many reservations today. See *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408 (1989). The Allotment Era resulted in the loss of about two-thirds of all tribally held lands dropping from 138 million acres in 1871 to about forty-eight million acres by 1934. Cohen, supra note 11, at 130-38; see also Collier Statement, supra note 205. In addition, nearly twenty million acres of the remaining forty-eight million acres of Indian lands were desert or semi-desert! *Id.*; see generally Judith V. Royster, *The Legacy of Allotment*, 27 *Ariz. St. L.J.* 1 (1995).

n214. Pub. L. No. 73-383, 48 Stat. 984 (June 18, 1934) (codified as amended in scattered sections 25 U.S.C. 461-479).

n215. Getches, supra note 158, at 193.

n216. *Id.* at 192-93; Prucha, *The Great Father*, supra note 133, at 762, 808-10 (mentioning that a 1927-28 Merriam report showed that allotment policies had increased government paternalism and Indian dependency and Indians had fallen into poverty and degradation; the Report found “deplorable conditions in health, education, and economic welfare”); Cohen, supra note 11, at 144; *Hagen v. Utah*, 510 U.S. 399, 425 (1994) (Blackmun, J., dissenting) (noting that after the allotment policies proved to be a disastrous failure, Congress reversed course with the passage of the Indian Reorganization Act). The Merriam report suggested experimenting on Indian reservations with “the modern business device of the corporation” and using tribal corporate organizations. Institute for Gov’t Research, *The Problem of Indian Administration* 42, 460-77, 480-82 (Johnson Reprint 1971) (1928).

n217. 25 U.S.C. 461, 464 (2000); Prucha, *The Great Father*, supra note 133, at 960-62 (suggesting that the IRA was considered a direct reversal of the allotment idea of individual Indian ownership of property; IRA ended allotment and froze in place restricted allotments). The IRA as originally introduced provided greater powers to tribes to consolidate and operate reservation economic activities than did the bill that was ultimately enacted. Cf. H.R. 7902, 73d Cong., 2d Sess., Title I & III (Feb. 22, 1934); Collier Statement, supra note 205, at Part 1, 20, 26-27 (Feb. 22, 1934), Part 3 (Feb. 26, 1934), Part 4 (Feb. 27, 1934).

n218. 25 U.S.C. 476. Some charge that the IRA imposed Anglo-American governmental and judicial systems on tribes and inhibited traditional governments and ways of life. Vine Deloria, Jr. & Clifford M. Lytle, *American Indians, Americans Justice* 14-15 (1983); Spicer, supra note 11, at 351-52.

n219. 25 U.S.C. 477. The goal was to “enable Indian tribes to develop economically.” Taylor, supra note 18, at x, 120 (suggesting that the IRA provision for consolidating tribal lands under tribal governmental ownership was to help tribes operate the economy). Tribal corporations are created under section 17 of the IRA and are known as section 17 corporations. Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* 8 (1947) (noting that the main function for tribes under the IRA was to manage property, land, and trust funds).

n220. 25 U.S.C. 477.

n221. Taylor, supra note 18, at 29-30, 38, 66, 120-24, 131-32, 136-37, 142-43 (“The fact that business organizations could function only at the tribal level or be initiated by tribal councils reinforced a strong tendency by [federal] administrators to focus on tribal activities at the expense of more local, community-centered initiatives”; tribal councils were the entities to control reservation economic development; the main objection appeared to be “setting up tribal corporations as permanent controls over Indian resources”; some of the large scale federal programs “tended to squeeze out of the picture the kind of small-scale projects in which Indians (and other local people) could participate directly”; “the process ... limited the bureau in its efforts to promote Indian participation”).

n222. 25 U.S.C. 477; Pub. L. No. 73-383 17, 48 Stat. 988 (1934). Tribes were initially restricted from any agreements to sell, mortgage or lease property for longer than ten years. *Id.* This was extended to twenty-five year periods in 1990. 25 U.S.C. 477; Act of May 24, 1990, Pub. L. 101-301, 3(c), 104 Stat. 207.

n223. 25 U.S.C. 470; Prucha, *The Great Father*, supra note 133, at 963.

n224. Cohen, supra note 11, at 147, 150 (mentioning that the IRA loan fund was for tribal enterprises). Individual Indians could borrow money from this fund for certain purposes. Prucha, *The Great Father*, supra note 133, at 963, 973 (\$ 250,000 was appropriated for Indian vocational and trade students); Taylor, supra note 18, at 27, 110 (noting that the loan fund was for chartered tribal corporations; only eight percent of adult male Indians had access to this fund).

n225. Prucha, *The Great Father*, supra note 133, at 994-96 (claiming that opponents painted the IRA as extremist and communistic and imposing dictatorial rule on Indians); 78 Cong. Rec. H11,736 (daily ed. June 15, 1934) (statement of Rep. Carter) (claiming that the IRA reversed whatever freedoms and rights Indians gained from their tribes under Allotment).

n226. See Laurence M. Hauptman, *The Iroquois and The New Deal* 51 (1981) (arguing that communism claims were just red scare tactics); *Econ. Encyclopedia*, supra note 7, at 162 (same).

n227. Prucha, *The Great Father*, supra note 133, at 958-60, 972 (explaining that IRA ideas of segregation and communal ownership of property caused rumors to circulate, especially among Oklahoma Indians, that IRA was socialism or communism; in 1935, the attempt to extend the IRA to Oklahoma brought new charges it would “establish communism in the United States”); Lawrence C. Kelly, *The Navajo Indians and the Federal Indian Policy* 156 (1968) (stating that the IRA “appeared to be tinged with Communism” to some); John Keiper Freeman, Jr., *The New Deal for Indians: A Study in Bureau-Committee Relations in American Government 186-87*, 317, 331-32 (1952) (unpublished Ph.D. dissertation) (citing the *New York Herald* for the proposition that the IRA is a “soviet type of Rule-Segregation and communal Ownership of Land” and the Indian communities to be formed under the IRA “soviets”; quoting former Indian Commissioners that the IRA “is socialism and communism in the rankest sense”); Philp, supra note 63, at 145, 147, 149, 152-53, 155, 200, 212 (noting that various tribes from all across the country opposed the IRA saying “thumbs down on Socialization and Communism” and because the IRA “was too communistic and would not develop initiative and self-reliance,” former Bureau officials denounced the IRA because it was “a Communist experiment”).

n228. Taylor, supra note 18, at 123 (commenting that some congressmen suspected the IRA “of planning ‘socialistic or communistic’ experiments on the Indian reservations”); see also Philp, supra note 63, at 212 (mentioning that some early Senate supporters became foes because they thought the IRA tried to organize Indians “on a collective basis”). The IRA was attacked as communism in congressional hearings in 1944. Cohen, supra note 11, at 153 n.9. The head of the BIA at that time “was particularly interested in finding the potential for cooperative economic activity that [he thought] existed in tribal social structures.” *Id.*; see also Philp, supra note 63, at 161-62, 165 (noting that the BIA head thought the IRA could forge “new collective advantages” for Indians; his goal was to restore the tribal “communal life”; he insisted all Indians “develop a closely knit communal existence”). The BIA told Congress that the IRA “does not introduce any socialistic or communistic idea or device.” *Collier Statement*, supra note 205, at Part 1 at 20, Part 5 at 178-85, Part 9 at 428-85; Kenneth R. Philp, *John Collier and the Controversy over the Wheeler-Howard Bill*, in *Indian-White Relations: A Persistent Paradox* 171, 189 (Jane F. Smith & Robert M. Kvasnicka eds., 1981) (citing rumors among Oklahoma Indians that the IRA was “communism, socialism, and paganism”).

n229. Prucha, *The Great Father*, supra note 133, at 1010 (commenting that the IRA imposed tribal governments and tribal economies on Indians); Taylor, supra note 18, at 29, 44-45, 60-65, 81 (“The inability of Indians to organize politically or economically except through tribal auspices perpetuated and strengthened what were to be basically artificial units of Indian political and social life.”); Hauptman, supra note 202, at 50 (stating that critics claimed the IRA only offered tribes “one form of government ... and that is [a] communal or cooperative form of living”); Thomas Biolsi, *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* 125 (1992) (noting that the IRA increased the federal role in “artificial reservation economies”); Ewers, supra note 97, at 139 (claiming that the IRA focused on communal economic organization centered around tribal governments); Philp, supra note 63, at 185-86, 165 (arguing that the IRA “was flawed because it imposed rigid political and economic ideas on tribes”).

