

# Indigenous (Ecological) Economics Remastered

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## I. INTRODUCTION

In the real world, nation-states such as the United States, base their economic activity on a particular economic policy or policies. In turn, those economic policies are based on a particular economic theory. Governmental officials and legislators at the national and international levels routinely consult economic advisors to assist them with the formulation of effective legal infrastructure and governmental policy in areas such as taxation, spending, banking, and drafting legislation. These economic advisors, in turn, also base their opinions on their preferred economic theory. Legal advisors within the government then take their cues from the economic preferences of the governmental officials and develop legal infrastructure that is consistent with the already-selected economic theory and policies of the government.

To develop effective legal infrastructure for effective Tribal Nation<sup>1</sup> economies, Tribes—like nation-states—must first identify and then adopt a particular economic policy or policies. The development of Tribal Nation economic policy, in turn, depends on which economic theory the Tribe selects. Post-contact, Tribal Nations have given these vital steps in self-governance little or no attention. This Article will take those vital steps and present a theory of economics called ecological economics. Ecological economics is a developed yet flexible economic theory with which most economists who have studied at the graduate level have some familiarity. However, because ecological economics is not the preferred economic theory within the United States,<sup>2</sup> the eco-

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1. This Article will henceforth predominantly use the term “Indigenous Peoples” rather than “Tribal Nations.”

2. See, e.g., JAMES R. HACKNEY, JR., UNDER COVER OF SCIENCE: AMERICAN LEGAL-ECONOMIC THEORY AND THE QUEST FOR OBJECTIVITY 89 (2006) (neoclassical economics is the dominant legal-economic theory in America). See generally Robert Nadeau, *The Economist Has No Clothes*, SCIENTIFIC AMERICAN, Apr. 2008, available at <http://www.scientificamerican.com/article.cfm?id=the-economist-has-no-clothes> (arguing that the dominance of neoclassical economic theory

conomic policies and laws within this country are typically a very poor fit for those Tribes that are interested in developing a sustainable, culturally-friendly economy that is achievable through ecological economics. Nevertheless, there are still many excellent sources for obtaining more information about ecological economics. This Article is based upon the work of Herman E. Daly, formerly a Senior Economist in the Environment Department of the World Bank and currently a professor in the Maryland School of Public Affairs, as well as that of other ecological economists.

Ecological economics easily meshes with traditional tribal values, such as respect for the environment, the sacredness of all life, and “enoughness.”<sup>3</sup> Tribes are perfectly capable of adapting ecological economics to their respective cultural traditions as well as their specific economic circumstances. In contrast, the surrounding society finds ecological economics difficult to accept, let alone implement, precisely because its core values do *not* mesh easily with those of ecological economics. In fact, many of the traditional core values of the surrounding society are diametrically opposed to those of ecological economics. Therefore, adapting and implementing an economy based on ecological economics requires a massive change in several key prevailing cultural values within the surrounding society. Numerous academics within the field of ecological economics have written about this clash of values but none have been able to convince significant numbers within the surrounding society to adopt more compatible core values as a policy matter. Tribes, on the other hand, struggle to maintain the very cultural values that are actually quite compatible with ecological economics.

This Article proposes that Tribes should adopt an economic theory—such as ecological economics—that is compatible with core tribal values. Tribes could then consciously and coherently formulate economic policies and legal infrastructure that are based on a compatible economic theory rather than continue on their present path of working with economic theory, policy, and law that is based on fundamentally incompatible values. Even those Tribes that have already embarked upon a market economy can still change course and consciously begin the transition to one that is more compatible with its core cultural values. At the very least, they can teach the next generation the skills that it will need to steer the Tribe back to a more culturally compatible economy in the future.

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and its pseudo-scientific veneer make it one of the greatest barriers to combating climate change and other environmental ills).

3. “Enoughness” is a phrase that one sometimes hears among Indigenous Peoples to convey their cultural de-emphasis on materialist way of life. For another example of the use of this term, see Valerie J. Phillips, *Parallel Worlds: A Sideways Approach to Promoting Indigenous-Nonindigenous Trade and Sustainable Development*, 14 MICH. ST. J. INT’L L. 521, 538 (2006).

“Contemporary indigenous economics” is essentially ecological economics that has been explicitly “remastered” for the contemporary needs of Tribal Nations or Indigenous Peoples.<sup>4</sup> It is an economic theory upon which Tribal Nations can base their economic policies and the development of any consequent legal infrastructure while easily retaining their core cultural beliefs because all the key core values within ecological economics conform to core indigenous values. This symmetry of values simply does not exist within the economic theory, policy, and legal infrastructure preferred within the United States. This Article will, therefore: (1) outline key values inherent within the prevailing economic theory preferred within the United States; (2) outline key values within ecological economics; (3) demonstrate the symmetry between ecological economic theory and key tribal values; and (4) analyze how Tribal Nations can begin to implement ecological economic theory within their own economic policies, economies, and legal infrastructure to produce strong economies that serve the needs of the people.

## II. PREVAILING ECONOMIC THEORY: KEY VALUES

There are basically three economic models that prevail within the United States. They are Neoclassical Economics, New Institutional Economics (NIE), and Environmental Economics, with neoclassical and new institutional economics being the most dominant. All three share several key values that are diametrically opposed to core values within indigenous economic systems. All three are typically discussed in a conversation that the United States has with itself, not with Indigenous Peoples, about possibly rearranging the outer contours of the prevailing economic system. However, the fundamental core of that economic system always remains the same. In a nutshell, these key shared values are *homo economicus*—efficiency, self-interest, and wealth maximization.

The last two values are intimately linked to the concept of *homo economicus*. All four values have long operated behind a shield that declares economics, as conceptualized by settler society, as a science and, therefore, the “only game in town” for Tribes or anyone else interested in living in the modern world.<sup>5</sup> The notion of economics as a science, as opposed to being a culturally and socially bound subject, has come under increasing intellectual attack from several quarters, including the scientific academy itself.<sup>6</sup> However, the idea of economics as

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4. The author uses the term, “contemporary indigenous economics,” to denote what can result when Indigenous Peoples consciously adapt ecological economics to their own traditional economic norms, values, and institutions.

5. See Nadeau, *supra* note 2 (asserting that nineteenth century economists ignored the criticisms of contemporary mathematicians and physicists “to claim that they had transformed their field of study into a rigorously mathematical scientific discipline”).

6. *See id.*

science remains a particularly strong one among U.S. policymakers and governmental officials, economic advisers, in the media, and in the popular imagination. There are many vested interests within American society that adhere to this fallacious view. It is, therefore, unlikely that any of the three dominant economic models—neoclassical economics, NIE, and environmental economics—within the United States are going to change fundamentally anytime soon in spite of the mounting evidence that their core precepts lead to an economy that is unsustainable, concentrates wealth in the hands of a few, and creates incentives to engage in predatory behavior.<sup>7</sup>

A. *Homo Economicus, or “Economic Man,” Versus Homo Reciprocans, or “Reciprocal Man”*

*Homo economicus*, or economic man, is the economic being that sits at the core of neoclassical economics, NIE, and environmental economics. This is supposed to be an individual who makes his decisions based on “rationality” (complete knowledge), who is self-interested, and who is driven by the desire to maximize his wealth.<sup>8</sup> Various western theorists built mathematical models using economic man as an axiom that represented the true nature of human beings.<sup>9</sup> The entry of mathematics into the mix served to further buttress the erroneous assumption that economics is a science and still makes the subject of economics intimidating for many. The values of *homo economicus* are celebrated within mainstream economics, and the notion of economic man continues to dominate NIE, neoclassical economics, and environmental economics.<sup>10</sup> This continues to be true in spite of strong evidence from behavioral science that refutes both the validity of economic man’s values and the longstanding claim that they are somehow “scientific,” or stated another way, not simply the result of cultural and social norms.<sup>11</sup>

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7. See generally Lynn A. Stout, *Taking Conscience Seriously*, in MORAL MARKETS: THE CRITICAL ROLE OF VALUES IN THE ECONOMY 157-70 (Paul J. Zak ed., 2008) (elaborating on the propensity of the sociopathic *homo economicus*, to lie, cheat, exploit, and take advantage as well as pointing to evidence that its influence has corrupted and impoverished economic analysis and students of economics).

