

Tribal Nations and Tribal Economics: The Historical and Contemporary Impacts of Intergenerational Material Poverty and Cultural Wealth Within the United States

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Let us put our minds together to see what we can build for our children.¹

Itancan Tatanka Iyotaka (Chief Sitting Bull)

I. INTRODUCTION

The poor quality of life and material impoverishment that is the situation for the majority of tribal citizens within the United States is unacceptable, especially in light of the U.S. policies that have created the poverty conditions faced by generations of Native Americans. This Article will examine the tribal quality of life and what laws, policies, and values have led to the contemporary situation. Part II will discuss the prosperity enjoyed by tribal peoples prior to the European invasion of mid-North America. In Part III, the historic causes of poverty will be examined as the British colonies gave way to the formation of the United States. By reviewing the historical factors that condemned tribal citizens to such intergenerational poverty, the contemporary circumstances facing tribal governments and their citizens will be brought into sharp focus. Part IV will examine the U.S. Indian policy of holding tribal lands in trust status and this policy's devastating consequences on tribal peoples. Part IV will also provide that returning full tribal jurisdiction over tribal lands without federal or state interference would remedy those consequences.

To help readers understand fully the consequences of the federal trustee model over tribal resources, Part V will explore the abject intergenerational poverty experienced by Native Americans. Material pov-

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** This is the author's Dakota name.

1. Sitting Bull College, <http://www.sittingbull.edu/> (last visited Apr. 8, 2010) (quoting Itancan Tatanka Iyotaka (Chief Sitting Bull)).

erty is not the only standard upon which to assess quality of life for tribal citizens. In Part VI, the cultural wealth of tribal citizens will be examined to explain the tenacity and endurance that has allowed tribes to endure through the imposition of material impoverishment by the United States as trustee of tribal resources. This Article provides that within the Tribalistic Economic framework tribal governments and citizens must continue to draw upon cultural wealth, tribal leadership values, and bicultural education to regain prosperous material quality of life. In conclusion, Part VII calls for realignment of the treaty partnership between tribal governments and the United States along with a return to the values embodied in Tribalistic Economics for a return to cultural and material prosperity in Indian Country.

II. TIME IMMEMORIAL: TRIBAL MATERIAL WEALTH UP TO THE 1700S

Prior to European invasion, the lands and bounty of mid-North America seemed endless. Tribal peoples balanced material needs, commercial relationships, and accumulation of material status objects within a worldview of respect for resources.² Tribal commerce throughout the centuries preceding active European commerce in the Western Hemisphere was extensive and based on a kinship model. Rivers were replete with fish and aquatic species; lakes were recreational, seasonal, and life resource centers; and every kind of imaginable fruit, vegetable, herb, and plant medicine was tended, harvested, and nurtured.³

Greedy impulses among tribal citizens were checked by societal norms that required the redistribution of wealth to attain community status.⁴ In various parts of mid-North America, these wealth redistribution community gatherings were given different names, but all had the same purpose. Leadership was based on being able publicly to provide for the community. Holding a community “give-away,” “potlatch,”⁵ or “celebration feast” were the means for the recognition of worthy individuals who secured material wealth. The individual gained status only

2. See Donald L. Fixico, *The Struggle for Our Homes: Indian and White Values and Tribal Lands*, in DEFENDING MOTHER EARTH: NATIVE AMERICAN PERSPECTIVES ON ENVIRONMENTAL JUSTICE 29, 35-37 (Jace Weaver ed., 1996).

3. See KATHRYN E. HOLLAND BRAUND, DEERSKINS & DUFFELS: THE CREEK INDIAN TRADE WITH ANGLO-AMERICA, 1685-1815, at 18 (1993).

A good harvest was a reason for thanksgiving, for the Creeks, like all other southeastern Indians, were horticulturalists and depended on the bounty of their fields for the main part of their diet. The Creek people were more than adequate farmers. Men prepared the fields and helped plant the crop. Women and children tended the corn, and both men and women participated in the harvest.

Id.

4. See DUANE CHAMPAGNE, SOCIAL CHANGE AND CULTURAL CONTINUITY AMONG NATIVE NATIONS 48 (2007). “Generosity and redistribution of gifts to kin and strategic allies were the rule.”

Id.

5. See, e.g., WILLIAM W. ELMENDORF, COAST SALISH AND WESTERN WASHINGTON INDIANS IV: STRUCTURE OF TWANA CULTURE 153-54 (1974).

after handing out the fruits of her labor and skill to those in need.⁶ Thus, a self-contained circle of giving and receiving was maintained for community wealth balance. One could not rise up within the societal-governance system without establishing that his or her heart was for the good of the people.

As youth gave way to the elder years, the oldest members of the community could happily expect to be provided for by the next generation.⁷ It was as much an honor to receive as it was to give. To receive meant that a person was within the community's cycle of life; reinforced the circle of belonging; and guaranteed that no abject poverty would arise for the less-skilled, the disabled, the elderly, the ill, or those otherwise unable to provide for themselves.

Trade festivals and summer seasonal gatherings drew thousands of different tribal citizens to prime-resource-abundant areas to stay for weeks, months, or the entire season. Kinship bonds were created, strengthened, and solidified during such gatherings.⁸ Marriages took place creating intertribal liaisons. Adults were adopted into new families to be recognized as joining family lines across tribes.⁹ Oral histories were shared and new stories added. Leadership positions were announced. All manner of community activity took place during the market/communal gatherings.¹⁰ Old grudges could be dropped for the time being, and new alliances could shift historical confederacies.

This brief synopsis cannot fully encapsulate the thriving tribal economies and basic cultural norms for commercial conduct on the mid-North American Continent. It does provide a window into the past and the sense of being in relation to others to conduct human interaction—such as adoption of new adult family members, providing for the less fortunate, and maintaining trade relations on a good-faith basis of kinship.¹¹

Societal norms and specific tribal organizations (often designated as tribal societies) upheld the responsibility of keeping in check those who would take advantage of their relatives or disrupt the social structure of respect.¹² Law and order were taken seriously at tribal gather-

6. See, e.g., A. C. ROSS, MITAKUYE OYASIN: "WE ARE ALL RELATED" 191 (1989). "By participating in the give-away, the more one gives, the greater the chances are for advancement within the tribe/nation. So the economics of the D/Lakota have to do with giving to gain." *Id.*

7. See Fixico, *supra* note 2, at 38-39.

8. See, e.g., Frederick J. Turner, *The Character and Influence of the Indian Trade in Wisconsin: A Study of the Trading Post as an Institution*, in EDUCATION, HISTORY, AND POLITICS VOL. IX 550-51 (Herbert B. Adams ed., 1891). "During these seasons of peace it was not uncommon for a member of one tribe to adopt a member of another as his brother, a tie which was respected even after the expiration of the truce." *Id.* at 550.

9. See, e.g., JAMES M. VOLO & DOROTHY DENNEEN VOLO, FAMILY LIFE IN NATIVE AMERICA 51 (2007).

10. *Id.* at 61.

11. See Turner, *supra* note 8, at 550.

12. See, e.g., CALVIN MARTIN, KEEPERS OF THE GAME: INDIAN-ANIMAL RELATIONSHIPS AND

ings with individuals held responsible to the community for offenses.¹³ To bring the disruption back to balance was the responsibility of the whole community through restorative actions. Disputes did arise and community involvement occurred to provide resolution. In extreme circumstances, a disruptive citizen could receive the worst punishment known to a tribal citizen—expulsion from the tribal community. The loss of community belonging, status, and kinship were viewed as the greatest loss a human being could face. In terms of hunting, the balance with the natural world was maintained in the same way with spiritual principles involved with the taking of animal life.¹⁴

In the commerce realm, basic foodstuffs and material goods were never at issue. Rather, only the products developed by skilled workmanship or special harvest became objects of trade. Basic sustenance was a given in tribal existence.¹⁵ Through summer-food preservation, winter needs were anticipated and food storage practiced. Women played a substantial role in the seasonal management of food storage and preparation.¹⁶ In many Tribes, women owned the home and could sever marital relations by removing her mate's possessions from the home.¹⁷ The family unit was not viewed as the economic unit. Rather, the entire community was the economic unit ensuring a share of the material wealth for every member.

All of these trade practices and values are the foundation of Tribal-ist Economics.¹⁸ It was upon this extensive network of inter-tribal

THE FUR TRADE 35 (1978). "Micmac subsistence pursuits were inextricably bound up within this spiritual matrix, which . . . acted as a kind of control mechanism on Micmac land-use, maintaining the natural environment within an optimum range of conditions." *Id.*

13. See Alan M. Klein, *The Political-Economy of Gender: A 19th Century Plains Indian Case Study*, in *THE HIDDEN HALF: STUDIES OF PLAINS INDIAN WOMEN* 162-64 (Patricia Albers & Beatrice Medicine eds., 1983).

14. See MARTIN, *supra* note 12, at 38.

As we reconstruct the Micmac cultural milieu of pre-contact times, using early historic and modern ethnographic sources, the impression we get is that the spiritual realm was the principal conduit, or channel, through which man was linked with his physical and natural surroundings. By operating in a spiritual realm, man found himself able to communicate—to have a dialogue—with Nature around him.

Id.

15. See, e.g., PAUL C. THISTLE, *INDIAN-EUROPEAN TRADE RELATIONS IN THE LOWER SASKATCHEWAN RIVER REGION TO 1840*, at 18 (1986).

In band societies, such as that of the Cree, trade automatically encompasses social relationships and obligations, and all exchange is social—not merely an economic—process. In particular, the fluctuation in the flow of food serves as an important barometer of social relations. The obligation to share food is a central link in any relationship in band-level societies. Indeed, food is withheld only from enemies.

Id.

16. E.g., VINE DELORIA, JR., *INDIANS OF THE PACIFIC NORTHWEST: FROM THE COMING OF THE WHITE MAN TO THE PRESENT* 16 (1977) (describing the recipes and techniques of Native women in food preparation in the Pacific Northwest).

17. See, e.g., Kay Givens McGowan, *Weeping for the Lost Matriarchy*, in *MAKE A BEAUTIFUL WAY: THE WISDOM OF NATIVE AMERICAN WOMEN* 50, 54 (Barbara Alice Mann ed., 2008). "Women had ownership rights. For instance, they owned the houses, the crops, and the lineages."

Id.

18. For a full discussion of "Tribalist Economics," see Angelique EagleWoman, *Tribal Values*

commercial relations, cultural norms over trade activities, and the trade routes spanning thousands of miles that interactions continued to be developed in mid-North America when foreigners entered the landscape.¹⁹

III. HISTORIC CAUSES OF TRIBAL MATERIAL POVERTY

In America, stone workings, shells, plant product weaving, petroleum pits, animal resources, and other types of materials were being utilized for human needs—the types of resources that could be harvested above the earth, with the exception of roots or other plant materials.²⁰ In Europe, on the other hand, the primary material came to be metal taken from inside the earth. With metal taken from inside the earth, the Europeans developed all manner of household goods, adornments, and eventually weaponry.²¹ These two different orientations on resource extraction would continue to mark differences in worldview philosophies as the peoples of America and Europe interacted.²² Metal weaponry, alcohol, and sham land purchases soon became the basis of commercial relations between Native Americans and the Europeans in North America.

A. *The Early Centuries of Interaction with Non-Americans: 1500s to 1800s*

Europeans seeking to enter the trade markets in North America included the British, Dutch, French, and Spanish.²³ Along the west coast, the British and the French heavily contested the Russian presence. Conflicts among the foreigners erupted in North America as each sought to establish exclusive commercial relations with Native American Nations.

In general, the Spanish penetrated North America from the south, through the Caribbean, Florida, and Mexico; France advanced from the northeast, along the St. Lawrence River, the Great Lakes, the Ohio River, and the Mississippi, with some penetration northwestward from the Gulf

of Taxation Within the Tribal Economic Theory, 18 KAN. J.L. & PUB. POL'Y 1 (2008).

19. See, e.g., James T. Davis, *Trade Routes and Economic Exchange Among the Indians of California*, in ABORIGINAL CALIFORNIA: THREE STUDIES IN CULTURE HISTORY 9 (1966). “There appears to be good reason for the fact that many Indian trails in California could later become modern highways.” *Id.*; see also VOLO & VOLO, *supra* note 9, at 235.

20. See Davis, *supra* note 19, at 16-50 (detailing a wide variety of trade items involved in inter-tribal trade).

21. See HOLLAND BRAUND, *supra* note 3, at 28.

22. See THISTLE, *supra* note 15, at 8.

University of Ottawa historian Cornelius Jaenen has written extensively on the mutual perceptions of Indians and French in eastern Canada. He has found that Indians did not immediately accept the idea of European superiority based on technological advancement and apparent wealth as has been assumed in much of the literature on Indian - non-Indian contact. In fact, the Western Woods Cree in the lower Saskatchewan River area laughed at European presumptions of pre-eminence.

Id.