n230. Vetter, supra note 6, at 175 n.39; see, e.g., *The Shooting Star: News from the Eastern Shawnee Tribe of Oklahoma*, June 2001, at 8-10 (reporting resolutions passed by the legislative branch of the tribe, the Eastern Shawnee Business Committee).

n231. Cohen, *supra* note 11, at 147; see also Indian Self-Rule, *supra* note 143, at 90-91 (quoting former BIA Assistant Commissioner of Indian Affairs, who stated that “tribal business and tribal government is so mixed that it is almost impossible to separate”); Haas, *supra* note 219, at 4 (stating that the IRA allowed tribes which received federal charters to operate as business corporations); 78 Cong. Rec. S11,123 (daily ed. June 12, 1934) (stating that the sponsor of the IRA said it allows tribes to use “the devices of modern business organization through forming themselves into business corporations”).

n232. Prucha, *The Great Father*, *supra* note 133, at 1010.

n233. Vetter, *supra* note 6, at 175-76.

n234. See, e.g., Indian Self-Rule, *supra* note 143, at 90-91. A Former BIA Assistant Commissioner of Indian Affairs claims that the IRA tribally chartered businesses have led to problems because political organizations are not “able to run a business. No state has been able to run a business, and the federal government has never been able to operate a business of any kind very successfully. Yet everyone expects a tribal political organization to operate a business.” *Id.*; see also Spicer, *supra* note 11, at 561-63 (noting that the IRA authorized tribes to organize corporations and pursue business activities; southwest tribes “were functioning economic units” and all the tribal corporations were chronically in a state of precarious existence).

n235. Taylor, *supra* note 18, at 40, 93-94, 102-03 (“Indian tribes were not deemed competent to manage their economic affairs” so federal officials provided guidance; Secretary of Interior had approval/review over all tribal council actions “in the regulation of the economic and political affairs of Indian tribes”).

n236. Pub. L. No. 73-383 16, 48 Stat. 987. That provision was later deleted. See 25 U.S.C. 476(e) (2000).

n237. Since 1871, the federal government had taken the responsibility to approve all contracts with tribes that were “relative to their lands.” Cong. Globe, 41st Cong., 3d Sess. 1484, 1486 (Feb. 24, 1871). Until 1958, such contracts had to be executed before a judge. Act of Aug. 27, 1958, Pub. L. No 85-770, 72 Stat. 927 (1958). It is easy to see why such requirements were obstacles to reservation economic development. This provision was amended in 2000 and the scope of its coverage was reduced. Pub. L. No. 106-179, 114 Stat. 46 (2000) (codified as amended at 25 U.S.C. 81 (2000)).

n238. *Our Brother’s Keeper: The Indian in White America* 7 (Edgar S. Cahn & David W. Hearne eds., 1969) (The BIA “is the federal, state and local government of the Indians, and supplants or dominates the private sector as well.”); Peter J. Ferrara, *The Choctaw Revolution: Lessons for Federal Indian Policy* 52-53, 142 (1998) (arguing that into the late 1950s the BIA was very paternalistic and was actually running many tribes).

n239. Ferrara, *supra* note 238, at 52-53, 142 (suggesting that BIA review and approval of tribal business plans and loans is a drag on development); Presidential Commission, *supra* note 9, at 924 (explaining that federal policies have inhibited the economic development of tribes; excessive regulation and self-perpetuating bureaucracies have stifled local decision-making and Indian control of their resources, and has promoted dependency rather than self-sufficiency); Champagne, *supra* note 11, at 203, 205 (claiming that BIA trust responsibility gives it final decision-making power over contracts and planning; constraints of trust responsibility and subordination of economic development to political and cultural goals tends to inhibit economic enterprises); Cornell & Kalt, *Culture and Institutions*, *supra* note 8, at 216 (noting that federal dominion over tribal property rights frustrates Indian efforts on economic goals); Raymond Cross, *De-federalizing American Indian Commerce: Toward a New Political Economy for Indian Country*, 16 *Harv. J.L. & Pub. Pol’y* 445, 450-51, 473, 489 (1993) (maintaining that federal dominion and overregulation of commercial relations suppresses the economic development efforts of Indians and non-Indians within Indian Country; federal regulations have a pathological effect and create perverse incentives for business; federal review of tribal contracts chills deals without any offsetting benefits); Barsh & Henderson, *supra* note 7, at 237 (“Federal law imposes higher costs on Indian businesses” and an administrative hierarchy regulates the economic decisions of Indians.); George Pierre Castile, *North American Indians: An Introduction to the Chichimeca* 272-73 (1979) (claiming that the BIA is dedicated to maintaining reservations not developing them and “possesses neither the inclination nor the ability to effect development” and “often stands in its path”); *Business Loans Up on Reservations*, *supra* note 5 (quoting a Department of Agriculture employee as saying that it is difficult for individuals to open businesses on reservation because of numerous tribal and BIA regulations and approvals needed).

n240. See generally *supra* notes 7 & 11; Dennis Ickes, *Tribal Economic Independence: The Means to Achieve True Tribal Self-Determination*, 26 *S.D. L. Rev.* 494, 502-04 (1981) (maintaining that federal overprotection and control of tribal resources has crippled developmental efforts on various reservations). Furthermore, most of the Indian economic activity that occurred under the IRA was New Deal, create-a-job projects and welfare handouts. Hauptman, *supra* note

226, at 86, 118, 135 (noting that little economic development occurred under the IRA and what did occur was New Deal programs and government spending and assistance); Prucha, *The Great Father*, supra note 133, at 985-88 (observing that New Deal programs created employment).

n241. Anderson, supra note 14, at xv (claiming that the IRA was not a success for tribes economically); Taylor, supra note 18, at 40, 93-94, 102-03, 131-32, 136-37, 142-43 (explaining that the IRA effort to make tribes the mechanism to improve economic conditions “was flawed” and nearly squeezed individuals out of the picture).

n242. Getches, supra note 158, at 224, 226.

n243. 25 U.S.C. 450-450n (2000).

n244. *Id.* 450(a).

n245. Cornell & Kalt, *Redefinition*, supra note 7, at 122.

n246. Getches, supra note 158, at 224 & 226; Cohen, supra note 11, at 721-23 (claiming that general poverty programs also served Indians; public works projects and industrial parks were built on reservations; planning grants were given to tribes); Larry W. Burt, *Tribalism in Crisis: Federal Indian Policy, 1953-1961* 128 (1982) (stating that the government “provided grants and loans to stimulate Indian economies” and public work projects).

n247. Indian Financing Act of 1974, 25 U.S.C. 1451 et seq. (2000), H.R. Rep. No. 93-907 (1974), reprinted in 1974 U.S.C.C.A.N. 2873, 2876, 2878, 2973 (“To provide for financing and economic development of Indians and Indian organizations.”); Cohen, supra note 11, at 201 (noting that the Indian Financing Act revolving loan fund designed to promote tribal economic development was amended in 1984 to allow individuals to borrow, 25 U.S.C. 1461). The Indian Business Development Program in the Interior Department provides equity capital through grants to support tribal and Indian entrepreneurship. 25 U.S.C. 1521-1524 (2000). The applicable regulations are found at 25 C.F.R. 101.1-103.55 (2000).

n248. Individual Indians received job training assistance through the Office of Economic Opportunity from 1964 forward. The Job Corps, Head Start, VISTA and Community Action Programs allowed tribes to develop and administer their own economic and social programs. Cohen, supra note 11, at 189-90 n.100, 201, 712; see also Prucha, supra note 133, at 1091-1100.

n249. *Econ. Encyclopedia*, supra note 7, at 108 (noting that the Seminole Tribe started modern commercial reservation bingo in 1979; by early 1985, seventy-five to eighty tribes in the United States had gaming); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

n250. Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (2000).

n251. The author is not arguing that this program should not have been created or be continued today. It is highlighted only to show how federal involvement in the economies of Indian country can have unexpected impacts on tribal and private economic growth. The poverty and absence of adequate alternatives of private housing on reservations seem to leave the United States little alternative in the short term but to continue assisting tribes in building housing.

n252. Robert J. Miller & Dean B. Suagee, *The New Indian Housing Act and Some of its Environmental Implications*, in *ABA Conference on Env't and Dev. in Indian Country* 1, 1-2 (1997); Cohen, supra note 11, at 706.

n253. Miller & Suagee, supra note 252, at 3-5; Cohen, supra note 11, at 189.

n254. Cf. William G. Grigsby & Louis Rosenburg, *Urban Housing Policy* 178 (1975) (arguing that a large inventory of subsidized housing negatively impacts the private housing sector); Eugene J. Meehan, *Public Housing Policy* 8 (1975) (“It is widely believed that conventional public housing has been a massive and unmitigated failure ...”).