8. Joseph Persky, *Retrospectives: The Ethology of Homo Economicus*, 9 J. ECON. PERSP. 221, 221-22 (1995). Even the so-called “complete knowledge” that *homo economicus* is supposed to possess is a concept that is diametrically opposed to core indigenous values surrounding humility in dealing with the forces of nature.

9. See Nadeau, *supra* note 2.

10. *Id.*

11. It is the author’s view that greed (wealth maximization), consumption, and overexploitation of the environment are cultural and social norms of settler society because settler society owes its very existence to the subjugation of the culture, resources, economies, and very being of the Indigenous Peoples of the Americas. See Rebecca Adamson, *First Nations and the Future of the Earth*, EARTHLIGHT, 2001, [http://www.earthlight.org/essay40\\_adamson.html](http://www.earthlight.org/essay40_adamson.html) (“What made traditional economies so radically different and so very fundamentally dangerous to Western economies were the traditional principles of prosperity of Creation versus scarcity of resources, of sharing and distri-

More importantly for Indigenous Peoples, the core values of *homo economicus* are diametrically opposed to core cultural and social norms of Indigenous Peoples. The notion of *homo economicus* is premised on the overriding primacy of the individual. The collective norms that characterize indigenous societies are an anathema to *homo economicus*. Self-interest, a cultural value that is emphasized over and over again within U.S. economics, carries far less weight within indigenous societies. Individual self-interest certainly exists, but the individual is socialized from birth to consider others within the group. One is expected to practice reciprocity throughout one's lifetime. There is no comparable emphasis within settler society, its institutions, or its prevailing economic system. In fact, mainstream economics regularly dismisses the importance of reciprocal behavior. It even seeks to explain reciprocity (and altruism) away as being attributable somehow to the primacy of self-interest.<sup>12</sup> Yet behavioral science indicates that neither reciprocity nor altruism can be explained away so simply.

Related to the norm of self-interest is the norm of *wealth maximization*. Mainstream economics exalts individual efforts to maximize wealth at all costs, stopping just short of advocating murder-for-hire, illicit drug peddling, slavery, and child prostitution, which, after all, are individual efforts to maximize wealth as well.<sup>13</sup> In contrast, within indigenous societies, individual wealth and material accumulation are tempered by values surrounding reciprocity, the concept of "enoughness," and respect for the earth.<sup>14</sup> Indigenous institutions are multifaceted, multipurpose outgrowths of indigenous culture and are openly culture-dependent.<sup>15</sup> These institutions, which reflect indigenous values, perform a variety of functions within indigenous societies, including, but not exclusively, economic ones. Indigenous Peoples have a dizzying array of their own institutions upon which they built their own economic systems. For example, within one group of Indigenous Peoples, the Hopi, one finds "(1) exogamous households; (2) the central clan households; (3) exogamous lineages; (4) totemically named exogamous clans; (5) phratries, as ceremonial clan combinations; (6) villages; and (7) na-

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bution versus accumulation and greed, of kinship usage rights versus individual exclusive ownership rights, and of sustainability versus growth.").

12. This is otherwise known as the "Invisible Hand Theory" and attributed to Adam Smith.

13. Lynn A. Stout, *Other-Regarding Preferences and Social Norms* 19 (Georgetown Univ. Law Ctr., Working Paper No. 265902, 2001), available at <http://ssrn.com/abstract=265902> ("Not to put too fine a point on it, *homo economicus* is a sociopath.").

14. See discussion *infra* Part III.C.

15. A word should be interposed here explaining that by "institutions," the author does not mean the institutionalism of New Institutional Economics (NIE), which conceives of culture itself as an institution. As explained by Fikentscher, the institutionalism of NIE removes economics from being culture-dependent as well as culture-specific. NIE maintains the fiction that economics is a "super-science" even as the discipline superficially concedes that culture exists in the world *outside* of economics. WOLFGANG FIKENTSCHER, *CULTURE, LAW AND ECONOMICS: THREE BERKELEY LECTURES* (2004). Indigenous economics exists *within* indigenous culture and is very culture-specific.

tion.”<sup>16</sup> These indigenous institutions are illustrative, not exhaustive. They emphasize bonding, cross-generational communication within the community, and links with one’s ancestors.<sup>17</sup> Diversity, change, and looking out for the well-being of future generations also tend to characterize indigenous societies.<sup>18</sup> Indigenous institutions create and reinforce values that are foreign to the economic systems that exalt *homo economicus*.

There is now a rival to economic man within the academic world called *homo reciprocans*, or reciprocal man.<sup>19</sup> In contrast to *homo economicus*, *homo reciprocans* is characterized by reciprocal behavior toward fellow human beings. Interestingly, proponents of *homo reciprocans*, such as Samuel Bowles and Herbert Gintis, constructed this version of humankind from the study of various indigenous societies around the world as well as from behavioral experiments involving human subjects who were placed in situations in which they had to choose between engaging in either selfish or reciprocal behavior.<sup>20</sup> At the individual level, indigenous cultural values, norms, and institutions tend to encourage the primacy of the kinds of qualities that are exemplified by *homo reciprocans*.<sup>21</sup> Encouragement of the more altruistic qualities within indigenous economic systems does not stifle individual needs, wants, and talents as a mainstream economist might assume. Instead, individuals tend to flourish as true individuals because there is also an overriding emphasis on diversity within indigenous societies. The qualities of *homo reciprocans* are in sharp contrast to the qualities of *homo economicus*, but they are in unique harmony with the norms and values within indigenous societies.

With respect to economic development, local-scale self-sufficiency, and reliance on locally-available natural resources are also important characteristics of indigenous societies. Rights to land, territories, and resources tend to be, but are not exclusively, collective and inalienable.<sup>22</sup> Respect for nature and restraint in resource exploitation characterize indigenous societies.<sup>23</sup> Only very recently has the settler population within the Americas even begun to recognize indigenous modes of thought, as reflected in the emerging shift within the academic community to an interactive explication of the so-called “nature/culture opposi-

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16. Wolfgang Fikentscher, *Cultural Complexity* 17-18 (Santa Fe Inst., Working Paper No. 98-09-087, 1998), available at <http://www.santafe.edu/media/workingpapers/98-10-087.pdf>.

17. CULTURAL AND SPIRITUAL VALUES OF BIODIVERSITY 4 (Darrell Addison Posey ed., 1999).

18. *Id.*

19. Samuel Bowles & Herbert Gintis, *Is Equality Passe?: Homo Reciprocans and the Future of Egalitarian Politics*, BOSTON REVIEW, Jan. 1999, <http://bostonreview.net/BR23.6/bowles.html>.

20. See generally Joseph Henrich et al., *In Search of Homo Economicus: Behavioral Experiments in 15 Small-Scale Societies*, 91 AM. ECON. REV. 73 (2001); Bowles & Gintis, *supra* note 19.