23. See CARL WALDMAN, ATLAS OF THE NORTH AMERICAN INDIAN 73 (1985).

Coast; England moved generally from the Atlantic Coast westward, with much additional activity in Arctic waters in search of the Northwest Passage; Holland penetrated northwestward along the Hudson River; and Russia moved from the west out of Siberia into Alaska, then southward as far as California.²⁴

Driving the economic engine of foreign trading posts was the demand for fur pelts available through the trapping and hunting skills of Native Americans.²⁵ As the trading posts became established entities fending off other European or Eastern Hemisphere peoples,²⁶ greed for land and wealth led to corrupt practices within the fur trade and interactions with the various Tribal Nation trading partners.²⁷

In the early 1600s, when the daughter of Powhatan, Matowaka,²⁸ married a Virginia colonist, James Rolfe, and taught him the cultivation of tobacco, the colony became commercially stable with both the cash crop and peaceful relations with the Powhatan Confederacy.²⁹ Soon colonists began taking fields from tribal settlements to cultivate tobacco for export back to European markets. The Virginia Company was at the forefront, offering estates to land promoters and officers and deeding itself a 12,000-acre estate.³⁰ Along with forcing tribal citizens from their homelands and their cultivated fields and engaging in unfair trade practices, the colonists also allowed their livestock, such as hogs, to damage tribal gardens.³¹ Any harm to a hog unleashed the colony's militia and led the English to "burn an Indian town and put a dozen people to the sword."³²

The French during this time were actively involved with the fur trade, which led to greater incursions into the interior of North America. Seeking more commercial markets for the fur trade, the French journeyed through the Great Lakes to the Mississippi area then onward to the Missouri River system of the prairies and plains country.³³ As

24. *Id.* at 74.

25. See Turner, *supra* note 8, at 551. "It was on the foundation, therefore, of an extensive inter-tribal trade that the white man built up the forest commerce." *Id.*

26. See, e.g., JENNIFER S. H. BROWN, STRANGERS IN BLOOD: FUR TRADE COMPANY FAMILIES IN INDIAN COUNTRY 1 (1980) ("[W]hile both the British and the French initially attempted to conduct the fur trade through royally chartered monopolistic companies, these companies followed differing courses to differing fates.").

27. See THE AMERICAN HERITAGE BOOK OF INDIANS 164-65 (Alvin M. Josephy, Jr. ed., 1961).

There was distrust and blundering on each side in this meeting of worlds so disparate, quarrels between Indians and the German, Irish, French, Polish, and English artisans and would-be gentry who made up the colonists, and there was deliberate trouble stirred up by the Spaniards to the south—Spanish emissaries to the Powhatans in 1609 are blamed for Indian attacks on Jamestown in 1610

Id.

28. *Id.* (Matowaka, commonly referred to by her nickname, "Pocahontas," died at the age of 21 from smallpox.).

29. *Id.* at 165.

30. *Id.* at 166.

31. *Id.*

32. *Id.*

33. See WALDMAN, *supra* note 23, at 76.

part of the French trading network strategy, the French sought alliances with tribal confederacies who would serve as suppliers to the French trading posts.³⁴ Other foreigners were threatened by the success of the French trading model, such as the Spanish who also resented the selling of firearms to the Comanche Nation by the French.³⁵ The French and the British, however, had been locked in imperial wars for centuries and would return to the conflict in North America.³⁶

B. British Imperialism and Formation of the United States on American Soil

The imperialistic history of Europe meant that, unbeknownst to tribal leaders, North America was under invasion. The gift giving and trade alliances were the false front for the true imperial impulse of those from Europe.³⁷ Using alcohol to begin trade negotiations and as a trade item was a key element of the European invasion of North America.

Alcohol figured prominently in the European invasion of North America. It was endemic wherever the French, British, or Dutch established New World beachheads and deployed policies for cultural alteration and economic gain among the native people encountered there. Wilbur R. Jacobs has flatly charged the British with “using it extensively in all their dealings with the Indians.” In his monumental history of the fur trade Paul C. Phillips has described in great detail the Anglo-French use of alcohol among Indians dating back to the sixteenth century, and Moravian missionary John Heckwelder’s contention that Manhattan (Manahachtanienk) meant “the island where we all became intoxicated” in the Delaware language speaks strongly for the use of alcohol by the Dutch (and later British) as a trade item with the native population there.³⁸

After becoming intoxicated and taken advantage of by foreign traders, tribal citizens often retaliated by destroying trading posts in the same way that tribal villages were burned to the ground by the English. Along with the alcohol trade, tribal leaders often negotiated for firearms and weaponry to even the playing field when marauding non-Indians attacked their villages or groups of traders stole goods at gunpoint.³⁹ The firearms trade allowed many Tribal Nations to escape from total extermination as the Europeans continued to move across the continent mas-

34. *Id.* at 76-77.

35. *Id.* at 77.

36. See GORDON M. SAYRE, *THE INDIAN CHIEF AS TRAGIC HERO* 127 (2005).

37. See, e.g., RICHARD WHITE, *THE MIDDLE GROUND: INDIANS, EMPIRES, AND REPUBLICS IN THE GREAT LAKES REGION, 1650-1815*, at 388-94 (1991) (describing the difference in war treatment by the Algonquians who tried to adopt their white captives and the brutal slaying of Indians by the “Indian hating” whites in contrast).

38. WILLIAM E. UNRAU, *WHITE MAN’S WICKED WATER: THE ALCOHOL TRADE AND PROHIBITION IN INDIAN COUNTRY, 1802-1892*, at 12 (1996).

39. See, e.g., CARL P. RUSSELL, *GUNS ON THE EARLY FRONTIERS: A HISTORY OF FIREARMS FROM COLONIAL TIMES THROUGH THE YEARS OF THE WESTERN FUR TRADE* 12 (1957). “By 1650, in spite of laws to the contrary, an extensive trade in guns and ammunition was conducted with Indians by all Europeans in the New World except the Spanish.” *Id.*

sacring and burning villages.

As the English established colonies in mid-North America, policies developed around the interaction between the English colonists and Native Americans.⁴⁰ Land, liquor, and firearms became the basis of the first trade restrictions established by the English in North America. Early colonial laws prohibited land purchases occurring without governmental approval in colonies such as Massachusetts, New York, Pennsylvania, and South Carolina.⁴¹

Bargaining with the Indians for land was but one aspect of the transactions between the two races. Trade in general was the great point of contact with the Indians, and the exchange of goods became a complex mixture of economic, political, and military elements. Two items in the trade, because of their explosive potentialities, were of critical importance in the efforts to preserve the peace—firearms and liquor. Just as the colonists were not free to buy land from the Indians, neither were they free to sell them arms or rum. For obvious enough reasons it was necessary to prevent the supplying of hostile Indians with weapons, and laws were enacted for that purpose, especially in the early days of the colonies, when survival against the Indians was of primary concern.⁴²

Some colonial officials condemned the practices by which traders took advantage of tribal citizens. Colonial traders were subject to licensing and fines for violating the regulations set forth by colonial governments. However, policing was difficult and often the military aided in illegal practices such as promoting the liquor trade contrary to local laws. Whiskey distillation and trade was an important source of wealth in the colonies and an active trade was engaged in throughout the history of Europeans in America.⁴³

Colonial and British practices did not fully address the violations being perpetrated on Tribal Nations by colonial citizens. The British failed to deal with the encroachment of white settlers within tribal territories and sought to placate tribal leaders with gift giving as a way to keep their alliance strong.⁴⁴

The corruption, the fraud, the mischievous dealings of the traders—who were described by those who came in contact with them as the scum of the earth—continually aroused the resentment of the Indians. Furthermore, not only did the Indians resent being made the dupes of the traders, but the steady pressure of the white settlers on their hunting grounds could not escape their attention. . . . Continuing to rely on presents in order to keep the Indians attached to the English cause, the British officials only slowly awakened to the realization that the way to keep the Indians happy

40. See generally COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 10-20 (Nell Jessup Newton et. al. eds., 2005 ed.).

41. FRANCIS PAUL PRUCHA, AMERICAN INDIAN POLICY IN THE FORMATIVE YEARS: THE INDIAN TRADE AND INTERCOURSE ACTS 1790-1834, at 6-7 (1962).

42. *Id.*

43. See UNRAU, *supra* note 38, at 1-3.

44. See, e.g., ARTHUR WOODWARD, INDIAN TRADE GOODS 3 (1967) (listing gift items distributed by British authorities in the Georgia Colony to tribal citizens).

was to remove the causes of their resentment and discontent—namely, the abuses practiced upon them by the traders and the encroachment upon their lands by the hunters and settlers.⁴⁵

The British gift-giving strategy failed to keep a substantial number of tribal leaders from aligning with the French in the North American outbreak of war between England and France beginning in 1754.⁴⁶ In the end, the fur trade with Europeans led to the outbreak of disease among Native Americans, the loss of territories through white encroachment, the depletion of fur-bearing animals on the continent, and the eventual permanent settlement of the British through military domination and the colonial system.⁴⁷

With the founding of the United States, the federal regulation of trade relations with Tribal Nations was embedded in the U.S. Constitution as an extension of the early colonial practices. Specifically, the U.S. Constitution granted to the U.S. Congress the power to “[r]egulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”⁴⁸ The first set of statutes passed by the new U.S. Congress contained the first of a series of Trade and Intercourse Acts to regulate U.S. citizens conducting trade with Tribal Nations.⁴⁹

The United States entered into treaties with many Tribal Nations to purchase tribal lands and to reach agreement on peaceful relations, boundary lines, and compensation for land cessions.⁵⁰ Not all Tribes entered into treaties with the United States. Much of the tactical use of treaties by the United States was to negotiate only with those who appeared to threaten the imperialistic aims of the new political entity.⁵¹ From the early days of the formation of the United States until 1849, the internal federal agency handling Indian affairs was the U.S. Department of War. In 1834, the Indian affairs division was moved to the U.S. Department of the Interior (DOI) as a domestic matter of federal regulation.⁵² Alcohol continued to be a negotiating tool used by the U.S. military and the Indian agents of the Bureau of Indian Affairs (BIA) in the

45. See PRUCHA, *supra* note 41, at 10.

46. See *id.* at 11.

47. See WALDMAN, *supra* note 23, at 74.

48. U.S. CONST. art. I, § 8, cl. 3.

49. The federal “Indian trader” statutes are still in force in the United States. See 25 U.S.C. §§ 261-264 (2006).

50. See COHEN’S, *supra* note 40, at 26-33.

51. See Robert J. Miller, *Treaty Interpretation: Judicial Rules and Canons of Construction*, in 2 ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW 771, 772 (Paul Finkelman & Tim Alan Garrison eds., 2009).

The United States and its negotiators often selected the “chief” of the tribe with whom they would negotiate. Often the government negotiators bribed and unduly influenced tribal negotiators with gifts or alcohol or both. The United States often was represented by attorneys, while the tribes did not have legal counsel.

Id.

52. See Robert McCarthy, *The Bureau of Indian Affairs and the Federal Trust Obligation to American Indians*, 19 BYU J. PUB. L. 1, 4 (2004).

1800s.⁵³

The U.S. federal judiciary's highest court, the United States Supreme Court, took an early role in legalizing the seizure of tribal lands,⁵⁴ the military control and "plenary power" that Congress exerted over Tribal Nations,⁵⁵ and the unilateral abrogation of treaties entered into between the U.S. and Tribal Nations by the U.S. Congress.⁵⁶ United States Indian policy has swung between the extremes of recognition for tribal governmental sovereignty to complete annihilation of the political existence of tribal government. The aftermath of the most devastating U.S. Indian policies included: removal from tribal homelands,⁵⁷ the kidnapping of tribal children to attend military-style government⁵⁸ and religious boarding schools,⁵⁹ termination of federal recognition of tribal governments,⁶⁰ seizure of tribal lands,⁶¹ oversight of exploitative and extractive industries on tribal lands to the detriment of sustainable tribal economies,⁶² and failure of adequate federal funding to assist in the return to an acceptable standard of living for tribal peoples.⁶³ The effects of these policies continue to impact Tribal Nations in the present day.

United States Supreme Court decisions have increasingly supported the derogation of tribal land rights,⁶⁴ imposed limitations on

53. See UNRAU, *supra* note 38, at 8-11.

54. See *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543, 573-74 (1823) (holding that the U.S. obtained superior title to tribal lands by virtue of Great Britain and by the doctrine of discovery leaving tribes with a right of occupancy rather than full ownership).

55. See *United States v. Kagama*, 118 U.S. 375, 379-81 (1886) (holding that the U.S. Congress acts in the best interests of Indians and has plenary authority over Indians).

56. See *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565-67 (1903) (holding that the U.S. Congress has plenary authority to abrogate treaties with Indian Tribes unilaterally).

57. See Indian Removal Act of 1830, ch. 148, 4 Stat. 411-12 (1830); see also DOCUMENTS OF UNITED STATES INDIAN POLICY 52-53 (Francis Paul Prucha ed., 2d ed. 1990) (providing the text of the act).

58. See, e.g., ROBERT N. CLINTON ET AL., *AMERICAN INDIAN LAW: NATIVE NATIONS AND THE FEDERAL SYSTEM CASES AND MATERIALS* 35 (5th ed. 2007).