n255. *Housing Assessment*, supra note 2, at 229 (noting that home equity in the United States is the second leading source of wealth); Mark Fogarty, *Building More than Houses: Meeting Indian Country's Housing Needs Fuels Other Industries*, *Am. Indian Rep.*, July 2000, at 20 (claiming that home building starts are a major economic indicator in the U.S. economy; a private housing market on reservations would be a big economic boost; housing starts should be an important part of reservation economies and create private businesses).

n256. Other factors such as the inability to mortgage Indian lands held in trust by the United States and the low income levels of reservation Indians have also impacted the ability of Indians to get private mortgages. Housing

Assessment, *supra* note 2, at 146, 190-91, 229-30 (maintaining that trust status of Indian land creates a major disincentive for private financing of home construction since the United States holds legal title and the land cannot be mortgaged; trust status of tribal lands prevent their use for loan collateral or mortgaging); Cohen, *supra* note 11, at 706-07 (explaining that housing capital is scarce because of few commercial lenders in Indian country, inability to give mortgages on trust land). The provision of below market housing would seem to stifle any incentive for private housing development on reservations because it cannot compete in price with subsidized housing and why would people buy market priced housing if instead they can just wait and be provided with subsidized housing?

n257. Native American Housing Assistance and Self-Determination Act, 25 U.S.C. 4101(1)(C), (6), 4111(i), 4131(a)(2), (5) (2000); Fogarty, *supra* note 255, at 20 (suggesting that NAHASDA seeks to stretch federal dollars by tribes partnering with private funding).

n258. 25 U.S.C. 4101(1)(C), (6), 4111(i) (“Tribes] shall make all reasonable efforts... to maximize participation by the private sector.”); see also 25 U.S.C. 4131(a)(2), (5).

n259. Family Closes First Loan on Pueblo With Help of Rural Housing Service, *Native Am. Rep.*, June 1, 2001, at 107 (stating that the tribe, Rural Housing Services, BIA and Fannie Mae made a private mortgage possible on trust land); Fannie Mae Aided 104 Families on Trust Land, *Indian Country Today*, June 13, 2001, at C2 (In 1999 and 2000, 104 private mortgages on trust lands were closed by private lender loans on the Navajo and Ute reservations.).

n260. Donald L. Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960*, at 203 (1986); see also Prucha, *The Great Father*, *supra* note 133, at 1165-66 (discussing 1975 congressional report which advocates the development of an economic base for reservations by assisting tribal land acquisition and consolidation and control over leases; United States providing technical assistance to tribes to plan and manage their operations and encourage and aid tribes to develop economic projects).

n261. What Tribes Can Do: An Interview with Joseph P. Kalt, *Am. Indian Rep.*, Mar. 1999, at 16 (claiming that there is an explosion waiting to happen in the private sector on most reservations because of the absence of local retail markets and the distance people have to travel to buy goods).

n262. See generally sources cited *supra* note 4.

n263. U.S. Dep’t Commerce, *Am. Indians and Alaska Natives: 1997 Econ. Census Survey of Minority-Owned Business Enterprises 9* (May 2001), available at <http://www.census.gov/prod/ec97/e97cs-6.pdf>; Native American Businesses Growing, Providing Jobs, Income to Reservations, *Native Am. Rep.*, June 1, 2001, at 102; Rea Howarth, *Open for Business: Small Companies Thrive in Indian Company*, *Am. Indian Rep.*, June 1999, at 12 (noting that in 1969 there were only 3,000 Indian privately owned businesses).

n264. See *supra* note 4.

n265. See Harvey S. Perloff, *How a Region Grows: Area Development in the U.S. Economy* 29-34, 137-40, 144-45 (1963) (claiming that every community has its economic advantages and disadvantages); Lorrie Kirst, *American Indian Economic Development Policies*, 2 *J. Planning Literature* 101, 105 (1987) (arguing that Indians have the advantage of entrepreneurial skills, positive attitudes toward development, available capital and financial assistance); Fremont J. Lyden & Ernest G. Miller, *Designing a Tribal Organization for Self-Governance*, in *American Indian Policy*, *supra* note 5, at 19 (agreeing that most of these factors are present for Indians).

n266. Timothy Egan, *As Others Abandon Plains, Indians and Bison Come Back*, *N.Y. Times*, May 27, 2001, at A1 (proposing that economic opportunities and jobs are bringing Indians back to their reservations); Carson Walker, *Reservations Revive as Native Americans Return to Roots*, *Oregonian*, Apr. 11, 2001 at A3 (reporting that the 2000 Census shows reservation populations growing with many crediting casinos for providing jobs); Diane Brooks, *Tribes, Once Crippled by Poverty Now Realizing American Dream: Tualips Roll Dice, Hit Jackpot with Casino*, *Seattle Times*, July 13, 2000, at A8 (noting that economic activity and jobs on reservations bring people home). Tribes have used increased funding, taxes and business and casino profits to build medical clinics, senior and youth centers, playgrounds, cultural centers, and to fund language and cultural programs. Kathryn R.L. Rand & Steven A. Light, *Virtue or Vice? How IGRA Shapes the Politics of Native American Gaming, Sovereignty, and Identity*, 4 *Va. J. Soc. Pol’y & L.* 381, 403 (1997); Heidi L. McNeil, *Indian Gaming-Prosperity, Controversy*, 872 *Prac. L. Inst.* 139, 157 (1994); Ray Halbritter & Steven Paul Mcsloy, *Empowerment or Dependence? The Practical Value and Meaning of Native American Sovereignty*, 26 *N.Y.U. J. Int’l L. & Pol.* 531, 567-68 (1994).

n267. Selden, *supra* note 6, at A1 (observing that money normally circulates five times in local communities); Siegner, *supra* note 6, at 18 (claiming that money circulates seven times in communities).

n268. Gregg Paisley, *Economic Development: Defining It and Keeping Score*, *Tribal Fin. Rev.*, Fall 1995, at 5-6 (claiming that one of the biggest economic problems for reservations is that Indians cash their checks and spend their money off-reservation because goods and services are not available on reservations); Beth Britton, *Tribes Seek Economic Salvation*, *Great Falls Trib.*, June 1, 2001 (on file with author) (claiming that nearly all Montana Indians have to drive long distances off their reservations to shop); Mark Fogarty, *Beyond the Jewelry Booth*, *Am. Indian Rep.*, July 1999, at 16 (reporting that until recently, Wanblee, South Dakota reservation residents had to travel at least twenty-seven miles for supplies); Frantz, *supra* note 169, at 297-98 (claiming that tribes lack a significant private sector); cf. Kay Humphrey, *Developing Economy Key in Boosting Employment*, *Indian Country Today*, Apr. 25, 2001, at D1 (spotlighting Senator Johnson's inquiry regarding the location of the coffee shops, barbers, shoe repair and hardware stores, etc.).

n269. See *Indian Self-Rule*, *supra* note 143, at 224 (quoting former Commissioner of Indian Affairs that \$ 1 million invested in most communities generates approximately \$ 10 million in cash flow; "but in Indian communities, one million dollars generates just one million dollars of cash flow").

n270. Kenneth E. Robbins, *Doing Business Since 1941*, *Am. Indian Rep.*, Apr. 2001, at 20 (stating that the presence of businesses on reservation lead to shopping on the reservation which keeps money in the community so that it multiplies and contributes to economic stability).

n271. Ron Selden, *Blackfeet Bank Keeps Dollars Circulating on the Reservation*, *Indian Country Today*, Dec. 1, 1999, at C2 (noting that the Blackfeet Tribe started the first tribally owned and operated bank on a reservation in 1987 to help start businesses and keep people doing their business and shopping in the reservation town; "these efforts help keep money and jobs circulating within the reservation, rather than being siphoned off outside"); Siegner, *supra* note 6, at 18 (commenting that money turns over only once on Montana's Indian reservations; reservations lack the retail businesses necessary to keep this money in the community); Paisley, *supra* note 268, at 5-6 (claiming that tribes need diverse economies so money can circulate on reservation and fuel further enterprise and profit); Al Henderson, *Tribal Enterprises: Will They Survive?*, in *Economic Development in American Indian Reservations* 114, 116 (Roxanne Dunbar Ortiz ed., 1979) (mentioning that the Navajo Nation chairman said in 1979 that "the border towns, where there is a better delivery of goods and services, absorb a majority of incomes earned on the reservation ... [and we] know that wealth is flowing off the reservation").

n272. Rodger J. Boyd, *Exec. Dir. Div. of Econ. Dev., The Navajo Nation, Remarks at the Federal Bar Ass'n Indian Law Conference*, Albuquerque, N.M. (Apr. 7, 1994) (notes on file with author).