21. Bowles & Gintis, *supra* note 19.

22. See CULTURAL AND SPIRITUAL VALUES OF BIODIVERSITY, *supra* note 17, at 4.

23. See *id.* at 3-5. See generally Adamson, *supra* note 11; Fikentscher, *supra* note 16.

tion,” reproduced in the table below.<sup>24</sup> The continuum of this ongoing shift in western thought may be observed along the dimensions indicated in a paper presented on system shocks and system resilience through the support of the Santa Fe Institute as:

Pre-1980s	1980s	1990s
Culture is natural	Nature is cultural	Nature and culture have a reciprocal relationship
Humans are <i>re</i> -active to the environment	Humans are <i>pro</i> -active in the environment	Humans are <i>inter</i> -active with the environment
Environment is dangerous to humans	Humans are dangerous for the environment	Neither are dangerous if handled carefully, both if that is not the case
Environmental crises hit humans	Environmental crises are caused by humans	Environmental crises are caused by socio-natural interaction
Adaptation	Sustainability	Resilience
Apply technofixes	No new technology	Minimalist, balanced use of technology
‘ <i>Milieu</i> ’ perspective dominates	‘ <i>Environment</i> ’ perspective dominates	Attempts to balance both perspectives

This shift is characterized as being a shift in thought itself, overlooking the fact that Indigenous Peoples were already near the end of the continuum long before western institutions made them subjects for study. The nature/culture continuum is more accurately described as a nascent shift in *western* thought. Thus far, this shift has not translated into respect for indigenous ways of living, nor fundamental change within western society. Rather, theorists writing about *homo reciprocans* tend to debate about things that do not threaten to change the status quo, such as whether human beings get their reciprocal kinds of behaviors more from socialization or from genes.<sup>25</sup>

Contemporary ramifications of western recognition of *homo reciprocans* for indigenous economic development have been overlooked.

24. Sander E. van der Leeuw & Chr. Aschan-Leygonie, *A Long-Term Perspective on Resilience in Socio-Natural Systems 5* (Santa Fe. Inst., Working Paper No. 01-08-042, 2001), available at <http://www.santafe.edu/media/workingpapers/01-08-042.pdf> (asserting that society’s ability to survive or be resilient in the face of environmental shocks is dependent on a particular society’s ability to absorb, in time, all the information available to it on that disruption).

25. Cosma Rohilla Shalizi, *Homo Reciprocans: Political Economy and Cultural Evolution*, 14 SANTA FE. INST. BULL. 16, 17 (1999), available at [http://www.santafe.edu/media/bulletin\\_pdf/fall1999/v14n2.pdf](http://www.santafe.edu/media/bulletin_pdf/fall1999/v14n2.pdf).

Indigenous Peoples themselves remain either a curiosity or an anachronistic reminder of the Stone Age to even the proponents of *homo reciprocans*.<sup>26</sup> Time will tell if proponents of *homo economicus* and even *homo reciprocans* will acknowledge how much their own cultural constructs have distorted their analyses of other economic systems as well as their own ability to live without destroying the planet. The bottom line is that Indigenous Peoples set up societies that tended to encourage and even exalt reciprocity.<sup>27</sup> Western societies, on the other hand, in particular the United States, did not. And today, *homo reciprocans* has not made its way into the prevailing economic, legal, governmental, or even academic institutions of settler society due to deep resistance within western society.

### B. Norms Regarding Distribution

#### 1. Pareto Efficient Allocation

Within indigenous societies, distribution, or allocation, of material goods is typically fluid but within socially agreed-upon boundaries. Distribution takes on a variety of cultural forms from potlatching to “give-aways.” The overriding principle in indigenous distribution is to provide for the people to live well while maintaining harmony and balance with the environment.<sup>28</sup> In contrast, fixed property interests are the hallmark of neoclassical, NIE, and environmental economics in spite of post-modernist expansion of the western intellectual universe.<sup>29</sup> Existing property relationships are reified, and distributive questions remain fundamentally “beyond the pale” in these economic systems.<sup>30</sup> Because settler society has built itself upon the land and resources of Indigenous Peoples, and as an outgrowth of prevailing seventeenth and eighteenth century European notions regarding property, indigenous distribution systems have been discouraged and, in many instances, banned as illegal.

Furthermore, neoclassical, NIE, and environmental economics contain their own built-in defense mechanism for jettisoning any attempt to rebuild indigenous distribution systems. This mechanism is called

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26. Samuel Bowles & Herbert Gintis, *The Evolution of Reciprocal Preferences* 4 (Santa Fe Inst., Working Paper No. 00-12-072, 2000), available at <http://www.santafe.edu/media/workingpapers/00-12-072.pdf>.

27. This is not an argument for the existence of the “Noble Savage” but merely a statement of *tendencies* within indigenous societies that western researchers have themselves concluded. It is certainly possible to find *homo economicus*-like behavior within indigenous societies but such behavior has been generally discouraged through a variety of socio-cultural mechanisms because of its destructiveness.

28. Phillips, *supra* note 3, at 538.

29. See, e.g., RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY* 145 (2001).

30. HACKNEY, JR., *supra* note 2, at 36.

“Pareto efficient allocation,” or “efficiency.”<sup>31</sup> Pareto efficiency is a concept used in economics to evaluate whether a particular economic system or policy is economically efficient.<sup>32</sup> Its operation is neutral, but where that process begins and ends is culturally and socially determined. Efficiency, or a Pareto efficient allocation, exists when goods are allocated (distributed) so that no person is made better off at the expense of making another person worse off.<sup>33</sup> It is not necessarily an equitable or desirable state of affairs for the society. For example, a slave-based economy that achieves Pareto efficiency would be lauded among mainstream economists as being “efficient,” as long as no changes existed within that system that would make slaves better off at the “expense” of slave-owners—by setting the slaves free. Slavery might seem like an absurd example of the pitfalls of relying on Pareto efficiency because it was abolished in this country years ago. However, disregarding so-called *externalities* like social, moral, cultural, and environmental concerns is still a fiercely-defended exercise within mainstream economics.

Even on those rare occasions when *externalities* are allowed into the discussion, the achievement of Pareto efficiency is still privileged above examining the norms that undergird its application. The decision to thus privilege Pareto efficiency above other concerns within the economy is itself a socio-cultural decision that settler society makes without blinking an eye. It deflects criticism of what is essentially a value judgment about who gets what by hiding behind the ostensibly scientific nature of economic efficiency. However, Indigenous Peoples need to understand that when policymakers and economists are lauding the efficiency of an economic system, they are already making a fundamental value judgment that the existing allocation of goods within that society should not be redistributed—and certainly not through cultural practices such as potlatching and giveaways. Cultural practices such as these would make the giver “worse off” from the perspective of settler society and, thus, not be Pareto efficient. In advocating efficiency, economists are also saying nothing about what is very important to Indigenous Peoples—the relationships among the people within that economy. They are, in fact, deliberately ignoring those relationships; applying Pareto efficiency allocation while deliberately ignoring its impact on underlying human relationships is a key characteristic of NIE, neoclassical, and environmental economics. This approach to distribution is diametrically opposed to the approach that Indigenous Peoples have traditionally taken within their own economic systems.

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31. HERMAN E. DALY & JOSHUA FARLEY, *ECOLOGICAL ECONOMICS: PRINCIPLES AND APPLICATIONS* 132-33 (2004).

32. *Id.* at 133.

33. *Id.*

## 2. Reliance on “The Market”

Further obscuring the fundamental differences in values between prevailing and indigenous economic systems is the extent to which a particular economy is expected to rely on “the market.” Often, markets and trading are confused with the market. The former two have been present in most human societies for thousands of years, although, in the popular imagination, Indigenous Peoples had neither markets nor engaged in trade. The latter term, “the market,” is a reference to the predilection of settler society to rely exclusively on market forces to provide for the economic needs of its members rather than develop strong relationships among those members.