59. See, e.g., PRUCHA, *supra* note 41, at 219-24 (detailing the assignment of religious societies to Indian reservations by the U.S. Commissioner of Indian Affairs).

60. See H.R. Con. Res. 108, 83d Cong., 67 Stat. 132 (1953); see also COHEN'S, *supra* note 40, at 89-97.

61. See *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 279-81 (1955) (holding that if Congress has not recognized land title held by an Indian then such title is unrecognized "Indian title" which may be seized without compensation).

62. See, e.g., Taylor Keen & Angelique EagleWoman, *Tribal Sovereignty and Economic Development*, in 2 HANDBOOK OF NORTH AMERICAN INDIANS: INDIANS IN CONTEMPORARY SOCIETY 129, 130-31 (William C. Sturtevant & Garrick A. Bailey eds., 2008) (examining the development of tribal consortiums to counteract the below market value leasing of tribal natural resources by the Bureau of Indian Affairs (BIA)).

63. See NATIONAL CONGRESS OF AMERICAN INDIANS, INDIAN COUNTRY FY 2010 BUDGET REQUEST 1 (2010), available at http://www.ncai.org/fileadmin/Final_Budget_Doc.pdf ("The federal funding that goes to Indian issues in every relevant program area—from education and public safety to the environment, infrastructure, and health care—lags behind the average for the rest of the United States.").

64. See, e.g., *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 333 (1998) (holding that a surplus lands act from 1894 had diminished the reservation boundaries over one hundred years prior to the lawsuit); *Hagen v. Utah*, 510 U.S. 399, 442 (1994) (holding that the 1905 federal act allowing for white settlement within the Uintah Reservation diminished the reservation almost ninety years prior to the case); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 585-86 (1977) (holding that the Rosebud Reservation was diminished due to agreements in 1904, 1907, and 1910, more than sixty years

tribal governmental jurisdiction,⁶⁵ hampered the ability of tribal government to raise revenues through taxation,⁶⁶ and disemboweled the authority of tribal courts to act as decision-makers over disputes and offenses on tribal lands.⁶⁷ In the last several decades, the United States has publicly announced a policy of Indian self-determination,⁶⁸ but has unofficially circumscribed the efforts of Tribal Nations to rebuild tribal communities to the level of prosperity enjoyed prior to the formation of the United States.⁶⁹

IV. DEVASTATION OF TRIBAL ECONOMIES BY THE U.S. TRUST SYSTEM OVER TRIBAL LANDS

A main contributor to the devastation of tribal economies, the U.S. trust system for tribal land management, will be reviewed in this section. To begin, a basic tenet of economics is that there must be a resource to develop to gain capital. Although many Tribal Nations can identify resources to develop, the United States has a stronghold on those resources. The United States has passed federal laws ensuring that the DOI has authority over tribal resources through the trust relationship imposed upon Tribal Nations.⁷⁰ The secretary of the interior has lease-approval authority for any leases entered into by Tribal Nations over tribal lands for a period of seven years or more,⁷¹ has land-management authority for any tribal lands in trust status with the United States,⁷² and has contract-approval authority for most business dealings entered into by Tribal Nations.⁷³ Therefore, Tribal Nations are caught up in a fed-

prior to the hearing before the U.S. Supreme Court); *DeCoteau v. Dist. County Court*, 420 U.S. 425, 427-28 (1975) (holding that the Lake Traverse Reservation had been disestablished eighty-four years earlier by approval of an 1891 federal act allowing for allotment of the reservation).

65. See *Montana v. United States*, 450 U.S. 544, 565-66 (1981) (holding that tribal general regulatory jurisdiction over non-Indians on fee lands within the reservation was limited to one of two exceptions).

66. See *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 159 (1980) (upholding state taxation on cigarette sales to non-Indians purchasing cigarettes within the tribal jurisdiction). For a thorough discussion of the imposition of state and federal taxes within tribal lands, see Angelique EagleWoman, *The Philosophy of Colonization Underlying Taxation Imposed upon Tribal Nations Within the United States*, 43 TULSA L. REV. 43 (2007).

67. See *Strate v. A-1 Contractors*, 520 U.S. 438, 442-43 (1997) (holding that the Tribal Court of the Three Affiliated Tribes lacked adjudicatory authority over a personal injury lawsuit involving non-Indians occurring on a right-of-way within the reservation boundaries).

68. Message from the President of the United States Transmitting Recommendations for Indian Policy, H.R. Doc. No. 91-363, at 3 (1970) (calling on the federal government to reject the termination policy and recognize a “self-determination” policy in Indian affairs from U.S. President Richard M. Nixon).

69. See generally Angelique EagleWoman, *Tribal Nation Economics: Rebuilding Commercial Prosperity in Spite of U.S. Trade Restraints—Recommendations for Economic Revitalization in Indian Country*, 44 TULSA L. REV. 383 (2009).

70. See Indian Reorganization Act, 25 U.S.C. § 462 (2006) (indefinitely extending the trust period over Indian lands, thereby perpetuating U.S. federal trusteeship over those lands and resources).

71. 25 C.F.R. § 84.003 (2009).

72. 25 C.F.R. § 162.107 (2009).

73. Specific federal statutes and regulations govern leasing and contract approvals for many types of tribal business activities. See, e.g., 25 C.F.R. § 162.107 (agricultural leases); 25 C.F.R. §

eral bureaucracy that has failed to protect tribal interests⁷⁴ and has ultimate veto authority over many forms of tribal economic decision-making.⁷⁵

A. The Imposition of the U.S. Trust System to Manage Tribal Lands

As Tribal Nations entered into treaty relationships with the United States, the Tribes reserved certain areas of lands. These reserved areas are commonly known as “reservations” and form the basis of the remaining tribal land base after entering into agreements with the United States. In certain areas, the reserved lands were designated as simply an Indian community rather than a reservation area.⁷⁶ In all instances, the land base for Tribes shrunk to mere pockets in an ocean of U.S.-claimed territory through U.S. laws and policies.⁷⁷

Passage of the 1887 General Allotment Act (Allotment Act)⁷⁸ by the U.S. Congress violated every treaty entered into between the United States and a Tribal Nation whereby the Tribe reserved lands for tribal members and the U.S. allotted those lands. The Allotment Act allowed the U.S. President to determine that a tribal reservation area was open for allotment. The allotment process divided the tribal reservation land base into parcels of 40-160 acres or less, usually for each Indian head of household.

Between 1887 and 1934, the tribal lands of 118 reservations were allotted, although many reservations, particularly in the Southwest, escaped allotment. From 1887 to 1900, the federal government approved 53,168 allotments, totaling nearly five million acres, and almost 36 million acres had been allotted by 1920. By 1934, approximately 27 million acres, or two-

163.10 (2009) (forestry management); 25 C.F.R. § 166.21 (2009) (grazing permits); 25 C.F.R. § 211.20 (2009) (mineral development).

74. See, e.g., *United States v. Navajo Nation*, 129 S. Ct. 1547, 1552-53 (2009) (ruling against Navajo Nation when the Tribe alleged breach of trust when the secretary of the interior engaged in ex parte communications with Peabody Coal to the detriment of the renegotiation of a mining contract rate for the Tribe).

75. See, e.g., *Sangre De Cristo Dev. Co. v. United States*, 932 F.2d 891, 894 (10th Cir. 1991) (holding that the cancellation of a lease agreement between the plaintiff company and the Tesuque Indian Pueblo by the secretary of the interior did not entitle the plaintiff to compensation under the Takings Clause of the Fifth Amendment because there was no vested property interest in the lease agreement until approved by the secretary of the interior).

76. As a whole, tribal lands are legally defined as “Indian country,” which was first codified in 18 U.S.C. § 1151 (2006). Indian Country is defined under federal law as

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including all rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Id.

77. See Indian Land Tenure Foundation, *Tribe/Reservation Specific Information*, <http://www.indianlandtenure.org/ILTFallotment/specinfo/specinfo.htm> (last visited Apr. 8, 2010).

78. Act of Feb. 8, 1887, ch. 119, § 1, 24 Stat. 388 (repealed 2000). This act is popularly referred to as the “Dawes Act” due to sponsorship by Henry Dawes.

thirds of all the land allotted to tribal members, had passed by sale or involuntary transfer from the Indian fee owner into non-Indian ownership.⁷⁹

After the parcels were designated, the remaining lands were then declared “surplus.”⁸⁰ Often, the U.S. government set the purchase price and purchased the surplus lands to sell to homesteaders.⁸¹ Through designation of “surplus lands,” Native Americans lost over sixty million acres as the United States redistributed tribal lands.⁸²

The initial parceling-out process began with Indian agents creating membership rolls to designate who would be entitled to an allotment.⁸³ These membership rolls were filled with errors, gave the federal officials unbridled license to punish “rebels” by leaving them off of the rolls, and allowed federal officials to change the names of tribal members.⁸⁴ Even now, these federal membership rolls serve as the basis for establishing tribal citizenship as the rolls have been memorialized in tribal constitutions approved by the secretary of the interior for tribal governance after 1934.⁸⁵ Diminishment of the Native American population has occurred not only through the introduction of European diseases and military killings of Natives, but also through this type of “paper genocide” in which over time there are less Native Americans on membership rolls meeting federal blood quantum requirements. As the Indian agents established and carried forward the U.S. policy of recognizing “full-bloods” as Indian and designating others as “half-breeds” or “quarter-bloods,” intermarriage with other groups has resulted in decreased numbers of recognized tribal citizens under U.S. laws and regulations.⁸⁶ Some Tribes have been able to counteract effectively “paper genocide” by changing the blood quantum requirements of their tribal constitutions or by recognizing anyone with Indian parentage as a tribal citizen.⁸⁷ The allotment process and the assimilation policy of the U.S. government went hand-in-hand to destroy the structure of tribal society,

79. COHEN’S, *supra* note 40, at 1042.

80. See Judith V. Royster, *The Legacy of Allotment*, 27 ARIZ. ST. L.J. 1, 13 (1995).

81. See Leonard A. Carlson, *Allotment in Severalty*, in 1 ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW 70-71 (Paul Finkelman & Tim Alan Garrison eds., 2009).

82. Royster, *supra* note 80, at 13.

83. See Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S. D. L. REV. 1, 24 (2006).

84. See Jill Doerfler, *Tribal Citizenship*, in 2 ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW, *supra* note 51, at 784; Jeri Thomas, *Blood Quantum*, GILA RIVER INDIAN NEWSPAPER, July 2009, available at <http://www.gilariver.org/index.php/news/91-july-2009-grin/734-blood-quantum>.

85. See Nicole J. Laughlin, *Identity Crisis: An Examination of Federal Infringement on Tribal Autonomy to Determine Membership*, 30 HAMLINE L. REV. 97, 106-08 (2007).

86. See, e.g., ELMER R. RUSCO, A FATEFUL TIME: THE BACKGROUND AND LEGISLATIVE HISTORY OF THE INDIAN REORGANIZATION ACT 268-69 (2000).

87. See Barbara Ann Atwood, *Achieving Permanency for American Indian and Alaska Native Children: Lessons from Tribal Traditions*, 37 CAP. U. L. REV. 239, 246 (2008) (“While tribal membership has been linked to blood quantum criteria since the late 1800s under compulsion of federal law, some of the 562 federally recognized tribes in the United States have loosened their membership requirements in the face of rising rates of intermarriage between Indians and non-Indians.”).

the prosperity of Tribal Nations, and tribal control over natural resources.

One of the goals of the allotment process was to transform tribal members into white Christian farmers through cultivation of the allotted parcels.⁸⁸ To further this goal, many times white homesteaders were intentionally situated surrounding an Indian allotment to serve as role models or a “civilizing” influence on the tribal members.⁸⁹ In addition, when the land was sold to the homesteader, the U.S. government considered the land to lose its characteristics as subject to some aspects of tribal jurisdiction and transformed the land into part of the surrounding state’s taxation jurisdiction.⁹⁰ This has led to the confusing jurisdictional situation known as “checkerboard” jurisdiction.⁹¹ Under this scheme, every parcel of land must be analyzed to assess whether it is subject to tribal jurisdiction or state jurisdiction depending on the specifics of regulation and the citizenship of the person involved.⁹² The difference in jurisdiction is significant.

With the passage of the Indian Reorganization Act (IRA) of 1934,⁹³ the U.S. Congress effectively ended the allotment policy of tribal lands. Stopping the property tax seizures of the late 1800s and early 1900s was a positive, but when a majority of tribal governments were reorganized by the IRA,⁹⁴ the same restrictions that stopped the local state governments from taxing tribal land applied to the Tribes themselves. This restrictive status left Tribes without a viable tax base to fund their governments. The IRA was a federal legislative measure with several intended purposes. First, the act formally renounced the previous era of the allotment policy.⁹⁵ In addition, the IRA indefinitely extended the trust period for all lands held in trust by the federal government for Indians.⁹⁶ Second, the act provided organizational structures to reformulate tribal governments with the power to create tribal government-owned corporations.⁹⁷ Third, provisions set forth a process

88. See Royster, *supra* note 80, at 10.

89. *Id.* at 13.