n273. Paisley, *supra* note 268, at 5-6; Castile, *supra* note 239, at 273 ("money paid to Indians is immediately spent off the reservation"; lack of on-reservation business fails "to provide a 'multiplier' effect" so the money immediately leaves the reservation instead of "bouncing around from Indian worker to Indian business to Indian government.").

n274. Siegner, *supra* note 6, at 18 (noting that Montana's 40,000 reservation Indians spend \$ 48 million off reservation every year).

n275. Selden, *supra* note 6, at A1.

n276. Samuelson & Nordhaus, *supra* note 145, at 439-42, 477. The principle of the propensity to consume graphically demonstrates how tribal economies lose when reservation residents have to leave the reservation to shop.

n277. *Id.* at 439-42, 477.

n278. *Id.* at 477.

n279. Armando Roman, *It's 2002, The Casino is Gone - Now What?*, *Indian Country Today*, July 5, 1999, at A5 (arguing that tribes need to use casino profits to build infrastructure and diversify tribal businesses and the private sector); Jeanie Senior, *Tribes Say City Would Share Take from Casino*, *Oregonian*, Aug. 10, 1999, at B1 (commenting that the Warm Springs tribal economy and employment levels are down due to a loss of timber revenue from a declining cut).

n280. See generally sources cited *supra* note 266; see also *infra* note 281.

n281. Edward Sifuentes, More Indians Living Off Reservation, North County Times.Net (Escondido, Cal.) (May 24, 2001), at <http://www.nctimes.com/news/2001/20010524/51710.html> (explaining that Indians moved from reservations to find jobs and housing; experts and tribal officials say many areas are getting a boost from Indians returning to jobs at tribal casinos); Carson Walker, Reservations Revive as Native Americans Return to Roots, Oregonian, Apr. 11, 2001, at A3 (reporting that the 2000 Census shows reservation populations growing, many credit casinos for providing jobs to return to and those interested in rekindling their heritage); see also Katie Dean, IT Rejuvenating the Reservation, Lycos Wired News (May 14, 2001), at <http://www.wired.com/news/school/0,1383,43718,00.html> (stating that California tribes are using internet technology “to help achieve a sustainable economy in their own backyards”; Indians want “to be able to make a living on their own reservation”).

n282. Selden, *supra* note 6, at A1 (observing that tribal economies ride the ups and downs of government funding); Kirst, *supra* note 265, at 104-06.

n283. Kenneth E. Robbins, State Support for Healthy Reservation Economies: A Win-Win Strategy for All!, Am. Indian Rep., June 1999, at 18 (proposing that business can create a tribal tax base; a township on Navajo started a 2.5% sales tax and raised \$ 670,000 in eighteen months); Brenda Norrell, Catching the Dream of Free Enterprise, Indian Country Today, May 23, 2001, at C1 (mentioning that businesses create sales and property taxes).

n284. See, e.g., McNeil, *supra* note 266, at 157 (reporting that in Wisconsin 4,500 employed by tribal gaming; half were unemployed and 20% were on welfare); Bunty Anquoe, Trump Hires Big Guns to Fight Indian Gaming, Indian Country Today, Aug. 25, 1993, at A6 (reporting that Mille Lacs Band unemployment went from 45% in 1991 to zero due to the tribal casino); John C. Mohawk, Indian Economic Development: The U.S. Experience of an Evolving Indian Sovereignty, Akwe:kon Journal 42, 49 (Summer 1992) (stating that if Indian peoples can gain the power and economic wherewithal to make decisions about their future “they can choose educational paths that allow their languages, history, arts, and culture to survive and therefore can perpetuate the very elements which define them as distinct peoples”).

n285. See, e.g., Kathie Durbin, Means To An End: Gambling Casinos Offer Oregon Tribes a Path out of Poverty, Or. Q., Summer 2000, at 21-22 (noting that Oregon tribes have used casino profits to build day care centers, provide a burial fund for tribal members, improve the fire department, and provide employment for all members who desire it); see also sources cited *supra* note 266.

n286. Natasha Gural, Study Credits Pequot with Economic Development, News From Indian Country, Mid-Dec. 2000, at 8A (commenting that a University of Connecticut study credits the Pequot Tribe with creating 41,000 jobs and boosting the Connecticut economy by \$ 1.2 billion); Francis X. Donnelly, Casinos Give Michigan’s Tribes Economic, Social, Political Clout, Detroit News, Jan. 2, 2001; Courtenay Thompson, Tribe Invests Profits in Portland, Oregonian, May 14, 1999, at B1 (spotlighting the Grand Ronde Tribe’s investment of casino profits in major housing, retail and office development projects in urban areas).

n287. Frantz, *supra* note 169, at 299; Halbritter & Mcsloy, *supra* note 266, at 564; Lyman H. Legters & Fremont J. Lyden, Introduction, in American Indian Policy, *supra* note 5, at xi (claiming that political weakness and economic dependence go hand-in-hand; tribes must address economic needs to succeed).

n288. City Council, Cabazons to Discuss Growth, Desert Sun (Palm Springs, Cal.) (Mar. 29, 2001), at <http://www.thedesertsun.com/news/stories/local/985820280.shtml> (reporting that due to the growing economic importance of tribes, the Palm Desert city council met with the Cabazon Tribe to discuss future growth); Jeff Hinkle, New Money Talks, Am. Indian Rep., July 2000, at 8 (commenting that some California tribes have gained political clout from their high profit casinos and helped pass two state-wide referendums supporting gaming); Steve Lawrence, California Tribes Show New Power, Oregonian, Dec. 6, 1998, at A25 (mentioning that tribes spending millions of dollars are becoming major players in California state politics).

n289. Kirk Johnson, Connecticut Tribe to Invest Casino Profits in a Boatyard, N.Y. Times, May 4, 1996, at A1; see also Pommersheim, *supra* note 11, at 181 (claiming that Minnesota Indian gaming is the state’s seventh largest industry; has created more than 10,000 jobs directly and 20,000 indirectly).

n290. Edward Sifuentes, San Pasqual Band to Pay \$ 6 Million for Roads, North County Times.Net (Escondido, Cal.) (June 12, 2001), at <http://www.nctimes.com/news/2001/20010613/94706.html> (noting that casino tribes are assisting County with road improvements); Jeff Hinkle, Following the Leaders, Am. Indian Rep., May 2001, at 12, 14 (More than 60% of Choctaw work force is non-Indian and many Mississippians “now depend on Choctaw success. That dependency ... has improved relations with state and local authorities.”).

n291. Kit Minielier, *Indians Buy Back Ancestral Lands*, Denver Post, Dec. 20, 2000, at B1 (claiming that dozens of tribes across the country are using business profits and casino money to rebuy thousands of acres of land); *Tulalips Buy Piece of Their Property Back*, Spokesman-Review (Spokane, Wash.), Feb. 18, 2001 (on file with author) (mentioning that tribe used casino profits to buy back land; the tribe now owns 60% of its reservation).

n292. See *infra* notes 308-09. Some might argue that the level of economic activity within a state's borders would only remain the same if Indians start new businesses and just take existing business away from off-reservation companies. "In actuality, however, businesses on reservations create new markets because new buyers will have access to goods and services previously out of their reach due to distance and/or total cost." Borunda 2001 Interview, *supra* note 143. This Article does not address the issue of state taxation of Indians.

n293. Patrice Sawyer, *Tribe's Industries Generating Millions in Wages, Income Tax*, Clarion-Ledger (Jackson, Miss.), Sept. 12, 1999, at A1 (stating that the Mississippi Choctaw tribal industries generated \$ 172.6 million in wages and \$ 4.8 million in state income taxes in 1998; the tribe is among the top ten employers in the state with 3,000 non-Indian employees and created 6,290 additional jobs ancillary to the tribe's enterprises; reservation unemployment rate dropped from 75% in 1979 to 4% in 1998); *The History of ONABEN*, Apr. 13, 1999, at 1 (on file with author) (explaining that in 1990 there were approximately 618 private Indian businesses in Oregon generating receipts of \$ 150 million and accounting for 428 jobs; in 1992 there were approximately 1,335 Indian businesses in Washington generating receipts of \$ 226 million).

n294. *Tourism, Jobs Grow Near Casinos*, Oregonian, Apr. 11, 2000, at B5 (noting that tribal casinos increased tourist spending and employment in surrounding counties at a higher rate than other Oregon counties); Durbin, *supra* note 285, at 18 (commenting that the Grand Ronde casino became Oregon's number one tourist attraction).