In the absence of relatedness and connection among societal members, the best way to wrest sustenance (maximize wealth) from the market is by acting in accordance with the tenets of *homo economicus*. Those who cannot or will not do so are “irrational” and/or just plain losers. The standard response to any problem within the surrounding society is to “let the market take care of it,” or put another way, do nothing other than maximize one’s wealth, and the other problems (like inequality and environmental degradation) will miraculously go away. This approach to an economy has worked remarkably well for most of settler society while it was in the process of acquiring the abundant land and resources of Indigenous Peoples. Laws, regulations, governmental policy, and local economies were devised with the basic assumption that everyone would indeed be relying on the market, Pareto efficient allocation, and *homo economicus* indefinitely. In contrast, indigenous societies consistently put the market in its place as a servant of the people and always in the context of a wider environment than one that is composed exclusively of human beings. Within indigenous economies, one did not rely on either the market or wealth maximization to the exclusion of everything else.

### C. Ecological Versus Environmental Economics

With the ongoing degradation of the environment, settler society reluctantly made semi-concessions to one *externality* in particular—the environment. Thus, environmental economics was born, which should not be confused with ecological economics. Environmental economics is a subset of neoclassical economics.<sup>34</sup> End-point environmental laws such as the Clean Air Act,<sup>35</sup> the Clean Water Act,<sup>36</sup> and the Resource Conservation and Recovery Act<sup>37</sup> resulted. In spite of lingering tensions

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34. DALY & FARLEY, *supra* note 31, at 5.

35. 42 U.S.C. §§ 7401-7700 (2006).

36. 33 U.S.C. §§ 1251-1387 (2006).

37. 42 U.S.C. §§ 6901-7000 (2006).

within the field, environmental economics continues to retain the key core values of *homo economicus*, Pareto efficient allocation, and even reliance on “the market” to solve environmental problems. The main lesson for those Indigenous Peoples who are interested in rebuilding their own economies is that if one starts with neoclassical economics, NIE, or environmental economics, *you cannot get there from here*.<sup>38</sup>

### III. ECOLOGICAL ECONOMICS AND INDIGENOUS ECONOMICS: COMPLEMENTARY KEY VALUES

Ecological economics may be defined at its simplest as a trans-discipline crossing economics, ecology, and complexity science. Its economists:

look at the Earth as a ship and gross material production of the economy as the cargo. The seaworthiness of the ship is determined by its ecological health, the abundance of its provisions, and its design. Ecological economists recognize that we are navigating unknown seas and no one can predict the weather for the voyage, so we don't know exactly how heavy a load is safe. . . . Neoclassical economists focus solely on allocating the cargo efficiently.<sup>39</sup>

In contrast to ecological economics, environmental economics embraces neoliberal “green developmentalism,”<sup>40</sup> or corporate “sustainable development,”<sup>41</sup> neither of which challenges the core economic values within settler society. Certain portions of settler society have, therefore, embraced both.<sup>42</sup> However, “claims made by indigenous groups in the Americas challenge us to imagine alternative forms of development”<sup>43</sup> and contemplate a decidedly modern existence.<sup>44</sup>

Ecological economics does a far better job of meeting the challenge that Indigenous Peoples' economies present to settler society because of its key values. Ecological economics consciously retains neoclassical market analytical *tools* while rejecting the *homo economicus* worldview that mainstream economists interject into that analysis. Rather than hiding norms and values, ecological economists make them explicit.

38. Charles Pouncy, Sovereignty Symposium: Sovereignty & Sustainable Dev. of Indigenous Peoples, A Centennial Meeting of the Am. Soc'y of Int'l Law, St. Thomas Univ. Sch. of Law: Neoclassical Economic Theory, Sustainable Economic Development and Indigenous Economics: Can We Get There From Here? (Jan. 27, 2006). See generally Charles Pouncy, *Economic Theory and the Road to Sustainable Economic Development*, 2 INTERCULTURAL HUM. RTS. L. REV. 137 (2007).

39. DALY & FARLEY, *supra* note 31, at 4.

40. Rosemary J. Coombe, *Protecting Traditional Environmental Knowledge and New Social Movements in the Americas: Intellectual Property, Human Right, or Claims to an Alternative Form of Sustainable Development?* 17 FLA. J. INT'L L. 115, 130 (2005).

41. *Id.* at 132.

42. For an example of how corporate America has been flirting with green developmentalism, see Ann Zimmerman, *Planting the Seeds: Big Food Companies Sell More Organic Products, but Production Is Risky*, WALL ST. J., Aug. 23, 2006, at B1.

43. Coombe, *supra* note 40, at 135. See generally CULTURAL AND SPIRITUAL VALUES OF BIODIVERSITY, *supra* note 17.

44. Coombe, *supra* note 40, at 128.

These values include:

- Explicit recognition that resources are limited.
- Explicit recognition that ecological systems and the earth have their own limits.
- Explicit recognition that technological advances may not be enough to address the effects of unlimited economic growth on human beings and the earth.
- Explicit recognition that how goods are initially distributed within a society affects how “the market” later allocates resources.
- Explicit concern for the equitable and moral issues that insatiable wants and unlimited growth present for everyone.
- Explicit recognition that unsustainable living within the West is inextricably related to the impoverishment of others and global inequality.
- Explicit recognition that sustainability is a matter of intergenerational equity.
- Explicit recognition that sustainable living is a matter of politics as well as economics.<sup>45</sup>

Each one of the above values also contains within itself an implicit choice about whether one is going to try to fix the problems that are generated. Indeed, ecological economics actively seeks to use economics to tackle each one of the problems outlined above. Neoclassical economics and NIE routinely ignore these problems as being outside the proper realm of “real” economics by conflating what are value-neutral analytical tools, such as Pareto efficiency, with Euro-American values surrounding materialism, individualism, technology, and nature.<sup>46</sup>

#### A. *Homo Reciprocans Within Ecological Economics?*

The concept of *homo reciprocans* actually originates within complexity economics and the work of Bowles and Gintis.<sup>47</sup> In a nutshell, complexity economics uses complexity science (chaos theory, systems analysis, and thermodynamics) to understand economies.<sup>48</sup> Ecological economics is a sub-branch of complexity economics that focuses on ecological concerns.<sup>49</sup> Ecological economics does not specifically embrace the notion of *homo reciprocans*. Nevertheless, proponents of ecological economics do embrace certain values that complement core values within societies that are based on reciprocity, thus, creating space for the emergence of a contemporary and decidedly indigenous *homo recipro-*

45. See generally DALY & FARLEY, *supra* note 31.

46. *Id.*

47. See generally Samuel Bowles & Herbert Gintis, *Walrasian Economics in Retrospect* 115 Q. J. ECON. 1411 (2000); Bowles & Gintis, *supra* note 19.

48. See generally ERIC D. BEINHOCKER, *THE ORIGIN OF WEALTH: EVOLUTION, COMPLEXITY AND THE RADICAL REMAKING OF ECONOMICS* (2006).

49. See generally DALY & FARLEY, *supra* note 31, at 15-35; NICHOLAS GEORGESCU-ROEGEN, *THE ENTROPY LAW AND THE ECONOMIC PROCESS* (1999).

*cans*. In keeping with its overriding focus on changing settler society, most proponents of ecological economics devote a great deal of energy to convincing that society to accept it.

### *B. Norms Regarding Distribution*

Ecological economics explicitly recognizes that norms are vitally important in the distribution (or allocation) of goods within a society. In the process, ecological economics does not discard important analytical tools, such as Pareto efficient allocation. It merely places those tools in their proper context—within a society’s chosen values. In doing so, ecological economics is able to ask unabashedly (and answer) the normative questions that neoclassically-based economics eschews. For example, should an economy be based on slavery? Should an economy be based on the concept of *homo economicus*? Should an economy assume that human beings have or should have insatiable wants? Should an economy assume that wealth maximization is itself a desirable end?