90. See *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 266 (1992) (holding that repurchased allotted land by the Tribe was subject to state taxation when held in fee and not in trust status).

91. *Id.* at 264-65.

92. See, e.g., Matthew L.M. Fletcher, *The Supreme Court's Indian Problem*, 59 HASTINGS L.J. 579, 599 (2008) (discussing the bright line rules developed by the U.S. Supreme Court to unhinge tribal territorial jurisdiction depending on a person’s membership status in the tribe). It should be noted that this parcel-by-parcel analysis conducted routinely by the U.S. Supreme Court is in contravention of the federal statute that defines “Indian country.” See 18 U.S.C. § 1151 (2006).

93. 25 U.S.C. §§ 461-479 (2006).

94. *Id.* § 461 (stopping the allotment of Indian land).

95. *Id.*

96. *Id.* § 462.

97. *Id.* § 476; see, e.g., Clara Sue Kidwell, *Ada Deer*, in *THE NEW WARRIORS: NATIVE AMERICAN LEADERS SINCE 1900*, at 239, 241 (R. David Edmunds ed., 2001). “In 1934, after the passage of the Indian Reorganization Act (IRA), Commissioner of Indian Affairs John Collier urged the Menominees and other tribes to adopt a BIA-sponsored, tribal constitution that would alter their

for Tribes to establish federally chartered corporations.⁹⁸ Yet the negative consequences of the allotment policy continue to burden Indian Country and weigh down efforts of economic development for Tribes.

B. Tribal Governmental Jurisdiction and Revenue Consequences of Trust Status for Tribal Lands

Lands and people within reservation boundaries would intuitively be part of tribal territorial jurisdiction. However, under the U.S. government allotment process, lands within reservation boundaries owned by non-Indians may be exempt from certain types of tribal jurisdiction, with state jurisdiction as the default.⁹⁹ According to federal Indian law, lands within reservation boundaries must be placed in trust status with the U.S. government for clear tribal regulation in areas such as taxation, hunting, and fishing regulation.¹⁰⁰ This protective trust status for land was created through the Allotment Act. In effect, the U.S. government holds the deed and therefore, legal title, to the tribal member's allotment in trust status for the land to be considered within the full tribal jurisdiction.¹⁰¹ Tribally owned lands not placed in trust status with the U.S. government have been held to be subject to state property taxation.¹⁰² Non-trust status lands owned by tribal citizens and the Tribe itself within reservations or tribal communities are presumptively under tribal jurisdiction and regulation.¹⁰³ Lands held in trust status are exempt from state and local taxes but are no longer managed by the tribal owner. Trust-status lands are heavily regulated by the BIA.

Through the allotment policy and its contingent policy of the trust land system, Indian Country was relegated to the tribal lands remaining after large land cessions, large-scale purchasing of lands designated as "surplus" after allotment, and those lands held in trust or restricted status.¹⁰⁴ Land as the basis of capital asset creation is of primary importance to the foundation of economic prosperity in the nineteenth and twentieth century. Trust land is inalienable and cannot be sold, taxed, mortgaged, or used for collateral. However, trust-land restrictions ef-

system of government." *Id.*

98. 25 U.S.C. § 477.

99. *See, e.g.,* Montana v. United States, 450 U.S. 544, 564-65 (1981) (holding that the Crow Tribe lacked regulatory authority over non-member hunting and fishing on fee lands within the reservation boundaries).

100. *See id.*

101. *See* S. James Anaya, *International Law and U.S. Trust Responsibility Toward Native Americans*, in NATIVE VOICES: AMERICAN INDIAN IDENTITY & RESISTANCE 155, 172 (Richard A. Grounds, George E. Tinker & David E. Wilkins eds., 2003).

102. *See* County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation, 502 U.S. 251, 270 (1992).

103. *See* COHEN'S, *supra* note 40, at 965-974. "The term 'fee land' in the jurisdictional context thus has not been used to include lands within reservation boundaries that are held in fee by tribes and their members." *Id.* at 967; *see also* Gobin v. Snohomish County, 304 F.3d 909 (9th Cir. 2002).

104. *See supra* Part III.

fectively limit a tribe's revenue base and limit the ability for either a tribe or an individual to utilize the primary asset—land and resources derived from the land.¹⁰⁵ These restrictions on federal trust land have had several negative economic impacts on Tribal Nations and individual Native Americans.

Trust land has had a major negative impact on tribal governments' ability to fund basic governmental services.¹⁰⁶ Property taxes cannot be assessed against trust land because there is no ability to seize the property. Other common methods of taxation that most governments take for granted have been severely limited by a long series of U.S. Supreme Court decisions.¹⁰⁷ Without tax revenues, Tribes do not have the revenue to fund basic services.¹⁰⁸

Not surprisingly, the BIA runs a national tribal school system,¹⁰⁹ a national law enforcement program within Indian country,¹¹⁰ and a national reservation roads program.¹¹¹ When combined with the BIA management responsibility for tribal land, almost all of the BIA's current responsibilities are the result of an attempt to mitigate the negative impacts of federal trust land on the ability of tribal governments to fund their own services through the normal taxation process. With the BIA's annual budget, in the range of \$2 billion dollars, there are still severe underfunding of tribal programs and dire needs in the delivery of services in Indian Country.¹¹²

105. See, e.g., Ezekiel J.N. Fletcher, *Negotiating Meaningful Concessions from States in Gaming Compacts to Further Tribal Economic Development: Satisfying the "Economic Benefits" Test*, 54 S.D. L. REV. 419, 441-42 (2009) (describing the loss in value when a Tribe purchases a property, renovates the property, and then places it in trust status as leading to zero value in terms of leveraging the property for acquiring a loan on the property's new equity from the renovations).

106. See *Oversight Hearing on Economic Development in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 109th Cong. 115 (2006) [hereinafter *Hearing on Economic Development*] (statement of Lance Morgan, CEO of Ho-Chunk, Inc.), available at <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg504/pdf/CHRG-109shrg504.pdf>. "Trust Land can't be taxed by anyone including tribal governments themselves. This prevents tribes from using local property tax dollars and tax-exempt bonds to implement basic Government services." *Id.*

107. See EagleWoman, *supra* note 66, at 53-70.

108. See Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue*, 80 N.D. L. REV. 759, 768-73 (2004).

109. McCarthy, *supra* note 52, at 129-30.

The Office of Indian Education Programs ("OIEP") within the BIA is charged with the responsibility for administering BIA's education programs. There are approximately 541,000 elementary and secondary-aged Indian students in the United States, about 49,000 of whom are enrolled in 185 federal Indian schools, 64 of which are operated by the BIA, with the remainder operated by Indian tribes. The BIA school system includes elementary, secondary, and boarding schools located on 63 reservations in 23 states. BIA also provides for the education of about 30,000 adult Indian students at 25 BIA-funded Tribally controlled community colleges and universities and an additional 1,600 Indian adults at two colleges operated by the BIA.

Id.

110. *Id.* at 52. "The BIA is responsible for overall policy development and implementation of the Indian Law Enforcement Reform Act, for its own law enforcement programs and for law enforcement activities of contracted tribes." *Id.*

111. *Id.* at 82-83; see also Federal Lands Highway, The Indian Reservation Roads/Bridges Program, <http://flh.fhwa.dot.gov/programs/irr/> (last visited Apr. 8, 2009).

112. See U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS: INDIAN AFFAIRS, at BH-77

Because of the tie-in between trust status of tribal lands and the recognition of full tribal jurisdiction, Tribes actively continue to reacquire lands lost through allotment within their reservation borders and to apply for trust status for those reacquired lands.¹¹³ The trust application process involves a sixteen-step process by the BIA for on-reservation discretionary trust acquisitions.¹¹⁴ There are no time limits within the BIA regulations for the fee-to-trust process, except the notice provisions for state and local governments¹¹⁵ and the provisions for publication of the trust decision in the Federal Register.¹¹⁶

As a result, the fee-to-trust process has been painfully slow with the DOI reporting 1,935 requests in process during a Senate Indian Affairs Committee hearing on December 9, 2009.¹¹⁷ The Tribal Chairman of the Grand Traverse Band of Ottawa and Chippewa Indians, the Honorable Derek J. Bailey, also provided testimony at the hearing:

While the restoration of a small portion of our territory through the land-into-trust process has been essential to the revitalization of our Tribe, we cannot function in a fully effective manner as a government or provide our citizens with adequate services without additional lands. Unfortunately, the land-into-trust process has become tortuously slow and complicated. As is the case with so many other Tribes, we have been stymied by the failure of the Department to act on trust applications for years, even when those applications are not objected to by the State or local units of government, and even when they pertain to lands that would allow us to provide critical services to our community.¹¹⁸

Obstacles surround the land-into-trust process with the U.S. government,¹¹⁹ and Tribes are stuck in a no-win situation that deprives them of regaining homelands, allows for contests over jurisdiction and regulatory actions, and delays economic development plans.¹²⁰

to BH-78 (2010), available at <http://www.doi.gov/budget/2010/10Hilites/BH077.pdf>; see also U.S. COMM'N ON CIVIL RIGHTS, A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY, at ix (2003), available at <http://www.usccr.gov/pubs/na0703/na0204.pdf>.

113. See 25 U.S.C. § 465 (2006) (authorizing the secretary of the interior to take lands into trust under the Indian Reorganization Act).

114. U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS: ACQUISITION OF TITLE TO LAND HELD IN FEE OR RESTRICTED FEE 16-29 (2008), available at <http://www.aic-inc.org/PDF%20files/FeeToTrustHandbook1.0.pdf>.

115. See 25 C.F.R. § 151.10 (2009).

116. See 25 C.F.R. § 151.12 (2009).

117. See *id.* (statement of George Skibine, Principal Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior), available at http://indian.senate.gov/public/_files/GeorgeSkibine%20testimony0.pdf.

118. *Oversight Hearing on the Current Status of Backlogs: Hearing Before the S. Comm. on Indian Affairs*, 111th Cong. (2009) (statement of the Honorable Derek J. Bailey, Chairman, Grand Traverse Band of Ottawa and Chippewa Indians), available at http://indian.senate.gov/public/_files/DerekBaileytestimony.pdf.

119. See, e.g., Dean Suagee, *Suagee: Getting Land into Federal Trust Status*, INDIAN COUNTRY TODAY, Sept. 1, 2005, available at <http://www.indiancountrytoday.com/archive/28163339.html> (discussing the additional requirement that Tribes conduct a National Environmental Protection Act assessment prior to the BIA's acceptance of land into trust status).

120. State governments also have proven to be impediments for Tribes seeking to regain homelands by opposing applications for land-into-trust. See, e.g., David Melmer, *Land into Trust Impediments*, INDIAN COUNTRY TODAY, Feb. 14, 2005, available at <http://www.indiancountrytoday.com>.

C. Poverty Conditions for Individual Tribal Citizens with the BIA as Trust-Land Manager

With the BIA as the trust-land manager for tribal lands, individual Indians have a limited role in the managerial decisions for the lands they own.¹²¹ As mentioned previously, the advantages for individual landowners placing lands into trust status include freedom from state and local property taxation and foreclosure actions, full tribal jurisdiction on the land, and inalienability of the land. The disadvantages result from having an outside governmental agency acting as land manager with approval authority over land usage, leasing, and encumbrances on the land.¹²² Additionally, the trust land status places the collection of lease rents, royalties, or any other income derived from the land under the BIA who then has the responsibility of distributing the landowner's funds.¹²³ This collection and distribution responsibility has been severely mismanaged by the DOI, the Department of the Treasury (DOT), and the BIA for many decades.

A federal study in 1984 demonstrated that *two-thirds of the BIA budget was consumed by the bureau itself*. As a result of this finding and the excessive regulatory power of the bureau, administrative changes were launched. Despite revelations about inefficiency, by 1994 only an estimated twenty cents of each dollar received by the BIA actually reached the Indians for whom it was intended. The worst BIA scandal concerns individual Indian trust accounts.¹²⁴

Thus, federal mismanagement has resulted in landowners not receiving the payments to which they are entitled that has further sunk tribal citizens into poverty.¹²⁵

On June 10, 1996, the Native American Rights Fund filed a class action lawsuit with Eloise Cobell as the lead plaintiff on behalf of Indian landowners whose lands were held in trust by the United States and managed by the BIA.¹²⁶ The lawsuit claimed that the landowners were

com/archive/28171439.html. "J.C. Crawford, chairman of the Sisseton-Wahpeton Tribe, told the State-Tribal Relations Committee that comments from an official, submitted as a reason not to take land into trust, stated that South Dakota tribes had become civilized and didn't need any more land." *Id.*

121. See COHEN'S, *supra* note 40, at 1286. "Most tribal land is held in trust by the federal government, and cannot be sold, taxed, or encumbered without federal approval." *Id.*

122. The General Allotment Act also created the fractionation problem, which has resulted in excessive administrative expense for the BIA. See, e.g., Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 VAND. L. REV. 1559, 1619 (2001).

123. 25 U.S.C. § 161 (2006); see also Angelique EagleWoman, *The Bureau of Indian Affairs and Reservations*, in 2 HANDBOOK OF NORTH AMERICAN INDIANS, *supra* note 62.