n295. Robbins, *supra* note 283, at 18 (stating that the Pequots added \$ 197 million to Connecticut economy; 1992 Minnesota study found that tribal gaming added 9,975 new jobs and that non-Indians held 73% of them); see, e.g., *supra* notes 284, 286, 293.

n296. *The History of ONABEN*, *supra* note 293, at 2 (stating that in 1990, Oregon lost \$ 498.2 million and Washington lost \$ 800 million in economic activity); see also *ONABEN Notes on Minority Entrepreneurship Data*, Apr. 23, 1998 (on file with author).

n297. See, e.g., Siegner, *supra* note 6, at 18 (noting that experts on tribal economic development state Indians lack capital and business expertise); Champagne, *supra* note 11, at 196 (mentioning that external dependence, absence of capital, federal regulation of institutions and resources; absence of resources; cultural and institutional relations incompatible for sustaining enterprises); Levitan & Hetrick, *supra* note 2, at 158-59, 164, 173-38 (highlighting fractionated land ownership, inadequate transportation, lack of infrastructure, no market access, unskilled and uneducated labor force); Selden, *supra* note 6, at A1 (noting that a former Montana tribal chair says tribes must change their attitudes to attract business, stabilize tribal governments, clean up their courts, use incentives to entice new business, and streamline regulations); Ainsworth, *supra* note 190, at 10 (mentioning that Indian education and job training is below average); Presidential Commission, *supra* note 9, at 921-24 (spotlighting a lack of capital, trust status of tribal resources, federal regulation and management, complex framework of regulatory controls, treaties, regulations, and tribal ordinances).

n298. Julnes, *supra* note 5, at 154-55.

n299. Cf. Ainsworth, *supra* note 190, at 11 (stating that most Indian children grow up in families where their elders have never had regular employment).

n300. See, e.g., Kenneth E. Robbins, *Gaming: A Good Bet for Tribal Economical Development?*, *Am. Indian Rep.*, Apr. 1999, at 20 (suggesting that tribes should use tribal businesses to build diverse economies and to help Indians start the businesses that supply and support tribal "anchor" businesses such as casinos).

n301. See *ONABEN: A Native American Business Network*, at <http://www.onaben.org>; Thompson, *supra* note 4, at C1 (reporting that Grand Ronde, Warm Springs, Klamath and Siletz Tribes organized Onaben and it is funded by federal and Oregon grants, private banks and Oregon tribes; as of 1998 Onaben had helped start 200 new Indian businesses); *ONABEN, 1998 Annual Report 8* (1998) (on file with author) (stating that by the end of its FY98, Onaben had helped individual Indians start 290 new businesses which contributed \$ 35 million a year to the Gross State Products of Oregon and Washington). The Author has been on the board of Onaben since 1998.

n302. An Overview of ONABEN 1 (on file with author).

n303. ONABEN, 1998 Annual Report, supra note 301, at 10. The TBICs provide computer, specialized business and educational information, and internet resources on reservations where individuals can research, draft and complete business plans. The SBA used the Onaben TBIC model to open eighteen more centers at tribal locations across the nation. Borunda 2001 Interview, supra note 143. (Mr. Borunda served as Executive Director of Onaben from 1994 to 1999.) Onaben also publicizes Indian businesses in a bi-annual business directory it produces and by a listing on its web page. ONABEN, 1999-2000 Bi-Annual Report 17 (2000), at <http://www.onaben.org>. Previously, Onaben operated an Internet site to sell its clients' products and services. ONABEN, 1998 Annual Report, supra note 301, at 18.

n304. ONABEN, 1998 Annual Report, supra note 301, at 8; ONABEN News, Sept. 1998, at 3. Onaben and the Union Bank of California created a start up loan program for individuals who complete the Onaben classes. Onaben is an intermediary for micro-loans and administers an in-house micro-loan program. Id. at 6, 8.

n305. ONABEN, 1998 Annual Report, supra note 301, at 8; ONABEN News, Sept. 1998, at 3. Onaben also provides ongoing individual one-on-one technical assistance and counseling. ONABEN, 1998 Annual Report, supra note 301, at 8 (stating that in FY98 Onaben served 1,600 individuals with 3,200 classroom hours and 3,500 individual counseling hours).

n306. ONABEN, 1998 Annual Report, supra note 301, at 7; ONABEN, 1999-2000 Bi-Annual Report, supra note 303, at 6. An informal poll revealed that 85% of the businesses Onaben helped to start in 1994 were still operating in 1997. Borunda 2001 Interview, supra note 143.

n307. James J. Chrisman, Ph.D., The Economic Impact of ONABEN's Counseling Activities in Oregon: 1998, at 2, 11 (on file with author).

n308. James J. Chrisman, Ph.D., The Economic Impact of ONABEN's Counseling Activities of the Oregon Native American and Entrepreneurial Network: 2000, at 2, 15 (on file with author).

n309. Chrisman, supra note 307, at 2.

n310. Id. at 2, 11; ONABEN, 1999-2000 Bi-Annual Report, supra note 303, at 7.

n311. Chrisman, supra note 308, at 2, 15. "ONABEN makes an important contribution to the Oregon economy. By every measure analyzed, whether objective or subjective, Onaben has proven to be a worthwhile investment to the small business and entrepreneurial sectors of the economy." Id. at 16.

n312. Mark Fogarty, Cheyenne River Loan Fund Seeded For "Economic Sovereignty," Indian Country Today, Jan. 31 2001, at B1 (noting that a new non-profit on the Cheyenne River Sioux reservation began its first ten-week training session in starting and operating businesses in fall 2000).

n313. These organizations include the National Indian Business Association, (202) 547-0580, and the Center for American Indian Economical Development, Northern Arizona University, (520) 523-7320. The Center started in 1985 and was funded by the state to help Arizona tribes. It assists Indians and tribes with workshops and information, acts as a loan intermediary, teaches classes, operates a youth entrepreneurial business camp and helps individuals write business plans. In addition, the National Center for American Indian Enterprise Development, (480) 545-1298, trains individuals to draft business plans, to find financing, and acts as a loan intermediary. Cate Montana, Business Consultants Expand Operations, Indian Country Today, Jan. 24 2001, at B1 (discussing National Center for American Indian Enterprise Development).

n314. Cf. Anderson, supra note 14, at xii, xiv (noting that problems arise from the complexity of Indian land ownership); Housing Assessment, supra note 2, at 146, 190-91, 229-30 (claiming that over half of U.S. homes are mortgage free and are a major source of investment capital; investment in housing is the main way U.S. households accumulate wealth).

n315. Jim Adams, Feds to Rez: Credit Will Make It Happen, Indian Country Today, May 10, 2000, at A3, (declaring that credit is hard to find on reservations; American homeowners can take out a mortgage to borrow money, but that is impossible on reservations); Frantz, supra note 169, at 180 (observing that Indians have very little land to mortgage, few have savings accounts and there are few banks on reservations).

n316. Fogarty, supra note 312, at B1 (explaining that the Cheyenne River Sioux Tribe assisted in creating a non-profit on reservation which will develop accounts to match entrepreneurs' contributions for education or business

startups); Fogarty, *supra* note 268, at 16-17 (commenting that there are a few sources for loans and grants for Indians to start businesses such as the First Nations Development Institute which had awarded, as of 1999, grants totaling more than \$ 5.8 million to tribes, tribal organizations and native individuals; the Lakota Fund in Kyle, South Dakota, is a micro-lender on reservation); *Econ. Encyclopedia*, *supra* note 7, at 91-92 (describing the First Nations Development Institute's activities); Adams, *supra* note 315, at A3 (observing that the New Mexico Community Loan Fund administers \$ 4 million for small loans on reservations, sponsors small businesses and provides technical support); ONABEN, 1999-2000 Bi-Annual Report, *supra* note 303, at 6, 8, 15 (mentioning that the Warm Springs Tribe provides micro-grants for startups); Howarth, *supra* note 263, at 12 (reporting that some tribes give matching grants or loans to individuals for business startups; Tohono O'odham Tribe gives up to \$ 100,000).

n317. "The distinction between economics and politics is now an artificial one, government has a necessary and powerful influence on economic behavior and performance." Galbraith & Salinger, *supra* note 146, at 5.

n318. Harry Shutt, *The Trouble with Capitalism* 10-13, 66 (1998) (Shutt argues that there are no pure capitalist countries, "the development of capitalist enterprise has always [relied] on significant state intervention.").

n319. Samuelson & Nordhaus, *supra* note 145, at 704; Selden, *supra* note 6, at A1 (claiming that business needs certainty and consistency from government).