Importantly, ecological economics goes far beyond a mere critique of the prevailing economy. It asks and attempts to answer creative questions like: “Why might excessive resource use have greater impacts on future generations than the current one? Consider the definition of Pareto efficient allocation”: goods are allocated (distributed) so that no person is made better off at the expense of making another person “worse off.”<sup>50</sup> “If the current generation is the de facto owner of all resources, could it be Pareto efficient for this generation to consume fewer resources so that future generations are better off?”<sup>51</sup>

### *C. Ecological Concerns and Development*

Ecological economics squarely addresses how economic development impacts the earth by calling for an end to growth and the adoption of a steady-state economy.<sup>52</sup> For proponents of NIE, environmental, and neoclassical economics, a call for an end to growth is heretical, threatening, and just plain un-American. Instead of the prevailing growth-based economy, ecological economists, such as Herman Daly, have proposed that developed nations adopt what is called a “steady-state economy.”<sup>53</sup> Indeed, Daly’s conceptualization of a steady state developed nation could be a viable goal for those tribes that have al-

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50. Posting of admin, justin.henry@uvm.edu, to <http://metacourses.org/ecologicaleconomics/blog/entry/3/> (Dec. 5, 2007, 12:17:00 EST); see also *supra* text accompanying note 33.

51. Posting of admin, *supra* note 50; see DALY & FARLEY, *supra* note 31, at 259-60 (“[Mainstream] economics has tended to address distribution out of logical necessity, but quickly sets it aside in the interests of political convenience.”).

52. DALY & FARLEY, *supra* note 31, at 22-23.

53. *Id.* at 54; see Brian Czech & Herman E. Daly, *The Steady State Economy—What It Is, Entails, and Connotes*, 32 WILDLIFE SOC’Y BULL. 598, 604 (2004).

ready embarked upon a growth-based market economy but who are still interested in transitioning to a more culturally compatible economic model.<sup>54</sup> The steady-state economy is a hallmark of complexity as well as ecological economics, both of which reject the neoclassical assumption that an economy is a deterministic and closed system that tends toward “equilibrium.”<sup>55</sup> Instead, the idea of adopting a steady-state economy is an outgrowth of growing recognition that economics, like almost every human endeavor on earth and nature itself, is an open, adaptive, nonlinear, and complex system subject to emergence, catastrophic events, and intrinsic evolution.

Mathematical models used in mainstream economics are based on the first law of thermodynamics (equilibrium), while those of complexity (and ecological) economics are based on both laws of thermodynamics (equilibrium and entropy). Complexity economists thus assert that mainstream economics is based on an incomplete conception of reality.<sup>56</sup> Behavioral science, behavioral economics, complexity science, and indeed the more complete economic systems of Indigenous Peoples, support this conclusion. As might be imagined, the traditional economies of Indigenous Peoples were steady-state economies, while the economic systems of settler society are growth-based. The steady-state economy focuses on quality of life when it comes to development, while the growth-based economy focuses on an ever-increasing consumption of goods as evidence of contemporary development. Development based on quality of life is far more in keeping with indigenous conceptions of enoughness and providing for the people while living in harmony with nature, rather than development that is defined as consuming more and more material things.

#### IV. INDIGENOUS (ECOLOGICAL) ECONOMICS “REMASTERED”

Remastering means to create a new master of a recording by altering or enhancing the sound quality of the original.<sup>57</sup> Indigenous economics is the original, older “master.” Ecological economics is the new enhanced or altered version born out of settler society’s belated and still contested recognition that its own economic system is destroying the earth. One might legitimately ask why Indigenous Peoples cannot just rebuild their own economies by simply returning to the original master.

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54. Such Tribes might include those that are trying to promote Native American owned businesses and services within North America. See CNN.com, Kim Segal and John Zarrella, Native Americans See Unity as Path to Prosperity, <http://www.cnn.com/2009/LIVING/wayoflife/05/08/native.american.group/> (last visited Apr. 12, 2010).

55. DALY & FARLEY, *supra* note 31, at 68-70.

56. Nadeau, *supra* note 2 (arguing that the dominance of neoclassical economic theory and its pseudo-scientific veneer make it one of the greatest barriers to combating climate change and other environmental ills).

57. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1052 (11th ed. 2003).

The answer is that so much of indigenous economies has already been destroyed by settler society that a contemporary mechanism like ecological economics is essential for it to navigate through and beyond the pervasive influence of the dominant economic system. By engaging in this exercise with ecological economics, Indigenous Peoples can remaster their economic traditions into contemporary indigenous economies, which they would simultaneously particularize to their respective cultures. Indeed, western conceptualizations of law and economics, as disciplines, have had an enormous and counter-productive impact on which “contemporary indigenous ideas” are even put forth to encourage indigenous economic development.<sup>58</sup> Clarity about theoretical assumptions is, therefore, an important prerequisite in contemporary indigenous economic development.

Unfortunately, much of the writing about indigenous economic development has, at most, only alluded to its theoretical underpinnings. These allusions have typically consisted of statements about the importance of indigenous culture to economic development, often combined with claims that western-style economies are, or are not, compatible with fundamental indigenous values. The most frequently cited economist in such writing is Ronald Trosper, an ecological economist with a Master’s in Economics from Harvard University and member of the Salish-Kootenai.<sup>59</sup> Yet the same sources make no attempt to analyze in depth their proposals in relation to Trosper’s actual work, which is in the area of ecological economics. The underlying assumption seems to be that perfunctory citation to Trosper’s conclusion that culture is very important in economics automatically propels one’s legal-economic proposals into the realm of cultural relevance.<sup>60</sup>

In reality, nothing but NIE and neoclassical models of law and economics exists within documents produced by most scholars on indigenous economic development. Typically, no reference is made to either ecological economics or the related complexity economics. The ideas

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58. Indigenous economics is more commonly referred to as “subsistence” in the literature. In this Article, the author primarily uses the term “indigenous economics,” sometimes interchangeably with the word “subsistence,” because the author thinks indigenous economics rather than subsistence better conveys the theoretical underpinnings that the author seeks to explore in this Article. Feminist economists such as Maria Mies use the term subsistence to refer to the application of fundamentally indigenous economic principles (indigenous economics) to non-indigenous as well as Indigenous Peoples. In contrast, the author’s primary focus is on Indigenous Peoples and, hence, more narrow than that of Mies in that sense. Non-indigenous peoples may certainly pursue indigenous economic principles, or subsistence à la Mies if they so choose. However, it would be unwise for Indigenous Peoples either to postpone their own economic development while waiting for the non-indigenous to make such a fundamental change in their lives or to allow indigenous economic development to be overly dependent on non-indigenous catharsis. Furthermore, Mies specifically eschews subsistence as an abstract theoretical model. In contrast, the author thinks that such a theoretical model is necessary, particularly in a world that is largely hostile to Indigenous Peoples and their ways of life.

59. Faculty Profile, [http://farpoint.forestry.ubc.ca/FP/search/Faculty\\_View.aspx?FAC\\_ID=22701](http://farpoint.forestry.ubc.ca/FP/search/Faculty_View.aspx?FAC_ID=22701) (last visited Apr. 12, 2010).

60. *See id.* (summarizing Trosper’s research agenda and philosophy).

that emanate from the NIE/neoclassical/environmental academic cadre do not reflect core indigenous values and are, unfortunately, destructive of them.<sup>61</sup> Yet legal scholars have gone so far as to claim that pre-contact Indigenous Peoples adhered to the same fundamental principles upon which the United States has based its economy.<sup>62</sup> This is tantamount to claiming that tradition is not an issue because it basically was the same as the principles that undergird neoclassical, environmental, and NIE economics today. Such a claim is patently false.