124. WENDELL H. OSWALT, THIS LAND WAS THEIRS: A STUDY OF NATIVE NORTH AMERICANS 41 (8th ed., 2006) (emphasis in original).

125. See U.S. COMM'N ON CIVIL RIGHTS, *supra* note 112, at ix. "BIA's mismanagement of Individual Indian Money trust accounts has denied Native Americans financial resources that could be applied toward basic needs that BIA programs fail to provide." *Id.*

126. See Native American Rights Fund, Individual Indian Money (IIM) Accounts *Cobell v. Kempthorne*: Fact Sheet for IIM Account Holders and Other Individual Indian Trust Beneficiaries, <http://www.narf.org/cases/iimgeninfo.htm> (last visited Apr. 8, 2010).

owed over \$47 billion dollars from the imposition of trust status by the Allotment Act of 1887.¹²⁷ Over a decade later, the federal courts have wrangled with the mismanagement of Individual Indian Money (IIM) accounts by the DOI and the DOT. DOI officials have been held in contempt for failure to provide requested accounting documents to the court.¹²⁸ One federal court ruling held that an accounting was impossible.¹²⁹ The ruling was reversed on appeal when the federal appeals court reaffirmed the order for the DOI to provide an accounting.¹³⁰

In late 2009, DOI officials met with attorneys representing the IIM account holders, and the parties agreed to a proposed settlement in the amount of \$1.4 billion, the establishment of a land consolidation fund for fractionated landholdings in the amount of \$2 billion, and an American Indian education scholarship fund.¹³¹ Any settlement must be judicially and congressionally approved prior to implementation for the Native American beneficiaries.¹³² This settlement does not address the additional lawsuits for an accounting filed on behalf of numerous tribes in the federal courts.¹³³

D. Remediating the Negative Consequences of Trust Status and Preserving Tribal Jurisdiction for Economic Prosperity

To remedy the negative consequences of trust land status, the solution is simple—full tribal territorial jurisdiction within tribal reservation and community boundaries. The U.S. government must end its assertion of federal control over the tribal land base and resources by federal recognition of tribal property systems with permanent tribal jurisdiction to regulate the land base.¹³⁴ This step is necessary to provide for the process of freeing up the underlying asset base of Indian Country. Non-tribal members purchasing or leasing land within tribal jurisdictions would be able to do so with the acknowledgement that the land will con-

127. See Indianz.com, Judge Issues Final Ruling in *Cobell* Trust Case, Aug. 7, 2008, <http://64.38.12.138/News/2008/010226.asp>.

128. See, e.g., *Cobell v. Babbitt*, 37 F. Supp. 2d 6, 9 (D.D.C. 1998).

129. *Cobell v. Kempthorne*, 532 F. Supp. 2d 37, 39 (D.D.C. 2008), *rev'd sub nom. Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009).

130. *Salazar*, 573 F.3d at 809 (holding that an equitable accounting was statutorily due to Indian beneficiaries).

131. See Class Action Settlement Agreement at 38, 51, *Cobell v. Salazar*, No. 1:96CV01285-JR (D.D.C. Dec. 7, 2009), available at http://www.cobellsettlement.com/docs/2009.12.07_Settlement_Agreement.pdf; see also U.S. Dep't of the Interior, Interior and Justice Department Announce Settlement of *Cobell* Lawsuit, Dec. 8, 2009, <http://www.doi.gov/news/Settlement-of-Cobell-Lawsuit.cfm>.

132. See Indianz.com, Mostly Praise for \$3.4B Settlement to *Cobell* Lawsuit, Dec. 9, 2009, <http://64.38.12.138/News/2009/017694.asp>. As of the date of this Article, the settlement has not been approved. See *id.*

133. See Indianz.com, Tribes File Class Action Trust Accounting Lawsuit, Jan. 4, 2007, <http://64.38.12.138/News/2007/017502.asp>.

134. See John L. Williams, *Paving the Way for the Future: Potential Structures for Tribal Economic Development*, 2 INDIGENOUS PEOPLES J.L. CULTURE & RESISTANCE 59, 83-84 (2005) (discussing the negative consequences for tribes when the federal government does not recognize territorial tribal jurisdiction).

tinue to be permanently subject to tribal law and regulation. This is the situation found in every jurisdiction around the world. For example, purchasing land in France is acquiescing to French laws of property ownership, zoning, and regulation.

In order to ensure that the tribal land base is not completely transferred out of Indian ownership, tribal laws may condition alienation. Historically, Tribal Nations had such restrictions in place.¹³⁵ Alienation may be restricted with a right of first refusal to the tribal government or a priority system for Native American buyers. These types of restrictions represent a half-step in entering the capitalist market economy as property owners. The tribal restrictions may limit the valuation and utilization of the property amounts for tribal land, however, the ability to maintain Native American ownership over generations would likely ultimately outweigh such economic limitations.

In the global economy, the United States is one of the major contributors to international aid and economic assistance. It is entirely possible for Tribal Nations to continue to receive grants and funding from the United States and be recognized as sovereign entities with their territorial jurisdiction intact.¹³⁶ Hundreds of countries that are recognized members of the United Nations, as nation-states, receive outside aid and remain sovereign nations with complete authority over their lands and all who enter upon those lands.¹³⁷ This should be the direction that Tribal Nations move toward as the trustee relationship between Tribal Nations and the United States is returned to the treaty-partner relationship that existed prior to the unlawful imposition of U.S. military control over the tribal homeland.

United States capitalism requires fundamental property ownership as a building block. To enter into the contemporary economic flow of commerce, capital assets are required, with the most fundamental asset for wealth creation being land ownership.¹³⁸ “Only the strong, legal right of property creates potential for the maximum prosperity of nations and materially explains to nationbuilders in less-developed countries the economic success of the West.”¹³⁹ For all governments, land ownership is inherently linked with jurisdiction and should apply as well to tribal governments.¹⁴⁰ Without this fundamental asset and the juris-

135. See Bobroff, *supra* note 122, at 1602. “Indian property systems and their stories about the land reflected the primacy of land to their societies. Accordingly, their property laws resisted the alienation of land to outsiders.” *Id.*

136. See VINE DELORIA, JR., *BEHIND THE TRAIL OF BROKEN TREATIES* 172-75 (1974).

137. See, e.g., U.S. DEP’T OF STATE, SUMMARY AND HIGHLIGHTS, INT’L AFF., FUNCTION 150, FISCAL YEAR 2009 BUDGET REQUEST 65-80, available at <http://www.state.gov/documents/organization/100014.pdf>.

138. See O. Lee Reed, *Nationbuilding 101: Reductionism in Property, Liberty, and Corporate Governance*, 36 VAND. J. TRANSNAT’L L. 673, 683 (2003).

139. *Id.* at 683-84.

140. See *id.* at 699-700 (describing the U.S. Constitution’s framers as viewing property rights as

diction over the land base, Tribal Nations are left to suffer in intergenerational poverty under an unworkable trustee relationship with one of the wealthiest nations in the world.¹⁴¹

V. ABJECT INTERGENERATIONAL POVERTY FOR TRIBAL PEOPLES

The most consistent policy of the United States towards Tribes has been one of deceit and purposeful oppression.¹⁴² Historical and contemporary actions of the United States serve to guarantee that tribal citizens will not have an adequate quality of life in terms of sufficient health care services, good housing, access to education, adequate land to secure an economy, revenue streams for the support of tribal services, income opportunities for the majority of tribal citizens, and the ability of tribal government to function effectively to alleviate these deplorable conditions.¹⁴³

During the removal and reservation eras of U.S. Indian policy, most tribal citizens lived in abject poverty as refugees after extensive U.S. military campaigns targeted them.¹⁴⁴ The poverty level during the 1800s and early 1900s for most tribal citizens is not easy to ascertain because of its depth. Tribal citizens died of starvation and disease on a regular basis in government-run boarding schools, in tribal communities, and on reservations throughout the early 1900s.¹⁴⁵ One major U.S. government study described the thoroughly deplorable living conditions of tribal citizens—the 1928 “Meriam Report.”

In the first chapter of the Meriam Report, the general findings indicate, “[a]n overwhelming majority of the Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization.”¹⁴⁶ The Meriam Report detailed

“sacred” and the formation of civil government as linked to the protection of such property rights).

141. See Stacy L. Leeds, *Moving Toward Exclusive Tribal Autonomy over Lands and Natural Resources*, 46 NAT. RESOURCES J. 439, 449 (2006).

It is undisputed that the allotment policy was a total failure, yet the rationales for putting that policy into motion have never been meaningfully re-evaluated. Instead, the role of the federal government as trustee for tribal lands has been converted from a temporary measure to a permanent solution—a solution that is unmanageable for the federal government and detrimental to the tribes.

Id.

142. See Nancy Bear, *First Annual Kickapoo Summit*, in SOVEREIGNTY, COLONIALISM AND THE INDIGENOUS NATIONS: A READER 38-39 (Robert Odawi Porter ed., 2005) (describing the policies of ethnic cleansing, extermination, assimilation, and colonialism by the United States).

143. See *supra* Part III.B.

144. See BARBARA PERRY, POLICING RACE AND PLACE IN INDIAN COUNTRY: OVER AND UNDERENFORCEMENT 38 (2009).

145. See SuAnn M. Reddick, *Education: Boarding Schools*, in 1 ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW, *supra* note 81, at 272, 274.

146. THE INST. FOR GOV'T RESEARCH STUDIES IN ADMIN., THE PROBLEM OF INDIAN ADMINISTRATION (1928), available at http://www.alaskool.org/native_ed/research_reports/Indian_Admin/Indian_Admin_Problms.html (follow “Chapter I. General Summary of Findings and Recommendations” hyperlink) (This report is commonly referred to as “The Meriam Report” after the technical director Lewis Meriam.).

that the conditions observed at that time for Native Americans were part of a “vicious circle of poverty and maladjustment.”¹⁴⁷ From deplorable living conditions for most families to the substandard government boarding schools forced onto Native American children, the Meriam Report presented a depressing image of the living situation experienced by Native people.¹⁴⁸ In discussing the economic conditions of most Native families, the report blamed the U.S. Indian Office for the system of rations that demoralized Native people, the failure to protect tribal assets to reap economic benefits, and the placement of Native Americans on the worst lands within their homelands as part of the allotment policy.

In justice to the Indians, it should be said that many of them are living on lands from which a trained and experienced white man could scarcely wrest a reasonable living. In some instances the land originally set apart for the Indians was of little value for agricultural operations other than grazing. . . . Frequently the better sections of the land originally set apart for the Indians have fallen into the hands of the whites, and the Indians have retreated to the poorer lands remote from markets.¹⁴⁹

Overall, the Meriam Report signaled to the U.S. Congress that Native Americans were subjected to abject poverty conditions as a result of U.S. Indian policy.

A. Lack of Statistical Data on Tribal Poverty Levels

How poverty-stricken were Native Americans from the 1800s to the late 1990s? There is very little data to determine the poverty level.¹⁵⁰ Anecdotal accounts describe Natives living in bare subsistence conditions or being on the verge of starvation for most of this time period. The U.S. Census Bureau did not have reliable population measures or income statistics for Native Americans for much of this time period.¹⁵¹ In fact, as late as 1999, the National Congress of the American Indians (NCAI) lodged protests to the U.S. Commission on Civil Rights that the U.S. Census conducted in 1990 severely undercounted people of color and those living in poverty in urban and rural areas.¹⁵² “The undercount of American Indians and Alaska Natives in 1990 was the most

147. *Id.*

148. *Id.*

149. *Id.*

150. See, e.g., WILLIAM SELTZER, EXCLUDING INDIANS NOT TAXED: FEDERAL CENSUSES AND NATIVE-AMERICANS IN THE 19TH CENTURY 4 (1999), available at <https://pantherfile.uwm.edu/margo/www/govstat/ind.pdf>.

151. See U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU: TRIBAL GOVERNMENTS LIAISON PROGRAM HANDBOOK 3 (2000), available at <http://www.census.gov/prod/cen2000/d-3288.pdf>. “1890-1950 Census-takers mainly use *observation* to identify American Indians and Alaska Natives.” *Id.*

152. See Jack C. Jackson, Jr., Dir. of Governmental Affairs, Nat'l Cong. of the Am. Indians, Statement on the Importance of an Accurate Census to American Indians and Alaska Natives Before the U.S. Commission on Civil Rights, Washington, D.C. 3 (Feb. 12, 1999), available at <http://www.ncai.org/ncai/resource/documents/governance/cvrightcensus.htm>.

disproportionate of all.”¹⁵³ In testimony before the House Committee on Government Reform, the NCAI Director of Governmental Affairs, Jack C. Jackson, Jr., elaborated on the undercount of American Indians as follows:

According to the post-enumeration survey conducted as part of the 1990 census, the net national undercount was 1.6 percent. By comparison, about 4.5 percent of all Indians (nearly 175,000 people) weren't counted. Most alarming, the census missed 12.2 percent of Indians living on reservations. Like all children, Indian children also were missed at a higher rate than the population as a whole; 6.2 percent were left out of the census. And young Indian males (age 18-29), like their peers in other non-white population subgroups, were more likely to be missed: 6.4 percent weren't counted.¹⁵⁴

In recent testimony before the U.S. Senate Committee on Indian Affairs, the Deputy Assistant Secretary for Indian Affairs, Del Laverdure, provided information on the unemployment rates found in most tribal communities: “While the nationwide unemployment rate hovers around a distressing 10 percent, some reservation[s] face unemployment rates of up to 80 percent. Chronic joblessness often seems endemic to many parts of Indian Country, resisting all antidotes, and plaguing one generation to the next.”¹⁵⁵

With poverty, there are attendant human problems such as stress, high blood pressure, and lack of high-quality fresh foods, which leads to diabetes, heart disease, and other dietary issues that require healthcare often not available for Native people.¹⁵⁶ For Native Americans, the disproportionate poverty experienced has resulted in decreased life expectancy and quality of life.