n320. Samuelson & Nordhaus, *supra* note 145, at 704; see also Brokaw, *supra* note 7 (reporting that one tribe is teaching computer literacy in tribal kindergarten to high school programs).

n321. See, e.g., Raymond Cross, *American Indian Education: The Terror of History and the Nation's Debt to the Indian Peoples*, 21 U. Ark. Little Rock L. Rev. 941, 943 (1999) (reporting that over 10% of Indian children are not enrolled in school; over 75% of Indian children are at least one grade behind in school; Indians have a significantly higher high school drop-out rate than other minorities); 143 Cong. Rec. S5876-77 (daily ed. June 17, 1997) ("Over 50 per cent of American Indian fourth graders scored below the basic level in reading proficiency, compared with 42 percent of all students"; "Indian students have the highest dropout rate of any racial ethnic group (36 percent) and the lowest high school completion and college attendance rates of any minority group."). In 1994, the average score for Indian students on the SAT was sixty-five points lower than the average for all students. *Id.*; see also Churchill & LaDuke, *supra* note 3, at 246 (noting that Indians have the lowest level of formal education of any group in the United States).

n322. See, e.g., 143 Cong. Rec. S5876-78 (daily ed. June 17, 1997) (stating that annual funding for the education of Indian children has not increased proportionately with their population increase; "average annual college funding per student of \$ 2,900 for Indian students, and \$ 6,200 for non-Indians"; "the Federal Government should assist in bringing the Indian schools and colleges up to parity with the rest of America"; "there is a major backlog of \$ 680 million in funding need for facilities construction, maintenance and repair for the 185 BIA-funded schools as well as for public schools located on and near Indian reservations"). Congress has long been considering a resolution reiterating its responsibility to adequately fund Indian schools. In 1997, a Senate resolution was passed expressing that Federal commitment for the education of American Indians should bring the quality of Indian education facilities up to parity with the rest of America. The resolution was referred to the Senate Indian Affairs Committee on June 17, 1997. S. Res. 100, 105th Cong. (1997).

n323. Selden, *supra* note 271, at C2 (noting that a tribal bank started a nonprofit economic development corporation to teach financial and economic matters to members and help them start businesses; organized mini-banking operations in the grade, middle and high schools to teach children banking procedures and finances); Samuelson & Nordhaus, *supra* note 145, at 699 (A key task of development is fostering "an entrepreneurial spirit.").

n324. See, e.g., Robbins, *supra* note 300.

n325. Cf. Kalt & Cornell, *Redefinition*, *supra* note 7, at 131-33. It has been pointed out that when tribes operate businesses they are most often successful when they keep the corporate entity separate from the political body. Cornell & Kalt, *What Can Tribes Do?*, *supra* note 8, at 29-31.

n326. Brokaw, *supra* note 7 (reporting that Cheyenne River Sioux Tribe chairman Gregg Bourland says tribe will use \$ 291 million land settlement award for economic development programs); Roman, *supra* note 279, at A5 (arguing that tribes need to make it easier for private entrepreneurs to start businesses, get loans and technical assistance, have access to low cost or no cost offices; tribes will benefit because it will build the tribal tax base and the reservation private sector).

n327. Mark Fogarty, *When Credit is Due: The Debate Over the Direction of Indian Banking*, *Am. Indian Rep.*, Nov. 1999, at 18 (stating that the Blackfeet National Bank has been an economic boost for the reservation economy helping to fund 200 new businesses); *Tribal Banks Come of Age*, *Indian Country Today*, July 19, 2000, at B1 (claiming that Indian owned banks “help keep the dollars on the reservation, circulating in Indian country”); Mark Fogarty, *Home-Grown Economics: User-Friendly and Structured for Local Control, Tribal Credit Unions Are Catching On*, *Am. Indian Rep.*, Apr. 1999, at 16 (mentioning that five native affiliated credit unions at Navajo, Muskogee, Oklahoma, Minnesota, Wisconsin, and South Dakota have operated for decades and work to bring and keep money on the reservation and help make credit available to Indians); Eric J. Greene, *Blackfeet Bank Builds Community as Well as Profits*, *News From Indian Country*, Late Aug. 1999, at 10 (noting that a tribally owned bank helped to start more than 200 businesses and revived business on reservation; people are spending more money in town; bank offers workshops and materials and loans to start businesses); Gregg Aamot, *Tribal Sovereignty Crucial to Economic Development*, *Star Tribune* (Minneapolis, Minn.), Nov. 15, 2000 (on file with author). The Mille Lacs Band of Ojibwe created a small business development program which arranges loans and provides tribal entrepreneurs with training, computer access and technical assistance. Since 1997, it has arranged thirty-five business loans for new startups, nineteen of which are still operating and had combined grosses of about \$ 1 million in 1999. *Id.*; see also *supra* note 320.

n328. See, e.g., *Eastern Shawnee Tribe - Economic Update Bank Tribal Loan Program Outlined*, in *The Shooting Star: News from the Eastern Shawnee Tribe of Oklahoma*, June 1999, at 6 (stating that the Eastern Shawnee Tribe bought a controlling interest in an off reservation bank and in 1998 arranged for the bank to make loans to tribal members in which the tribe guarantees the loans by providing the bank with the collateral of certificates of deposit of tribal funds). As of 2001, no tribal members had defaulted on their loans. *The Chief's Report*, *The Shooting Star*, *supra* note 230, at 2.

n329. John M. Glionna, *Rural Tribe Gives New Meaning to ‘Wireless,’ Oregonian*, Aug. 12, 2001, at A25 (noting that nearly half the homes on the Yurok Reservation do not have electricity or phone service); Michelle Locke, *Half of American Indians on Large Reservations Still Without Phones* (Aug. 11, 2001), available at <http://webpages.charter.net/naan1/naannews4.htm>. Brenda Norrell, *Clinton's New Market Focus on Indian Country*, *Indian Country Today*, May 3, 2000, at A1 (reporting that 22.5% of Navajos on the reservation have phone service compared to 94% national average).

n330. *Id.*; see also *supra* notes 3, 252; Brenda Norrell, *Navajos Protest Crumbling Housing*, *Indian Country Today*, Aug. 1, 2001, at A1; *Indian Tribal Surface Transportation Act of 2000*, S. 2283 (placed on Senate Legislative Calendar under General Orders on Sept. 11, 2000), S. Rep. No. 106-406 (2000) (suggesting that the reservation roads system represents one of the most rudimentary transportation systems in the United States; there is an enormous unmet need for transportation infrastructure on Indian lands of \$ 6.8 billion; poor transportation infrastructure has a devastating impact on Indian economic development; reservation roads have never received the same level of funding as non-Indian roads); K. Marie Porterfield, *National Panel Raises Questions of Environmental Racism*, *Indian Country Today*, Apr. 26, 1999, at A1 (commenting that on Pine Ridge Reservation in South Dakota the water quality is so bad that the head of the Environmental Office advises visitors to bring their own water).

n331. Marley Shebala, *Council Approves Tax Credit for Coal Companies*, *Navajo Times*, Aug. 9, 2001 (on file with author) (stating that the Navajo tribal council voted a 25% business activity tax break for reservation based coal companies); Pommersheim, *supra* note 11, at 171 (tribes can offer technical assistance, tax advantages, abundant non-union labor).

n332. Harvey S. Perloff, *How a Region Grows: Area Development in the U.S. Economy 29* (1963) (stating that businesses locate where they can make a profit). Tribes will not secure the permanent investment of large companies in factories, utilities, and other supporting projects if reservations are not a good or promising location for such investments. See Friedman, *supra* note 144, at 110.

n333. *What Tribes Can Do: An Interview with Joseph P. Kalt*, *supra* note 261, at 16 (arguing that tribes compete for jobs and investors with everyone; companies, local banks, even tribal members have to decide where to pursue a career; tribes have to make reservations attractive to investors by establishing a rule of law and fair and sound business codes, and courts and agencies independent from politics; “without the building of an independent tribal court system, small business has virtually no chance”); Siegner, *supra* note 6, at 18 (reporting that a Montana Indian banker says tribes lack a friendly business environment and “aren’t taking an appropriate role in supporting economic development”).