Even a simplified example of an indigenous economic institution demonstrates the importance of traditional values within indigenous economies as well as their fundamental divergence from the values upon which the American economic system is based. For example, the overriding value of respect for nature was embedded into the customary law of Indigenous Peoples, perhaps in the form of an institution such as the clan. The clan might be composed of families who communicated across generations about what does and does not work for a particular ecosystem. The market was subservient to the subsistence needs of the people in a clan's economic relations, an approach which turns on its head the prevailing view that we can "rely on the market" to solve all of our problems. Consumption was regulated by customary law and tradition, looping back to the people who constituted the indigenous institutions like clans. Clans, in turn, enforced customary law. Clans might be divided further into particular families who also emphasized communication across generations on appropriate land uses and so forth. Relationships were, thus, extremely important within indigenous societies as Rebecca Adamson and others have identified.<sup>63</sup>

It is beyond the scope of this Article to articulate fully an indigenous economic theory.<sup>64</sup> Nevertheless, the core indigenous values that would be vital to articulate within such a theory may be used to evaluate any proposed economic paradigm for Indigenous Peoples as well as economic development projects. It is, therefore, important first clearly to identify exactly what are some, or all, of the most pertinent core values in an indigenous economy. Scholars and activists generally agree that such core values revolve around relationships, responsibility, reciproc-

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61. *Contra* Ezra Rosser, *This Land Is My Land, This Land Is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 ARIZ. L. REV. 245, 311 (2005) (concluding that the NIE approach is more sensitive than neoclassical economics to the influence of culture and norms on economies and expands "the menu of policy alternatives" that Indigenous Peoples have).

62. "[N]ative peoples . . . lived by principles that we today call private property, free market economics, and capitalism." Robert Miller, *Economic Development in Indian Country: Will Capitalism or Socialism Succeed?* 80 OR. L. REV. 757, 766 (2001).

63. See generally Adamson, *supra* note 11.

64. Such a theory is forthcoming in the author's manuscript and is alluded to in boldface in the Comparative Chart of Phillips, *supra* note 3, at 533.

ity, and redistribution.<sup>65</sup>

Rebecca Adamson, who holds a Master's of Science in Economic Development and an honorary Doctorate in Human Letters from Dartmouth, is among those indigenous leaders within the United States who has articulated these values to westerners. She states:

Modern science is just now beginning to catch up with such ancient wisdom. Clearly, Bell's theorem of quantum physics, Einstein's theory of relativity, and Heisenberg's uncertainty principle indicate that how and when we look at subatomic particles affects what we see. All particles of matter, property, position, and velocity are influenced by the intention or presence of all other particles. Atoms are aware of other atoms.<sup>66</sup>

Others theorists, such as the Ecuadorian Indian lawyer Nina Pacari,<sup>67</sup> frame these core values in even more culturally-specific terms:

- a) YACHAY, which means *wisdom*, the know-how and know-that that allows indigenous nations to maintain-in-transformation the *internal way* (that is, in the same way that the West operates maintaining-in-transformation its way of life, forms of knowledge and economic and political management);
- b) RICSINA, means *knowledge*, and refers to knowledge of the complex geography of human beings in order to help harmonious co-existence, that is, conviviality . . . ;
- c) USHAI, means management or planning and refers to the know-how presupposed in every consistent execution in the management of politics, economy and education; that is, in socio-communal organization;
- d) PACTA-PACTA, means the exercise of "democracy" not in the bourgeois sense of the word or in its socialist meaning, but in the sense of conviviality, equal to equal relationship, with collective participation and social management as it is inscribed in the memories and experiences of the *ayllu* (or the *altepetl* in the case of Mexico) . . . ;
- e) MUSKUI, which could be translated as the ideal horizon of the future, that is, *utopia*; a necessary concept to be active in the process of social transformation instead of waiting for the liberal economy or the communist State to find a solution for the Indian Nations.<sup>68</sup>

Little compartmentalization is present in Pacari's description of communal political and economic management. Her work has the addi-

65. See, e.g., Americans for Indian Opportunity, [http://www.aio.org/about\\_aio](http://www.aio.org/about_aio) (last visited Apr. 12, 2010).

66. Adamson, *supra* note 11. Adamson is Founder of First Nations Development Institute as well as Founder and President of First Peoples Worldwide. Her graduate course materials on Indigenous Economics served as the basis for a course that the author developed on Law and Indigenous Economics.

67. Marc Becker & Judy Hinojosa, *Nina Pacari*, in NOTABLE TWENTIETH-CENTURY LATIN AMERICAN WOMEN 218, 219 (Cynthia Tompkins & David William Foster eds., 2001), available at <http://www.yachana.org/research/pacari.pdf>. Pacari is also a member of the United Nations Permanent Forum on Indigenous Issues. Ms. Nina Pacari Vega-UNPFII-United Nations Permanent Forum on Indigenous Issues, [http://www.un.org/esa/socdev/unpfii/en/member\\_pacari.html](http://www.un.org/esa/socdev/unpfii/en/member_pacari.html) (last visited Apr. 12, 2010).

68. Walter D. Mignolo, *The De-Colonial Option and the Meaning of Identity in Politics*, in 9/10 ANALES NUEVA EPOCA 24 (2007), available at [https://gupea.ub.gu.se/dspace/bitstream/2077/4500/2/anales\\_9-10\\_mignolo.pdf](https://gupea.ub.gu.se/dspace/bitstream/2077/4500/2/anales_9-10_mignolo.pdf).

tional merit of interweaving decolonizing theory with practice, as, for example, in the following four general principles for decolonial thinking and action:

- a) **Proportionality-Solidarity**, is the principle that guides the political (e.g., political thinking) toward the benefit of those who have less. The political impinges here in the *oyko-nomy* . . . that is, in a political economy that administrate [sic] scarcity rather than celebrating accumulation;
- b) **Complementarity**, refers to production and distribution that contemplate [sic] the well being of the community and not the accumulation and well being of an elite. It means, in other words, conviviality in the harmonious complementarity of opposing elements. For instance, Sun and Moon (masculine and feminine) are not opposed by power relations, but two halves of a unit; a unit without which the generation of life is not possible;
- c) **Reciprocity**, it is expressed in the institution called “minga,” which means cooperative work for improvement. To give and to receive, the principle of reciprocity it [sic] is both rights and obligations of every one;
- d) **Correspondence**, simply means the sharing of responsibilities . . .<sup>69</sup>

These spheres of life—economic and political—are intertwined with each other as well as with indigenous management of education.<sup>70</sup> In contrast to the insidious nature of the legal-economic theory, Indigenous Peoples express the intertwining of these spheres openly and often on a spiritual level. It is in the sphere of western education, of Langdellian orthodoxy, that one sees the most obdurate and yet hidden alliance with neoclassically-based economic theory. This alliance, its pseudoscientific supremacy, lingering colonial ideals (the West is *best*), and fundamentally hegemonic methodology are embedded within the legal and economic academies. Langdellian orthodoxy is incapable of engaging in productive dialogue with indigenous scholars such as Pacari. The New Haven School holds some promise because it at least allows room for a reality-based, honest dialogue between the westernized academy and indigenous scholars. Its tenets imply that it would not be threatened by calls for a clear pre-identification of exactly who is meant when western scholars say “we.” Unfortunately, Langdellian orthodoxy, not the New Haven School, is the norm within law schools so that most attorneys who work for tribes are not inclined to break out of that mold unless they are explicitly required to do so by their clients.

## V. IMPLEMENTING ECOLOGICAL ECONOMICS

[N]ot every sovereign act undertaken by an indigenous nation necessarily promotes sovereignty of the people. Law can be adopted by an indigenous nation which has values inconsistent with the value system. . . . The

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69. *Id.* at 67-68 (footnotes omitted).