Native Americans have a lower life expectancy—nearly six years less—and higher disease occurrence than other racial/ethnic groups. Roughly 13 percent of Native American deaths occur among those under the age of 25, a rate three times more than that of the total U.S. population. Native American youth are more than twice as likely to commit suicide, and nearly 70 percent of all suicidal acts in Indian Country involve alcohol. Native Americans are 670 percent more likely to die from alcoholism, 650 percent more likely to die from tuberculosis, 318 percent more likely to die from diabetes, and 204 percent more likely to suffer accidental death when compared with other groups. These disparities exist because of dis-

153. *Id.*

154. *Oversight of the 2000 Census: Community Based Appropriations for a Better Enumeration: Hearing Before the H. Comm. on Gov't Reform*, 106th Cong. 109 (1999) (statement of Jack C. Jackson, Jr., Director of Governmental Affairs, National Congress of the American Indians), available at <http://www.gpo.gov/fdsys/pkg/CHRG-106hhrg10657800/pdf/CHRG-106hhrg10657800.pdf>.

155. *Unemployment on Indian Reservations at 50%: The Urgent Need to Create Jobs in Indian Country: Hearing Before S. Comm. on Indian Affairs*, 111th Cong. (2010) (statement of Donald Laverdure, Deputy Assistant Sec'y of Indian Affairs), available at http://www.doi.gov/ocl/2006/IndianUnemployment_012810.htm.

156. See NAT'L CONG. OF AM. INDIANS, THROUGH THE EYES OF OUR CHILDREN: HOPE FOR A RESTORED NATIVE AMERICA, INDIAN COUNTRY FY 2009 BUDGET REQUEST 12 (2009), available at http://www.ncai.org/ncai/ncai_Final_book.pdf. “On a per capita basis, American Indians and Alaska Natives receive half the amount spent on federal prisoners for healthcare.” *Id.*

proportionate poverty, poor education, cultural differences, and the absence of adequate health service delivery in most Native communities.¹⁵⁷

In addition, poverty may result in psychological problems; escapism through drugs and alcohol; family issues that may become exacerbated leading to domestic violence and other dysfunctions; and societal problems arising from limited choices for money-making opportunities that may lead to involvement in the criminal justice system (such as turning to criminal activity or other high-risk activities).¹⁵⁸

The poverty reflection in tribal communities exists in housing conditions, broken-down vehicles, lack of proper recycling, poorly-dressed children, lack of community care for buildings and property, and generally depressed looking neighborhoods in a state of dilapidation. “Native Americans rank at or near the bottom of nearly every social, health, and economic indicator.”¹⁵⁹ These conditions have plagued many tribal communities for too many decades while under the “guardianship” of the United States as trustee.

In the early 1970s, the American Indian Movement group responded to a request for assistance on the Pine Ridge Reservation in South Dakota. Many of the tribal citizens were living in fear and economic crisis while U.S. policymakers refused to investigate corruption of U.S.-condoned tribal leadership.

Pine Ridge reservation, home to some twelve thousand Oglala Sioux Indians, was a scandalous exhibit of economic racism. In early 1973 Pine Ridge was a scene of desolation. Most people lived in tarpaper shacks without running water, electricity, or indoor plumbing. Some lived in small, ancient log cabins with dirt floors. One family’s “home” was a tiny, ramshackle 1920s trailer. Its owner, with typical Oglala humor, told me his floor space was the size of a “white man’s throw rug.” At least three-quarters of the people were in desperate need of decent housing. The average yearly income on the rez was \$1,500. Shannon County, which the reservation is part of, was then and is to this day the poorest of all the more than three thousand counties in America.¹⁶⁰

Nicknames are commonly given to tribal housing areas, such as “the ghetto” or “the last resort,” illustrating a lack of pride in community. The deplorable state of housing for tribal communities has garnered international attention in recent years. Particularly, the situation for tribal citizens living on the Pine Ridge Reservation twenty years after the above description continues to be a state of substandard conditions for human habitation.

157. U.S. COMM’N ON CIVIL RIGHTS, *supra* note 112, at 34-35.

158. See *Examining Proposals to Create Jobs and Stimulate Indian Country Economies: Hearing Before the S. Comm. on Indian Affairs*, 111th Cong. 17-18 (2009) (statement of Jackie Johnson-Pata, Executive Dir., National Congress of American Indians), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg5/pdf/CHRG-111shrg5.pdf> (describing Tribal Socio-Economic Conditions).

159. U.S. COMM’N ON CIVIL RIGHTS, *supra* note 112, at 8.

160. DENNIS BANKS & RICHARD ERDOES, *OJIBWA WARRIOR: DENNIS BANKS AND THE RISE OF THE AMERICAN INDIAN MOVEMENT* 145 (2004).

The United Nations Rapporteur on the Right to Adequate Housing scheduled a visit to the Pine Ridge Reservation for November 11, 2009, to see firsthand the housing conditions that the Oglala Lakota peoples have been forced to endure as treaty partners with the United States.¹⁶¹ The International Indian Treaty Council had submitted a report detailing the inhumane housing conditions at Pine Ridge and in other tribal communities. The report included the following:

[H]ousing built and indirectly maintained by the U.S. Department of Housing and Urban Development (through thoroughly inadequate grants in aid to the Lakota Oglala Sioux Pine Ridge Reservation) is in a deplorable state. Holes in the wall are inadequately repaired by the residents with duct tape and cardboard, mold is a constant menace to health, the units are severely overcrowded, and trash is not collected, among many housing problems. The Oglala Pine Ridge Reservation also raises another problem of many Indian Reservations and their relationship to the United States. The Lakota Nation, among other Indian Nations, is a party to treaties with the United States, signed in the mid and late 1800's. Among the United States Treaty Obligations is the provision of subsistence and housing, guaranteed to them for their stolen lands and the extermination of their primary means of subsistence, the Buffalo.¹⁶²

When tribal citizens have filed lawsuits to hold the United States and its federal agencies accountable for deplorable housing conditions, the U.S. federal courts have dismissed these actions, denying that the United States has a trust responsibility for providing adequate housing.¹⁶³ Owning a house is the typical asset for a family in the United States, however, Native Americans have been forced into being “lifelong renters” because of the federal trust status of tribal and individually owned lands that bars a normal mortgage to build and purchase a home.¹⁶⁴ Without the opportunity to be homeowners, tribal citizens must dwell in the substandard government housing on reservations or in tribal communities often shared with other family members who have been wait-listed for community housing.¹⁶⁵

161. See Press Release, International Indian Treaty Council, United Nations Official to Visit Pine Ridge Reservation to Investigate Housing Conditions (Oct. 11, 2009), available at http://www.treatycouncil.org/PDFs/IITCPR_UNRapportHousingVisit_101109FINAL.pdf.

162. *Id.*

163. *E.g.*, *Marceau v. Blackfeet Hous. Auth.*, 540 F.3d 916, 921-28 (9th Cir. 2008) (holding that the U.S. Department of Housing and Urban Development had not assumed the U.S. governmental trust responsibility to tribal members and, therefore, dismissing that claim); see also U.S. Dep't of Hous. & Urban Dev., Indian Home Loan Guarantee Program (Section 184), <http://www.hud.gov/offices/pih/ih/homeownership/184/index.cfm> (last visited Apr. 8, 2010). But see *Housing Issues in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 110th Cong. 14 (2007) (statement of John Yellow Bird Steele, President, Oglala Sioux Tribal Council), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg65/pdf/CHRG-110shrg65.pdf> (stating that he was unaware of any tribal member at Pine Ridge utilizing Section 184 to purchase a home or of any bank in the area who would work with a tribal member for a loan).

164. See *Hearing on Economic Development*, *supra* note 106, at 115. “Trust land also killed home ownership in Indian country. Owning a home has always been a path to create wealth in the United States. But you cannot get a normal mortgage on trust land. We have become life long renters.” *Id.*

165. See *Housing Issues in Indian Country: Hearing Before the S. Comm. on Indian Affairs*,

B. Individual Economics and Per Capita Payments

In terms of the economics of individual tribal citizens, “boom and bust” has been the primary mode of financial wealth in Indian Country since the negotiation of treaties in the late 1700s until the present day. Treaty payments were distributed on a per capita basis as designated by U.S. officials within treaty documents.¹⁶⁶ Rations, agricultural implements, and payments for government boarding schools, facilities, and services were deducted from the land payments amounts. The Indian Claims Commission took the process to a new level by diminishing any land payment amount still due from the United States in the 1940s and 1950s with deductions for any service provided by the United States as valued by the United States.¹⁶⁷ With land-settlement-payment funds distributed on an individual basis to those listed on the federal enrollment lists, the concept of communal wealth has been forever disrupted by the per capita payment.¹⁶⁸

The per capita payment has become a mainstay in tribal economics. Any settlement with the United States often includes a per capita portion alongside a payment to the tribal government(s) involved.¹⁶⁹ The boom and bust of per capita payments translates into shopping sprees in border towns with little wealth remaining to sustain a fractured tribal economy. Desperate poverty conditions encourage tribal citizens to lobby for per capita payments when any large sum enters the tribal coffers.¹⁷⁰ With tribal gaming becoming a new form of governmental business, tribal citizens have sought per capita payments to raise their standard of living and be on par with the surrounding communities.¹⁷¹ Basic

110th Cong. 7-8 (2007) (statement of Dr. Jon Perez, Director of Behavioral Health, Indian Health Services), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg65/pdf/CHRG-110shrg65.pdf>.

166. See Nell Jessup Newton, *Federal Power over Indians: Its Sources, Scope, and Limitations*, 132 U. PA. L. REV. 195, 221 (1984). “Furthermore, money promised the tribe as an entity in treaties could be paid to members per capita, thus drastically diminishing the tribe’s resources.” *Id.*

167. See Nell Jessup Newton, *Indian Claims in the Courts of the Conqueror*, 41 AM. U. L. REV. 753, 819 (1992). “In the Indian Claims Commission Act, for example, Congress provided for ‘gratuitous offsets.’ Thus, the Government had the opportunity to present evidence of literally every blanket given to a tribe to offset the judgment.” *Id.*

168. An extreme example of this came in the form of the termination era when tribal citizens were coerced into receiving land settlement payments as a condition of accepting termination of their federal tribal recognition. See, e.g., Kidwell, *supra* note 97, at 243. “While the Menominees voted to accept termination as a condition for receiving their cash settlement, Congress moved toward finalizing its termination policies on a national basis.” *Id.*

169. See Mendota Mdewakanton Dakota Community, BIA Official Memo to Prospective Indians (2008), <http://mendotadakota.com/mn/2008/04/06/us-department-of-the-interior-on-the-web-bureau-of-indian-affairs/> (last visited Apr. 8, 2010) (describing government payments for land settlements or from tribal revenues on a per capita basis); see also U.S. Dep’t of the Interior, Office of the Special Tr. for Am. Indians, Frequently Asked Questions (FAQs) from IIM Beneficiaries, <http://www.doi.gov/ost/faqs/index.html#7> (last visited Apr. 8, 2010).

170. See, e.g., *Blackfeet Tribal Business Council Announces Largest Per Capita in Decades*, INDIAN COUNTRY TODAY, Dec. 22, 2009, available at <http://www.indiancountrytoday.com/archive/79901487.html> (announcing a \$200 per capita payment to every tribal member).