n334. Friedman, *supra* note 144, at 27 (claiming that governments must maintain law and order; define and enforce contract and property rights); Samuelson & Nordhaus, *supra* note 145, at 41 (mentioning that governments set the rules

by laws, court systems and procedures to enforce contract and property rights; stability encourages people to work to secure these rights; governments promote efficiency, fairness and foster macroeconomic growth and stability); Pommersheim, *supra* note 11, at 171 (arguing that tribes must reduce business uncertainty, help businesses to be free from political pressure); cf. *What Can Tribes Do?*, *supra* note 8, at 21-24 (claiming that investor risks go up if there is uncertainty in enforcing contracts, no commercial codes, delay in gaining approvals, or politics get into business); see, e.g., *Cheyenne River First Tribe to Adopt State Business Code*, *Indian Country Today*, Jan. 17, 2001, at D1 (noting the Cheyenne River Sioux Tribe adopted South Dakota's UCC and will cooperate with the state in filing loan information to increase business development on the reservation and make it easier for businesses to invest in Indian country and bankers to extend credit); Aamot, *supra* note 327 (claiming that the Ho-Chunk Tribe adopted a corporate code using the state's as a model and it has helped diversify the economy).

n335. *What Can Tribes Do?*, *supra* note 8, at 21-22; cf. Interview with Gerald Sherman, Community Development Officer, First Interstate Bank, in Billings, Montana (May 14, 1998) (claiming that the bank would open a branch on the Northern Cheyenne reservation as soon as the tribe enacted a Uniform Commercial Code).

n336. Cornell & Kalt, *supra* note 8, at 227, 235, 237 (arguing that tribes need strong independent judiciaries and to keep business separate from politics so that investments will be safe from political manipulation); Friedman, *supra* note 144, at 15 ("Government is essential both as a forum for determining the 'rules of the game' and as an umpire to interpret and enforce the rules decided on.").

n337. John C. Mohawk, *Indian Economic Development: The U.S. Experience of an Evolving Indian Sovereignty*, *Akwe:kon Journal* 42, 46-48 (Summer 1992) (noting that sometimes tribal councils have changed the rules on investors or engaged in "opportunistic behavior"; this "can go a long way toward discouraging Indians from investing their resources in their own businesses"; without independent courts even tribal members will not invest their time or money in ventures where they can be treated unfairly).

n338. *What Can Tribes Do?*, *supra* note 8, at 28-30.

n339. See *supra* notes 310-11.

n340. See, e.g., Becky Kramer, *State Grants Provide Money to Boost Jobs*, *Spokesman-Review* (Spokane, Wash.), Aug. 7, 2001 (on file with author). (Idaho gave a \$ 500,000 grant to the Coeur d'Alene Tribe to upgrade a strawboard plant as part of other grants given to rural Idaho communities to spark economic development.)

n341. The Oregon Economic and Community Development Department has supported development services to Oregon Indians for many years with sizeable grants that in 2000 equaled 20% of Onaben's budget and in 1999 equaled 26% of its budget. ONABEN, 1999-2000 Bi-Annual Report, *supra* note 303, at 6, 8, 15 (illustrating that federal agencies provided 55% of Onaben's 1999 budget and 59% in 2000; tribal governments provided 5.2% for Onaben in 1999 and 4.3% in 2000); see *supra* notes 310-11 (including figures on Oregon's return in state taxation).

n342. See, e.g., *Comprehensive Employment and Training Act*, 29 U.S.C. 801-999 (1994); *BIA Employment Assistance*, 25 U.S.C. 13, 25 C.F.R. 26.1-26.8 (1984); *Community Action Program Employment Training*, 42 U.S.C. 2701-2995d (1994).

n343. See, e.g., *McCaleb Asks Congress for More Cash to Foster American Indian Business*, *Indian Country Today*, Aug. 1, 2001, at D1 (explaining that the assistant secretary for Indian Affairs asked Congress to expand federal guarantees of business loans to Indians and private companies working in Indian country and to increase tax incentives for companies to locate in Indian country); Senator Tim Johnson, *How Can Congress Aid in Native Americans' Economic Development: Partnerships Provide Tools for Self-Sufficiency*, Roll Call, Feb. 18, 2000 (on file with author) (same).

n344. Michelle Tirado, *Left Behind: Are Public Schools Failing Indian Kids?*, *Am. Indian Rep.*, Sept. 2001, at 12 (noting that a 1992 study showed 30% of American Indians drop out of high school compared to 17% for Hispanics, 13% for blacks and 9% for whites; in 1999 Washington Indian fourth grade students passed assessment tests at half the rate of white students); Kay Humphrey, *Developing Economy Key in Boosting Employment*, *Indian Country Today*, Apr. 25, 2001, at D1 (commenting that federal funding and increasing assistance in developing infrastructure, new businesses, and helping schools are on the minds of tribal leaders); Nathan J. Tohtsoni, *Federal Program Provides Mobile Phones to Low-Income Residents*, *Navajo Times*, Aug. 9, 2001 (on file with author) (noting that the federal government provides one dollar cellular phones to Navajos who do not have telephone connections); Fannie Mae Foundation, *Building Native Communities* (2000) (on file with author) (mentioning that financial skills training

materials created for Indian families); Johnson, *supra* note 343 (stating that President Clinton's Empowerment Zone designation for the Pine Ridge Reservation in South Dakota and a Department of Education \$ 10 million initiative to train 1,000 new Indian teachers will help improve reservations' Indian schools and tribal colleges); Cross, *supra* note 321, at 943; see also *supra* notes 329-30.

n345. Under 15 U.S.C. 637 (2000) and 13 C.F.R. 124 et seq. (2001), the SBA can be the intermediary for small firms owned by minorities, including Indians and tribes, to provide services and supplies to federal agencies without competitive bidding procedures. See also Vernon Loeb, *Alaskan Ventures Land Big Technology Contract*, *Wash. Post*, June 14, 2001, at A41 (reporting that Alaska native contractors signed a \$ 2 billion dollar contract with the Defense Department under a provision that suspends competitive bidding requirements for Native American contractors); Kenneth E. Robbins, *Department of Defense Legislative Changes Promote Native-to-Native Business*, *Am. Indian Rep.*, July 1999, at 18 (noting that Congress enacted legislation allowing the Defense Department's five percent Indian Incentive Payment Program to more easily apply to small Indian businesses and to allow Indian owned firms to be prime contractors).

n346. *New Markets Venture Capital Program Act*, 15 U.S.C. 689-689q, Pub. L. No. 106-554, 114 Stat. 2763 (Dec. 21, 2000). In promoting the act, President Clinton described it as government tax credits, loan guarantees and subsidies to entice companies to invest in economically distressed areas such as reservations and that government and private lenders would work together to issue 1,000 mortgages to build homes on reservations using federal guarantees of \$ 1.5 billion in bonds. Charles Babington, *Clinton Tells Poorest Tribe: "We Can Do Better,"* *Wash. Post*, July 8, 1999, at A2.

n347. Amendments to the Internal Revenue Code, effective January 1994 and lasting ten years, attempted to encourage business development and investment in Indian country by granting businesses accelerated depreciation for capital investments on reservations and tax credits for employing Indians and/or their spouses on reservation. 26 U.S.C. 38(b), 45A, 168(j) (2000).

n348. Exec. Order No. 12928, 59 Fed. Reg. 48377 (Sept. 16, 1994).

n349. *Tribal Enterprises Eligible for SBA HUBZone Program*, *Am. Indian Rep.*, Oct. 1999, at 19. The SBA is currently promoting its HUB Zone program which helps minority owned businesses on reservations contract with the federal government. See SBA, *HUB Zone Empowerment Contracting Program*, available at <http://www.sba.gov/hubzone/section05b.htm>. The Department of Agriculture named Pine Ridge Reservation an Empowerment Zone. It is the only such Zone on a reservation. This designation will provide \$ 20 million over ten years to improve infrastructure. Michelle M. Taggart, *Challenging the Traditional View of Tribal Economics*, *Am. Indian Rep.*, Oct. 1999, at 16-17; see also James Gerstenzang, *Clinton Takes Close Look at Tribal Poverty*, *Oregonian*, July 8, 1999, at A4 (noting that Clinton was the first incumbent President to visit a reservation in sixty-three years; the Pine Ridge Reservation in South Dakota is within the poorest U.S. county; 46.7% live in poverty and life expectancy is forty-five years; unemployment 73% while national average is under 5%; there are no banks on the reservation and no public transportation).

n350. *Tax Incentives Could Promote Growth, Economic Opportunity for Indians*, *Native Am. Report*, Apr. 7, 2000, at 68. On December 5, 2001, the House unanimously passed H.R. 2538, the *Native American Small Business Development Act*, and sent the bill to the Senate for consideration. 147 Cong. Rec. H8856-60 (daily ed. Dec. 5, 2001). The bill provides federal assistance and training for Native Americans to start and operate privately owned businesses. *Id.*

n351. See *supra* note 239.