70. *Id.* at 68 (citing Editorial: La Universidad Intercultural Amawtay Wasi, <http://icci.nativeweb.org/boletin/65/editorial.html> (last visited Apr. 12, 2010)).

change of, or addition to, traditional law is clearly within the sovereign authority of an indigenous nation . . . where the end result . . . is an indigenous nation's law is no different in substance or language from state law, indigenous nations participate in their own assimilation into the mainstream of American law . . . [and] the alienation of its own people.<sup>71</sup>

An explicit decolonizing mindset is a critical prerequisite for Indigenous Peoples to implement an ecologically-based economy in contemporary times.<sup>72</sup> Ironically, one reason for adopting such a mindset can even be found in the work of mainstream economics. Oliver E. Williamson, one of the pre-eminent architects of NIE, has set out three levels of analysis which the discipline uses.<sup>73</sup> It is within these three levels of analysis that one may find NIE's core emphasis. It is also within these levels that one may find an important reason for Indigenous Peoples to adopt a decolonizing mindset in economic matters. The three levels of NIE analysis are:

- Level One—the “social embeddedness” level, in which the norms, customs, informal institutions, and traditions of a society are located,<sup>74</sup>
- Level Two—“institutional environment,” in which the “formal rules of the game,” such as constitutions, laws, and property rights, have already evolved in society but design opportunities still exist.<sup>75</sup> Definitions and enforcement of property rights and contract laws are particularly important at this level.<sup>76</sup> The polity, a judiciary, and bureaucracy are assumed to be in place at this level.<sup>77</sup> Any design opportunities are very limited as they are “constrained” by the pre-existing Levels One and Two.<sup>78</sup> Rare windows of opportunity to effectuate “reforms” sometimes result from cataclysmic events such as colonial or other kinds of occupation, such as that following World War II.<sup>79</sup>

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71. Christine Zuni Cruz, *Tribal Law as Indigenous Social Reality and Separate Consciousness [Re]Incorporating Customs and Traditions into Tribal Law*, 1 TRIBAL L.J. 1 (2001) (footnotes omitted), available at [http://tlj.unm.edu/tribal-law-journal/articles/volume\\_1/zuni\\_cruz/index.php](http://tlj.unm.edu/tribal-law-journal/articles/volume_1/zuni_cruz/index.php) (arguing that tribal sovereignty is strengthened when the laws of an Indigenous Nation are based on internalized values and norms).

72. As one scholar has opined:

[T]heory at its most simple level is important for indigenous peoples. At the very least it helps make sense of reality. It enables us to make assumptions and predictions about the world in which we live. It contains within it a method or methods for selecting and arranging, for prioritising and legitimating what we see and do. Theory enables us to deal with contradictions and uncertainties. Perhaps more significantly, it gives us space to plan, to strategize, to take greater control over our resistances. The language of a theory can also be used as a way of organising and determining action. It helps us to interpret what is being told to us, and to predict the consequences of what is being promised. Theory can also protect us because it contains within it a way of putting reality into perspective. If it is a good theory it also allows for new ideas and ways of looking at things to be incorporated constantly without the need to search constantly for new theories.

LINDA TUHIWAI SMITH, *DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES* 38 (2001); see Cruz, *supra* note 71.

73. Oliver E. Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 J. ECON. LITERATURE 595, 596-600 (2000).

74. *Id.* at 596.

75. *Id.* at 598.

76. *Id.*

77. *Id.* at 597 (referring to Figure 1).

78. *Id.*

79. *Id.*

- Level Three—“Governance,” or play of the game is when the focus of analysis becomes the governance of contractual relations.<sup>80</sup> The role of the governance structure at this level is to reshape incentives in private ordering.<sup>81</sup> In other words, governance structures are to be aligned as much as possible with facilitating market transactions.

If one applies Williamson’s levels to the present situation of Indigenous Peoples, one can readily come to the conclusion that NIE is an inappropriate model for Indigenous Peoples who desire to maintain their fundamental cultural values. Of vital importance to consider in rebuilding the indigenous economy is Level One, which is precisely the level which most economists, of whatever intellectual orientation, do not closely examine simply because they take western customs, values, and institutions as a given in their analysis.<sup>82</sup> Western customs, values, and institutions are certainly taken as a given in NIE.

However, scholars writing about indigenous economic development have also left Level One unexamined. Instead, they rely implicitly on the neoclassical assumption that a particular society’s informal institutions, customs, traditions, norms, and religious beliefs are less important than the formal rules of the game, which occurs at Level Two.<sup>83</sup> Because Indigenous Peoples have their own institutions, customs, norms, and institutions, their Level One is fundamentally distinct from the West’s. Therefore, starting an economic analysis at Level Two is a fundamental error. Yet in analyzing indigenous economic development, most scholars have implicitly accepted that a western cultural orientation has prevailed at Level One, so they, too, start at Level Two, leaving Level One unexamined.<sup>84</sup>

In fact, colonial rulers determined the legal origins of many countries.<sup>85</sup> This is a fundamental Level One reality that Indigenous Peoples cannot afford to ignore. Furthermore, cross-cultural studies have found that being ruled by Great Britain has had long-lasting implications for social, economic, and legal outcomes within formerly subject countries.<sup>86</sup> British rulers made “institutional reforms,” including legal transplantation.<sup>87</sup> Such institutional changes and legal transplantation occurred on a massive scale in the English-speaking “settlement colonies” of Australia, Canada, New Zealand, and the United States.<sup>88</sup>

Ordinarily, changes in cultural values take place very slowly and

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80. *Id.* at 599.

81. *See id.* at 597 (referring to Figure 1).

82. Amir N. Licht et al., *Culture, Law, and Corporate Governance*, 25 INT’L REV. L. & ECON. 229, 232 (2005) (quoting Oliver E. Williamson).

83. This may be found in the works of Miller, *supra* note 62, and Rosser, *supra* note 61, at 311.

84. *Compare* Williamson, *supra* note 73, at 597, *with* Cruz, *supra* note 71.

85. Licht et al., *supra* note 82, at 245, 247.

86. *Id.* at 245-46.

87. *Id.* at 246.

88. *Id.*

usually do not occur in response to indoctrination or efforts at reform.<sup>89</sup> Colonial occupation is a severe exogenous shock<sup>90</sup> that is one of the few cataclysmic events that can potentially alter Level One institutions.<sup>91</sup> Indigenous Peoples should be encouraged by the fact that, even with the “window[] of opportunity” that colonial occupation may present for the colonizers, the response to such opportunities has often been one that resulted in ostensible failure.<sup>92</sup> Eastern Europe is a glaring example of the failure of concerted reform efforts after the kind of “breakdowns” that supposedly made that society more amenable to major changes.<sup>93</sup> Ironically, NIE adherents cite Eastern Europe as a success story that U.S. Tribes should strive to emulate.<sup>94</sup> In spite of the failures of “shock therapy” in the former Soviet Union and elsewhere, the importance of culture, “the mother of all path dependencies,” has not been brought explicitly to the fore in mainstream economics.<sup>95</sup>

The Harvard Project’s data on tribes indicates that there are subsistence underground economies on every reservation.<sup>96</sup> This is an encouraging example of the persistence of cultural memory among Indigenous Peoples, even in the face of the severe exogenous shock that continuing occupation represents. In spite of the evidence of indigenous cultural persistence in the economic arena, most scholars inside the legal academy who write about indigenous economic development issues have either directly or indirectly assumed that its complete extinguishment is desirable.<sup>97</sup> Tribes are typically presented with a Hobson’s Choice for their economic development—between “progress” and being true to one’s cultural values.