171. Tribal citizens receiving per capita gaming distributions are subject to federal income taxes on those distributions according to the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(b)(3)(D) (2006).

needs such as school clothes for children, athletic gear for teenagers, payment of utility bills, necessary home repairs for safe habitation, the cost of gasoline for transportation to an employment site miles away from the home, gifts for holidays and birthdays, and the basic food needs of tribal citizens all justify the tribal government officials' decisions to distribute funds in a per capita manner.¹⁷²

The fleeting per capita payment accompanied by the influx of new goods into otherwise stark circumstances is an irregular occurrence in tribal communities.¹⁷³ Furthermore, individual financial management has been lacking in many tribal communities.¹⁷⁴ Banking accounts may not exist for many tribal members who do not trust local banks and who choose to do their transactions on a cash-only basis without the hassle of going into a non-Indian dominated institution to withdraw and deposit personal funds.¹⁷⁵ Border town banks have been notorious for acting in discriminatory fashion with regard to tribal citizens and tribal governments.¹⁷⁶ Some tribal governments have set up tribal credit unions and tribal banks to provide options for tribal citizens in money-management activities.¹⁷⁷

Although tribal spending energizes the local border town economies, the attitudes towards tribal citizens and tribal governments are often racist and mean-spirited.¹⁷⁸ Those attitudes may become momentarily set aside when news is released that the local tribe will be distributing a per capita payment in the coming weeks. Once the per capita monies have been spent, the racist attitudes and discriminatory practices are back in full swing.¹⁷⁹

172. See, e.g., Gale Courey Toensing, *NIGC Issues Letter-of-Violation to Yakama Nation: Nation Faces Potential \$25,000 a Day Fine*, INDIAN COUNTRY TODAY, Sept. 11, 2009, available at <http://www.indiancountrytoday.com/archive/59057842.html> (citing the Tribe for making a per capita payment of gaming revenue in time for Christmas shopping without allegedly having formal approval from the DOI).

173. See Indianz.com, *Per Capita Payments Under Tribal, Federal Scrutiny*, Sept. 26, 2005, <http://64.38.12.138/News/2005/010471.asp> (describing per capita payments as being spent quickly by tribal members, such as "at Wal-Mart in one afternoon").

174. See, e.g., *Capital Investment in Indian Country: Hearing Before the Subcomm. on Fin. Insts. of the S. Comm. on Banking, Hous. & Urban Affairs*, 107th Cong. 56 (2002) (statement of Michael B. Jandreau, Chairman, Lower Brule Sioux Tribal Council), available at <http://www.gpo.gov/fdsys/pkg/CHRG-107shrg991/pdf/CHRG-107shrg991.pdf> (recommending federal incentives to encourage banks to "increase the financial literacy for Native Americans").

175. See, e.g., *Montana/Wyoming Native First Accounts Program: Helping New Depositors to Use the Banking System*, INDIAN COUNTRY TODAY, Nov. 20, 2002, available at <http://www.indiancountrytoday.com/archive/28184734.html>.

176. See, e.g., *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct. 2709, 2714-16 (2008) (dealing with allegations by Native American plaintiffs that a border town bank engaged in discriminatory lending practices involving their family ranch business); see also Patrick Borunda, *Misconceptions Mask Opportunities in Indian Country*, 8 COMMUNITY INVESTMENTS, Summer 1996, available at <http://www.frbsf.org/publications/community/investments/cranews/8-3miscn.html> (describing the reluctance of bankers to interact in tribal economies).

177. See, e.g., *Native American Bank, N.A.*, <http://www.nabna.com/> (last visited Apr. 8, 2010).

178. See, e.g., *Civil Rights in Indian Country*, http://www.indiancivilrights.org/conference_2006.html (last visited Apr. 8, 2010).

179. See, e.g., Karen Francis, *Rights Panel: Border-Town Racism Still Alive*, GALLUP

As tribal peoples have lived within the U.S. market capitalist economy in a state of “guardianship” with the United States as trustee, intergenerational material poverty has been the result.¹⁸⁰ There has been little tangible advantage to this relationship for tribal peoples. As one commentator has stated, “[t]he dire poverty and the concomitant social problems facing Native Americans today are a direct result of federal policy, past and present, concerning the indigenous peoples of this country.”¹⁸¹ The end result is that the United States government and the citizenry it represents are accountable for imposing policies resulting in abject intergenerational poverty upon Tribal Nations and tribal citizens.

VI. TRIBAL CULTURAL WEALTH AND RESILIENCE

The hardships endured by Indigenous Peoples around the world are astounding.¹⁸² The survival of Indigenous Peoples through genocide, mass executions, torture, raiding of homes, stealing of children, removal from beloved homelands, propaganda intended to dehumanize and mock them, and other atrocities all bear witness to the resiliency and spiritual strength of the Indigenous spirit.¹⁸³ This is true for the Tribal Peoples of mid-North America as well.¹⁸⁴

A. Return to Tribal Leadership and Emphasis on Education to Regain Prosperity

Even through oppression, abject material poverty, and genocide, tribal peoples hold fast to cultural ways, ceremonies, and understandings to endure.¹⁸⁵ As part of this traditional view of the present situation in which Tribes find themselves, the old teachings of the elders will prove to lead the way for future successes. Throughout the dependency and poverty created by the Tribal-U.S. relationship, the old teachings of endurance, fair dealings, human industry, courage in the face of adversity, optimal health and skill development in anticipation of the next chal-

INDEPENDENT, Dec. 19, 2008, *available at* <http://www.gallupindependent.com/2008/12december/121908rightspanel.html>.

180. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). “Their relations to the United States resembles that of a ward to his guardian.” *Id.*

181. DEAN HOWARD SMITH, *MODERN TRIBAL DEVELOPMENT: PATHS TO SELF-SUFFICIENCY AND CULTURAL INTEGRITY IN INDIAN COUNTRY* 33 (2000).

182. See, e.g., James A.S. Musisi, *Overview*, in *INDIGENOUS PEOPLES, THE ENVIRONMENT AND LAW: AN ANTHOLOGY* 3, 9-11 (Lawrence Watters ed., 2004).

183. See UNITED NATIONS, SECRETARIAT OF THE PERMANENT FORUM ON INDIGENOUS ISSUES, *STATE OF THE WORLD’S INDIGENOUS PEOPLES* 1 (2009), *available at* http://www.un.org/esa/socdev/unpfiid/documents/SOWIP_web.pdf.

184. See *generally* DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* (1970).

185. See SMITH, *supra* note 181, at 111. “[N]early every tribal leader in the author’s knowledge views economic development as being necessary for cultural maintenance and integrity.” *Id.*

lenge, and the sharing of basic necessities with the community prior to wealth accumulation have not been focused upon.¹⁸⁶

Tribal cultural wealth and resilience sustained tribal peoples through devastating difficulties throughout the European invasion. Because of these skills, there are still tribal peoples to protect and steward the homeland.¹⁸⁷ There are still tribal peoples to pass on the teachings and hand over the leadership to the next generation. The U.S. policy of assimilation was a full frontal assault on tribal cultural wealth, integrity, values, and teachings for Native American people.

American Indian tribal institutional structures have come under tremendous pressure from east to west and north to south for over a 500-year period after contact with the outsiders that came to their homelands. Their political structures would be eroded until they crumbled, economic structures would be seriously altered, stressed, and ultimately destroyed, the health and spiritual belief systems of the tribes would be challenged, belittled, and suppressed, and ultimately, the education of American Indian children would be taken from the tribes once their other institutions had collapsed.¹⁸⁸

However, the assimilation policy of the U.S. government did not succeed in completely decimating the tribal identity, the tribal fabric of strength and resilience, and the tribal sense of caretaking and sharing embodied in kinship.¹⁸⁹ Yet U.S. assimilation policies have weakened the cultural wealth in many respects.

Through a dependence mentality, tribal communities have begun to accept lower expectations, bleak horizons, and substandard human development.¹⁹⁰ It is through the return to the old teachings that the heart of tribal communities will beat with renewed vigor and the vision the ancestors' held of the future generations will be realized. Seven generations ago in the Dakota way of life, the people planned for those who live now.¹⁹¹ Most other Tribal Nations also embrace concepts simi-

186. See CONNIE F. ERICKSON, *MANY NATIONS IN ONE: A HISTORY OF FEDERAL INDIAN POLICY 10-11* (1993), available at <http://opi.mt.gov/pdf/TitleI/fedIndianhist.pdf>.

187. According to the 2006-2008 American Community Survey 3-Year Estimates of the U.S. Census Bureau, there were 2,419,895 American Indian/Alaska Natives in the United States. U.S. Census Bureau, United States-ACS Demographic and Housing Estimates: 2006-2008, <http://factfinder.census.gov/home/saff/main.html> (follow "get data" hyperlink under "American Community Survey" heading; then follow "Data Profiles" hyperlink under "2006-2008 American Community Survey 3-Year Estimates" heading; then follow "Show Result" hyperlink) (last visited Apr. 8, 2010).

188. Wayne J. Stein, *Tribal Colleges and Universities: Supporting the Revitalization in Indian Country*, in *TRADITION AND CULTURE IN THE MILLENNIUM: TRIBAL COLLEGES AND UNIVERSITIES* 17-18 (Linda Sue Warner & Gerald E. Gipp eds., 2009).

189. See, e.g., Nat'l Museum of the Am. Indian, About the National Museum of the American Indian, <http://www.nmai.si.edu/subpage.cfm?subpage=about> (last visited Apr. 8, 2010) (describing the museum's work with tribal communities "to protect and foster their cultures by reaffirming traditions and beliefs, encouraging contemporary artistic expression, and empowering the Indian voice").

190. But see Jon Reyhner, *American Indians out of School: A Review of School-Based Causes and Solutions*, 31 J. OF AM. INDIAN EDUC., Jan. 1992, available at <http://jaie.asu.edu/v31/V31S3ind.htm> (submitting that the lack of appropriate culturally-related curriculum and a lack of non-Indian teachers that care about their students causes American Indian students to disconnect and drop out of schools).

191. See *Dakota Tradition Reveres Symbolic White Buffalo*, ROME NEWS-TRIBUNE, Oct. 20,

lar to the seven-generation principle.¹⁹² Everyone in the Tribal Nation was prayed for and sent positive intentions to carry the peoples forward through difficulties.

Leadership training occurred within every tribal society to contribute to the community storehouse of cultural wealth.

Drawing on the values they had been taught as well as on what they had learned through personal experience, Navajo grandmothers taught their children and grandchildren about “good thinking” (*yá’át’ééh ntsáakéés*) and “forward thinking” (*naas ntsáakéés*). Their teachings focused on establishing and maintaining a good life, one in which you have everything you need—no more, no less—one in which family, relatives, and neighbors live and work together in harmony. Basic to these teachings was an understanding of clanship, the maintenance of close kin ties, an appreciation and acceptance of the concept of reciprocity, an awareness of the importance of land and livestock for survival and sustenance, and a willingness to work hard toward current and future goals.¹⁹³

This leadership training must continue to restock the tribal cultural storage caches. In some tribal traditions, men’s and women’s societies demanded that only by invitation could new young men and women join who had exhibited the qualities exemplified in the societies.¹⁹⁴ The clan structure also dictated proper conduct for its members.¹⁹⁵ Young people were held to standards of excellence, moral training, endurance skills, and mental acumen. These attributes are rarely emphasized in today’s tribal communities.¹⁹⁶ The future leaders of Tribal Nations must be taught and tested in their home communities to emerge as the talented creative forces of the next generations. Tribal colleges and universities may serve as an initial step for adult tribal citizens to enter into academic training in which tribal cultural courses are available in the curriculum.¹⁹⁷ From there, they may choose to enter other programs at U.S. colleges and universities for bicultural training.

For example, many more Native men and women are following the path to a legal education.¹⁹⁸ There are law schools responding to the influx of Native law students and the numbers of advocates who support

1996, at 11-A, available at <http://news.google.com/newspapers?nid=348&dat=19961020&id=1hMwA AAAIABAJ&sjid=gTMDAAAIAIBAJ&pg=5253,4440547>.

192. See, e.g., Athena Pratt, *Seven Generation Planning*, <http://www.pia.nrcs.usda.gov/about/generation.html> (last visited Apr. 8, 2010).

193. Karen Ritts Benally, *Thinking Good: The Teachings of Navajo Grandmothers*, in AMERICAN INDIAN GRANDMOTHERS: TRADITIONS AND TRANSITIONS 25-27 (Marjorie M. Schweitzer ed., 1999).

194. See, e.g., GEORGE BIRD GRINNELL, 2 THE CHEYENNE INDIANS: THEIR HISTORY AND WAYS OF LIFE 48 (1962) (describing the seven men’s societies of the Cheyenne).

195. See, e.g., Oneida Nation, Oneida Clans, <http://www.oneidanation.org/museum/clans.aspx> (last visited Apr. 8, 2010).

196. See Gerald E. Gipp, *Leadership in American Indian Higher Education*, in TRADITION AND CULTURE IN THE MILLENNIUM, *supra* note 188, at 161.

197. See *id.* at 167.

198. The ABA reported 1,730 American Indian/Alaska Native lawyers from the 2000 census. See Am. Bar Ass’n, Statistics About Minorities in the Profession from the Census, <http://www.abanet.org/minorities/links/2000census.html> (last visited Apr. 8, 2010).

tribal sovereignty.¹⁹⁹ Native American law programs exist in many western law schools and more of them are offering courses that relate to tribal economic development and the laws impacting tribes.²⁰⁰ As Native leadership becomes versed in bicultural education, Native peoples must not lose sight of tribal values.²⁰¹ Tribal cultural wealth includes an emphasis on knowledge and intercultural understandings. Native peoples have always been adaptable without losing their sense of place in the universe.

“It’s a challenge for Crow kids. There is the Indian way, and there is the white way,” [Joseph Medicine Crow] explains. “Our students are walking that fine line with their feet on both sides, taking the good from both sides and trying to avoid the bad on both sides.”