n352. *Indian Tribal Economic Development and Contract Encouragement Act*, Pub. L. No. 106-179, 114 Stat. 46 (Mar. 14, 2000), 25 U.S.C. 81, 476 (2000) (limiting federal involvement in approving tribal contracts); *Indian Tribal Regulatory Reform and Business Development Act of 2000*, Pub. L. No. 106-447, 114 Stat. 1934 (Nov. 6, 2000), 25 U.S.C. 4301 Note (2000) (authorizing a review of federal laws and regulations affecting investment and business decisions on Indian lands and the extent to which those laws unnecessarily impair development); *Native American Business Development, Trade Promotion, and Tourism Act*, Pub. L. No. 106-464, 114 Stat. 2012 (Nov. 7, 2000), current version at 25 U.S.C. 4301-4307 (2000) (addressing barriers to job creation and economic development; establishes an office to promote coordination of federal programs affecting Indian economic development; coordinates federal technical and financial assistance to aid tribes and Indian owned businesses in developing opportunities and expanding trade and economic development).

n353. See supra note 259. Inexplicably, however, individual Indian mortgages dropped in 2000, thus demonstrating that this issue remains a problem for Indians. Mark Fogarty, *American Indian Mortgages Declined Throughout 2000*, *Indian Country Today*, Aug. 29, 2001, at D1.

n354. See, e.g., Ferrara, supra note 242, at 16 (noting that the federal government should maximize Indian autonomy over their own economic resources, finances, social programs); Levitan & Hetrick, supra note 2, at 113, 122 (mentioning that the history of federal government ineffectiveness shows Indians will have to assume greater responsibility for developing their economies); see also *What Can Tribes Do?*, supra note 8, at 183, 199-200 (proposing that tribal management of reservation forests has proven to be more profitable and environmentally sound than federal management; those who will profit or pay for their decisions seem to make the best decisions).

n355. See, e.g., Tim Funk, *Cherokees Caught Between Desires for Revenue, Reverence*, *Charlotte Observer*, June 11, 2001, at 1A; Brett Pulley, *'Leisure Virus' Begins to Divide Tribes*, *Oregonian*, Mar. 21, 1999, at A18 (noting that economic development on one reservation is causing complaints that religion, culture and sovereignty are being sacrificed); Naomi Mezey, Note, *The Distribution of Wealth, Sovereignty, and Culture Through Indian Gaming*, 48 *Stan. L. Rev.* 711, 728-29 (1996) (gaming has introduced another materialistic evil into tribal communities, fosters cultural destruction and assimilation, promotes values incompatible with tribal teachings); Cornell & Kalt, supra note 8, at 245-46 (stating that the cultural fit of economic development is important to whether people will support it); Karin Mika, *Private Dollars on the Reservation: Will Recent Native American Economic Development Amount to Cultural Assimilation?*, 25 *N.M. L. Rev.* 23, 31-34 (1995) (noting that tribes will disagree on how much cultural purity will be lost through economic development; it is up to tribes to decide); Cross, supra note 239, at 486-87 n.186 (arguing that tribes should propose economic development that is compatible with cultural values; the cultural paradigm of a tribe will help it identify development efforts that will be supported). But see Friedman, supra note 144, at 8, 11, 90 (maintaining that a country can avoid free-market globalization for cultural and social reasons but this will come at "an increasingly steep price" as the country gets left out of the economic gains; author admits that standardized economic systems can cause "cultural homogenization").

n356. Cf. Frantz, supra note 169, at 182 (declaring that it is a tribal and cultural decision whether to emulate the American economy); Thomas R. Berger, *A Long and Terrible Shadow: White Values, Native Rights in the Americas Since 1492*, at 138 (2d ed. 1999) ("Native people do not oppose industrial development; they believe, however, that they are entitled to a measure of control over the pace of such development."); Pommersheim, supra note 11, at 185 (noting that many Indians have "a profound ambivalence about the ethos of economic development that values only production and acquisition").

n357. *What Can Tribes Do?*, supra note 8, at 19-20, 43, 46-47 (noting that tribal economic development works best when it matches the tribe's cultural traditions).

n358. See supra note 13; cf. Pommersheim, supra note 11, at 162-63, 183-84 (explaining that usually it is just assumed that tribes want economic development without asking; "to many Indians development is the road to cultural ruin ... a further walk down that non-Indian road to assimilation and 'civilization'").

n359. Operating private businesses seems to correlate with most tribal cultures because it is a result of the free will and private decision-making Indians engaged in traditionally and historically. Cf. *What Can Tribes Do?*, supra note 8, at 33 (noting that most tribal leaders had limited authority and were only followed or obeyed by willing tribal members). In fact, private business ownership can be an expression of Native American values. ONABEN: A Native American Business Network: Program Overview, at [http://www.onaben.org/ONABEN Program Overview.htm](http://www.onaben.org/ONABEN%20Program%20Overview.htm); see also Cornell & Kalt, supra note 8, at 227 ("[It is] probably not necessary to stop being tribal or 'traditional' to develop economically."); Charles F. Wilkinson, *American Indians, Time, and the Law* 17-18 nn.59, 61 (1987) (stating that some tribes and chiefs desired the material and cultural benefits of American society); Kalt & Cornell, *Redefinition*, supra note 7, at 145 (claiming that there is no tension between economic success and some tribal cultures); Trosper, supra note 14, at 218. Trosper, a Harvard trained economist and tribal member who has worked on reservation economic activities, asks "is it true that traditional values are inconsistent with economic development?" Id.

n360. Onaben states that private business ownership can be an expression of Native American traditional values. See <http://www.onaben.org>. Onaben's training programs are culturally tailored to Indians and their local situations. ONABEN, 1999-2000 Bi-Annual Report, supra note 303, at 6.

n361. Frantz, supra note 169, at 171-74, 182.

n362. “Some tribes need to unlink themselves from attitudes of dependence and recognize the successful practice of private enterprise has roots in native cultures going back a thousand years or more.” Borunda 2001 Interview, *supra* note 143.

n363. Editorial, McCaleb’s Economic Message Significant, *Indian Country Today*, Aug. 1, 2001, at A4 (“The rationale of a diversified economic base, premised on solid infrastructure improvement and stable government, is essential for job-creating private industry to flourish on American Indian lands.”); Ericka Schenck Smith, Meeting Spotlights Reservation Economies, *Billings Gazette* (June 1, 2001), at <http://www.billingsgazette.com/index.php?display=/rednews//2001/06/01/build/local/2rezeconomy.inc>. (noting that U.S. officials and private researchers advise tribes to develop new and diverse businesses and to create jobs on reservations; strong tribal governments with solid business laws and a sharp focus on business strategy can create an economy); Steven Haberfeld et al., *supra* note 5, at 1-2 (“Tribes must manage and nurture growth on their own reservations, by combining public sector and private sector involvement.”).

n364. This Article does not presume to tell tribes what type of economic system they should operate, nor has it pretended to be an in-depth analysis of the benefits of one system over the other. However, the purpose has been to point out that the federal, state and most tribal governments have generally overlooked the possibilities for reservation economies from promoting and encouraging capitalistic private free enterprise. Cf. Galbraith & Salinger, *supra* note 146, at 21 (observing any discussion of economic systems and alleged benefits is open to disagreement and contradictory opinions); Champagne, *supra* note 11, at 208 (commenting that the diversity between the numerous tribes makes the existence of a one-size-fits-all remedy for reservation economic development doubtful). But see Frantz, *supra* note 169, at 297-98 (claiming that tribes need to “find alternative economic endeavors and encourage a larger role for the private sector to create and expand current economic activities”); What Can Tribes Do?, *supra* note 8, at 40 (proposing an economic system of small private enterprises seems well suited to some reservations).

n365. Prucha, *The Great Father*, *supra* note 133, at 1201, 1207 (claiming that economic dependency of Indian communities continues U.S. paternalism); Mezey, *supra* note 355, at 727 (quoting a Pequot tribal member as saying, ““You need money to practice sovereignty.””); Halbritter & Mcsloy, *supra* note 266, at 564 (proposing that economic power is “the crux of sovereignty and political power”).

n366. Borunda 2001 Interview, *supra* note 143.

n367. Pommersheim, *supra* note 11, at 168 (claiming that tribal governments cannot be shut out of reservation economic development; they have three possible roles: “the principal actor,” the “catalyst or supporter of private efforts” or “as the regulator and monitor of a positive development environment”).

n368. Ferrara, *supra* note 238, at 15 (arguing that the federal government needs to pass control over tribal resources and federal Indian services from the federal bureaucracy to the tribes; “in other words, what the Federal government needs to do most is to get out of the way of Indian advancement and opportunity”).