Perhaps even more disturbing, there have also been claims that the nature of pre-contact indigenous economies was fundamentally the same as the currently prevailing economic system. Therefore, all Tribes need to do is tinker here and there with some of their more superfluous cultural traditions to develop a “modern” economy.<sup>98</sup> This approach to

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89. *Id.* at 252. Williamson argues that major changes in the rules of the game occur only on the order of decades or even centuries. See Williamson, *supra* note 73, at 598.

90. Licht et al., *supra* note 82, at 252.

91. See Williamson, *supra* note 73, at 597-98.

92. *Id.* at 598.

93. *Id.* at 608-10.

94. *Id.* at 598.

95. Licht et al., *supra* note 82, at 245 (citing Amir N. Licht, *The Mother of All Path Dependencies Toward a Cross-Cultural Theory of Corporate Governance Systems*, 26 DEL. J. CORP. L. 147 (2001)).

96. See generally COHEN’S HANDBOOK OF FEDERAL INDIAN LAW (Nell Jessup Newton et al., eds. 2005).

97. An example of an indirect reliance on the further extinguishment of cultural memory in the economy is the tendency of the entrepreneurship model to recognize indigenous culture as only a resource to be sold. This is tantamount to being so preoccupied with selling the golden eggs that one kills or allows to be killed the goose that lays them. See *infra* note 98.

98. Rosser, *supra* note 61, at 311; JENNIFER MALKIN ET AL., NATIVE ENTREPRENEURSHIP: CHALLENGES AND OPPORTUNITIES FOR RURAL COMMUNITIES 13 (2004), available at [http://toolbox.nwaf.org/store2/product\\_images/NativeEntrepreneurship28.pdf](http://toolbox.nwaf.org/store2/product_images/NativeEntrepreneurship28.pdf). Miller concludes that “[c]apitalism

indigenous economic development is as superficial as it is damaging, plunging tribes deeper and deeper into self-destructive economic policies and projects while ignoring the universe of viable alternatives for developing contemporary indigenous economies that are truly in sync with indigenous values.

Until very recently, the United States has been quite unabashed in its view that acculturation is a necessary prerequisite to economic development in Indian communities.<sup>99</sup> This viewpoint stemmed from the belief that American Indians were backward, primitive, and uncivilized at the time of European settlement. Its contemporary, and less blunt, incarnation conveniently fails to acknowledge the pivotal role of Euro-American expansion in the current impoverishment of Native Americans.

The official viewpoint of the United States has evolved to one in which, today, statements about respect for indigenous culture are commonplace within and outside the government. Laws ironically allow a great deal of leeway for American Indians to pursue their own visions of a suitable economy even as the current state of obfuscation about economics renders that freedom meaningless.<sup>100</sup> The same may be said about federal laws that are directed at economic development among Indigenous Peoples outside of the United States, such as 22 U.S.C. section 262p-4o, which directs U.S. officials within the World Bank “to use the voice and vote of the United States to bring about the creation and full implementation of policies designed to promote respect for and full protection of the territorial rights, traditional economies, cultural integrity, traditional knowledge and human rights of Indigenous Peoples.”<sup>101</sup> Indigenous Peoples outside the United States are subject to the same pressures to develop along the lines of the prevailing economic system as well as the same obfuscation about whose norms, institutions, and values prevail within that system.

In other words, Indigenous Peoples across the Americas are forced to operate in an economic world not of their own making. There are far better alternatives for dealing with this contemporary economic reality than most tribes are led to believe. The ecological economics alterna-

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as an economic system, then, does not appear to be a foreign idea to most of the American tribal cultures.” Miller, *supra* note 62, at 798. Miller mentions the economic activities of various Tribes in support of this conclusion. Yet he overlooks the significant fact that all of these Tribes had clans, moieties, families, sibling-groups, or other traditional institutions that regulated economic behavior according to customary law.

99. “Economic development will proceed so far as the process of acculturation allows.” ERIC HENSON & JONATHAN B. TAYLOR, *NATIVE AMERICA AT THE NEW MILLENNIUM* 108 n.254 (2002) (quoting SUBCOMM. ON ECON & GOV’T, 91ST CONG., U.S. BUREAU OF INDIAN AFFAIRS, *ECONOMIC DEVELOPMENT OF INDIAN COMMUNITIES, TOWARD ECONOMIC DEVELOPMENT FOR NATIVE AMERICAN COMMUNITIES* (Comm. Print 1969)), available at <http://www.piegainstitute.org/native-americaatthenewmillennium.pdf>.

100. Miller, *supra* note 62, at 758-64.

101. 22 U.S.C. § 262p-4o (2006).

tive is a viable engine for tribes regardless of their level of assimilation if their goal remains one of retaining cultural integrity and developing an economy that is more in harmony with their respective ecological circumstances. Those Tribes that have already embarked upon a market-based economy should be aware that they are thereby also socializing tribal members to the core values of neoclassical, NIE, and environmental economics described above. If Tribes do not simply want to be brown-skinned versions of *homo economicus*, they will have to develop a clear vision of what they do want to be economically and then aggressively adopt the tools necessary to achieve that goal. They will also have to look outside the box to more culturally compatible economic models like ecological economics, which has an abundant set of resources upon which Tribes can draw. Tribes across the assimilation spectrum should demand that their attorney and faculty advisors disclose their economic orientations openly and clearly so that the Tribes know exactly what they are getting when they are being advised. Tribes cannot continue to let their market-oriented advisors hide behind the cover of science if they want to stop committing cultural suicide.

## VI. CONCLUSION

Most proponents of ecological economics continue the daunting task of pulling a resistant, often hostile settler society into a truly sustainable future. While laudable, such an emphasis does very little for Indigenous Peoples whose values are most compatible with those of ecological economics and whose traditional ways of life are under constant assault from the surrounding society.

The best approach to take is a proactive one. Whether they are market based or not, Tribes that are interested in harnessing what they already have to develop a more culturally compatible economy can directly approach proponents of ecological economics. They can thoroughly investigate for themselves the work of ecological economists such as Ronald Trosper, Herman Daly, and Robert Costanza. Invite these and other ecological economists as speakers before the many law and business-related tribal gatherings that are held across the country. Consider engaging them as economic consultants on either a continuing or ad hoc basis. Consider having a graduate student in ecological economics do a project in your homeland with your youth and elders or perhaps one of your tribal governmental departments. Require your tribal attorneys and other economic advisors to be trained in ecological economics.<sup>102</sup> Then demand that they provide you with advice on how

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102. To take an online course, see Certificate in Ecological Economics, <http://www.metacourses.org/>.

the Tribe can utilize what it has learned. Investigate for yourselves how much ecological economics may be compatible with your particular tribal values and then incorporate that into tribal curricula. Have your tribal school's library subscribe to the *Journal of Ecological Economics* and then *use* the articles as a springboard for community discussion. Encourage the American Indian Science and Engineering Society and tribal colleges to incorporate ecological economics into their programs. There are many free and low-cost resources available on the topic of ecological economics.<sup>103</sup> Therefore, the good news for Indigenous Peoples is that ecological economics offers a viable economic alternative for them because it demonstrates the basis through which *you CAN get there from here*.

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103. For a start, try these websites. See The University of Vermont, The Gund Institute for Ecological Economics (last visited Apr. 12, 2010); The International Society for Ecological Economics, <http://www.ecoeco.org/content/> (last visited Apr. 12, 2010); Faculty Profile, Ronald Trosper, [http://farpoint.forestry.ubc.ca/FP/search/Faculty\\_View.aspx?FAC\\_ID=22701](http://farpoint.forestry.ubc.ca/FP/search/Faculty_View.aspx?FAC_ID=22701) (last visited Apr. 12, 2010); University of Maryland, School of Public Policy, Herman Daly, <http://www.publicpolicy.umd.edu/directory/daly#bio> (last visited Apr. 12, 2010); see also Daly & Farley, *supra* note 31.