“Do a good job straddling the two worlds, and you will not only become well-educated; you will be enlightened, and wise, and maybe even wealthy later on,” he added. “Just like Chief Plenty Coups said, ‘Education is your best weapon. With education you are the white man’s equal; without education you are his victim.’”²⁰²

By gaining educational degrees, Native peoples support the strengthening of their Tribal Nations.²⁰³

Greater numbers of publicly educated tribal citizens who are able to blend tribal cultural values with public education teachings will lead to successful management of tribal businesses and better tribal policies. For example, there are Tribal Nations that have remembered the old teachings and have a “giving culture” operating within their business operations.²⁰⁴ This giving culture includes donations to other Tribes for necessary community projects,²⁰⁵ donations to support education to students in the tribal region,²⁰⁶ donations to support the delivery of services in area communities,²⁰⁷ and donations to national organizations serving

199. See Law School Admission Council, Inc., Indian Lawyers Translators of Two Worlds, http://www.lsac.org/videostreams/Indian_Main.asp (last visited Apr. 8, 2010).

200. See Am. Indian Law Center, Inc., PLSI (Pre-Law Summer Institute), <http://www.ailec.org/PLSI.htm> (last visited Apr. 8, 2010).

201. See Marjane Ambler, *Re-Envisioning American Indian Education*, 9 TRIBAL C. J. Fall 1997, at 8, 10; see also Vernon S. Finley, *Designing a Cultural Leadership Program*, 9 TRIBAL C. J. Fall 1997, at 19-20.

202. Luella N. Brien, *Medaling in Education: Elder of the Year Teaches TCU Students to Walk on Both Sides*, 21 TRIBAL C. J. No. 3, at 15 (2010).

203. See David Melmer, *Language, Culture Key to Education*, INDIAN COUNTRY TODAY, Nov. 8, 2000, available at <http://www.indiancountrytoday.com/archive/28195809.html>.

204. See generally, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY 2008 DONATION REPORT: OVER \$40 MILLION DONATED IN 2008, available at <http://www.shakopeedakota.org/pdf/2008DonationRpt.pdf>.

205. See, e.g., The Mohegan Tribe, Positive Impact, <http://www.mohegan.nsn.us/Government/contributions.aspx> (describing the various donations to children’s programs, state and local government programs, the Smithsonian National Museum of the American Indian, and to other Tribes).

206. See, e.g., Reznets, Coeur d’Alene Tribe’s Donations to Education in Idaho Rises to \$4.5 million, <http://www.reznetnews.org/blogs/tribalog/coeur-dalene-tribes-donations-education-idaho-rises-45-million-14400> (May 28, 2008).

207. See, e.g., Art Campos, Indian Tribe Makes Key Donations: Legal Aid for Poor, Battered Women, and City of Colfax Benefit (2004), <http://www.auburnrancheria.com/news/2004-news/indian-tribe-makes-key-donations-2013-legal-aid-for-poor-battered-women-and-city-of-colfax-benefit>.

tribal peoples in educational pursuits.²⁰⁸ These examples of cultural wealth at the heart of tribal corporations and Alaska Native Corporations lead the way for the future of tribal business endeavors and prove that new material prosperity is being created in Indian Country despite the burdens imposed by the United States.²⁰⁹

B. Tribal Economics and the Future

Prior to the European invasion of North America, a great sense of spirituality permeated relationships between Native peoples and other peoples, living beings, animals, the environment, and the natural world.²¹⁰ This sense of having a place within an interconnected world infused the tribal worldview and sense of proper relations.²¹¹ Living in balance was the ultimate goal of the human being and the tribal community. These principles form the basis of Tribal Economics.²¹²

In Tribal Economics, commercial interactions are based upon fair dealings and a sense of equivalent exchange.²¹³ Value can only be determined by the participants in the exchange. Basic survival needs are not part of commercial relations because they are within the community's obligations rather than based upon an individual's bargaining power.²¹⁴ Tribal Economics embraces a sense that human beings are intended to make use of the abundance of resources provided by the earth, the animals, the waters, and the plants in a balanced manner.

Through this long history Indian economy—the production and distribution of goods and services—was not separated from Indian education, public administration, social services, art and ceremony. All were part of an integrated system founded in a world view of interdependence—the common origin and destiny—of man and nature. Indians have therefore been called the first American ecologists, the first Americans to believe in and practice reciprocity with their environment. The outstanding feature of this system is that it worked; it sustained Indian peoples and gave strength and purpose to individual Indian lives.²¹⁵

In doing so, tribal values of stewardship and balance guide tribal peoples. Tribal Economics are the default principles that govern tribal interactions.

Bringing these values to bear upon the current economic situation

208. See The Mohegan Tribe, *supra* note 205.

209. For a detailed summary of tribal businesses and Alaska Native Corporations (ANCs), see *Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations* (Veronica E. Velarde Tiller ed., 1996).

210. See George E. Tinker, *An American Indian Theological Response to Ecojustice*, in *DEFENDING MOTHER EARTH*, *supra* note 2, at 153, 160.

211. *Id.* at 162.

212. See Eagle Woman, *supra* note 18, at 17-19.

213. *Id.* at 20-21.

214. See *infra* Part II.

215. PHILIP RENO, *MOTHER EARTH, FATHER SKY, AND ECONOMIC DEVELOPMENT: NAVAJO RESOURCES AND THEIR USE* 3 (1981).

faced by most tribal citizens, tribal individuals and governments are largely in a state of reaction to U.S. policies that have cut them off from use of their own abundant resources and lands. Thwarted from experiencing the ways of life that are meaningful to Indigenous Peoples, many tribal citizens have experienced the worst aspects of material poverty and continue to do so.²¹⁶ Consciously following Tribal Economics would realign the ownership and stewardship of tribal resources and lands with the values of tribal communities, thereby reasserting balance throughout the community.

In order for balance to be reasserted, the domination of the United States over tribal resources and lands must end. As a treaty partner and in recognition of the aboriginal status of Tribal Nations, the United States must be held accountable for forced assimilation, destruction of tribal economies, and the continued draining of tribal resources for the benefit of the United States and to the detriment of tribal peoples.²¹⁷ Returning to international norms for the humane treatment of Indigenous Peoples is one very clear route to bring the U.S.-Tribal Nations relationship back into balance.²¹⁸ The trust-land-management system has proved a failure to protect tribal resources, to maximize returns for tribal owners, and to create economic sustainability for tribal communities.²¹⁹ Tribal Nations are the proper jurisdictional authority within tribal reservations, communities, and areas. By simply righting the wrong of U.S. interference in tribal jurisdictions, Tribal Nations and tribal peoples will begin to regain material prosperity through their own self-determination within Tribal Economics.

In spite of U.S. trade restraints, Tribal Nations have a cultural storehouse of endurance upon which to draw, abundant resources in both natural resources and human industry, and the unification of thousands of years of experience in dealing in commercial relations.²²⁰ All of these components of Tribal Economics foretell of a return to prosperity for Tribal Nations and tribal citizens. In the past decade, the growth of the tribal economic sector has been extraordinary, especially in light of the blockades to tribal initiatives.²²¹ The successes from Indian

216. See *supra* Parts III-IV.

217. See VINE DELORIA, JR., FOR THIS LAND: WRITINGS ON RELIGION IN AMERICA 74 (1999).

218. See Anaya, *supra* note 101, at 176. See generally Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc A/Res/61/295 (Sept. 13, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (setting forth a minimum floor of human rights to be collectively upheld for Indigenous Peoples around the world).

219. Tribal Nations continue to own significant resources for economic development. See COHEN'S, *supra* note 40, at 1279. "Indian nations still control 56 million acres of land—two percent of the land mass of the United States—and substantial natural resources." *Id.*

220. See Margo Gray-Proctor, *The Power of Indian Country—Today, Tomorrow, Together*, INDIAN COUNTRY TODAY, Feb. 16, 2010, available at <http://www.indiancountrytoday.com/business/84501942.html>.

221. Some of the success can be attributed to gaming establishments. See generally NAT'L INDIAN GAMING ASS'N, THE ECONOMIC IMPACT OF INDIAN GAMING IN 2008 (2009), available at

Country uplift not only tribal businesses but whole communities.²²²

For decades, Indian tribes have owned and operated tribal businesses as sovereigns. Though the popular perception of Indian commerce centers on the casino, in reality tribes have long engaged in a plethora of commercial enterprises. Tribes own auto-parts plants, timber management services, printing businesses, mills, grocery stores, golf courses, banks, and ski resorts, to name a few. Tribes are also actively engaged in media outreach to their members and surrounding communities, investing in newspapers, radio stations, and commercial telecommunications ventures.²²³

Through continued application of the proven values honed over centuries, the material wealth of Tribal Nations will accumulate once more.

An exciting part of this continuation is the return to the trade networks and commercial relationships between tribal trading partners.²²⁴

As Tribes realign with fellow Tribes, economic interactions can serve to bind together trade partners in a wave of economic well-being that lifts all canoes. Increasingly, Tribal Nations are seeking niche markets to fulfill contracts with other nations, particularly the United States, and then expand into broader opportunities that include overseas trading partners and tribal trading partners throughout the Americas.²²⁵

VII. CONCLUSION

In short, the road to rebuilding material prosperity is underway for many Tribal Nations. The “domestic dependent nation” status dictated to tribal peoples by the U.S. Supreme Court has led only to negative consequences and poverty conditions.²²⁶ It will take reasserting tribal values and standing up for the responsibility of resource stewardship to right the wrongs of the past. Intergenerational poverty has taken its toll through the U.S.-trustee model.²²⁷ The relationship with the United

http://www.indiangaming.org/info/pr/press-releases-2009/NIGA_08_Econ_Impact_Report.pdf. Another part of the success is attributable to the development of tribal corporations and ANCs. See *Diversifying Native Economics: Hearing Before H. Comm. on Natural Resources*, 110th Cong. 116-17 (2007) (statement of Jonathon Taylor, Research Associate The Harvard Project on American Indian Economic Development; Senior Policy Associate Native Nations Institute; President, The Taylor Policy Group, Inc.), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg11037848/pdf/CHRG-110hhrg11037848.pdf>.

222. See *Contracting Preferences for Alaska Native Corporations: Hearing Before Subcomm. on Contracting Oversight of the S. Comm. on Homeland Security and Governmental Affairs*, 111th Cong. 102-03 (2009) (statement of Jacqueline Johnson Pata, Executive Director of the National Congress of American Indians), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg250/pdf/CHRG-111shrg250.pdf>.

223. Angela R. Riley, *(Tribal) Sovereignty and Illiberalism*, 95 CAL. L. REV. 799, 832-33 (2007).

224. See Debora Juarez & Sharon Haensley, *Kinship Commerce: New Developments in Inter-Tribal Trade*, INDIAN COUNTRY TODAY, Dec. 5, 2008, available at <http://www.indiancountrytoday.com/opinion/35559894.html>.

225. See COHEN’S, *supra* note 40, at 1318 (describing the Small Business Administration’s 8(a) program for Indian tribal businesses, Alaska Native Corporations, and Native Hawaiian organizations allowing for preferences in bidding for contracts with the federal government).

226. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).

227. See COHEN’S, *supra* note 40, at 1280. “The history of pervasive federal control has stifled reservation economies.” *Id.*

States must be realigned to allow Native Americans to experience fully improved living conditions and harmony with tribal philosophies. Tribal peoples in mid-North America have sacred covenants with the earth, each other, and all living beings that require a return to economic leadership. Through upholding the values that form Tribal Economics, material and cultural wealth can be merged for the well-being of the next seven generations.

As Tribes experience increased economic well-being, they are remembering the old trade networks and working with each other.²²⁸ The skewed relationship created by the United States in its imperialist vision has subjugated Tribes to material poverty and has hamstrung tribal resources. This relationship must be renegotiated as one based on treaty partners and sovereigns throwing off the colonization of past eras for a better future in mid-North America.²²⁹ It is through creative development and applying cultural-wealth values that Tribal Nations are regaining an economic foothold. “The key to turning around our tribal economies is to do it together. As Native American and Alaska Native people, we are survivors, and we are still here. But to gain true self-sufficiency for our people, we need to grow our own economies by supporting Native business.”²³⁰

The future continues to be a matter of balance, leadership, heart, and stewardship for the tribal peoples of mid-North America. In time, tribal businesses following tribal values will be the way to end the inter-generational poverty experienced by tribal communities since the formation of the United States in mid-North America. This pathway will ultimately also lead to the overthrow of the paternalistic practices still being asserted by the United States government over tribal economies, resources, and lands.

228. See Jerry Reynolds, *Startup Network Seeks to Encourage Intertribal Commerce*, INDIAN COUNTRY TODAY, Sept. 26, 2008, available at <http://www.indiancountrytoday.com/business/29791674.html>.

229. See David Melmer, *Treaties Need to Be Honored*, INDIAN COUNTRY TODAY, Jan. 24, 2005, available at <http://www.indiancountrytoday.com/archive/28171949.html>.

230. See Gray-Proctor, *supra* note 220.

