

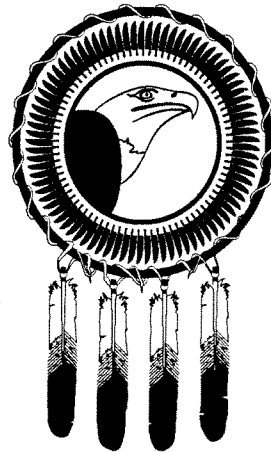
Malcolm Wiener Center for Social Policy

*The Redefinition of Property Rights in American Indian Reservations:
A Comparative Analysis of Native American Economic Development*

by

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Harvard Project on
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THE REDEFINITION OF PROPERTY RIGHTS IN
AMERICAN INDIAN RESERVATIONS:
A COMPARATIVE ANALYSIS OF NATIVE AMERICAN ECONOMIC DEVELOPMENT

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I. PROLOGUE

American Indians are the most impoverished minority in the United States. At the same time, American Indian reservations are subject to unique legal and economic status, constituting what have been termed "nations within" a nation. After a century of dependence and subjugation, this status is undergoing dramatic change. American Indian reservations are achieving (or being subjected to, depending on one's point of view) sharply increased possibilities for self-determination. In the face of changing federal funding priorities, the economic well-being of many American Indians hinges increasingly on tribes' own responses to these possibilities.

Beginning with a major policy statement in the Nixon Administration and accelerating during the Carter and Reagan Administrations, American Indians' assertions of their rights have been manifested in the specific policy of political and economic self-determination. Some reservations have responded by turning themselves into the equivalent of economic enterprise zones, offering (with widely varying success) tax and regulatory

havens to outside investors. Some have become the equivalent of medium to large corporations, issuing financial instruments in the world capital markets and explicitly adopting corporate strategy and management practices. Indeed, tribes such as the Mescalero and White Mountain Apaches have become premier "private" managers of multiple-use forest resource economies. Still other reservations, however, have intentionally or unintentionally avoided raising the prominence of economic development strategies in tribal affairs, or have chosen strategies with lower profiles and less ambitious goals.

Recent legal, political and economic upheavals in Indian Country have meant renewed attention to economic affairs. The Reagan Administration has produced two major reports on paths to Indian economic self-determination. Tribes themselves have formed planning consortia and inter-tribal research organizations to develop and share accumulating knowledge on relevant economic and socio-political matters. Tribal councils, tribal members, and tribal newspapers are debating the dimensions of economic self-determination with increased urgency, as federal budget cuts and greater Indian responsibility place an unprecedented level of the economic and sociological opportunity costs of tribal decisions on the tribes themselves.

The central change in Indian economic affairs that self-determination has brought is that, for the first time, development programs are being designed and directed by Indian tribes instead of the Federal Government. Various tribes have

launched projects ranging from ski resorts, mineral extraction, and forest and wildlife harvesting to industrial parks, on-reservation factories, and well-known gaming operations. There are signs that some versions of self-determination are meeting with sustainable economic success on at least some reservations. With varying degrees of solvency, a listing of substantial Indian enterprises includes:

- The Cherokees of Oklahoma own and operate an electronics manufacturing plant.
- The Passamoquoddy Tribe of Maine recently purchased the nation's largest cement plant, and have now sold it at several times purchase price.
- The Mescalero Apaches of New Mexico and the White Mountain Apaches of Arizona each own and operate large lumber industries, ski resorts, and fee-hunting and fee-fishing industries. The Mescaleros also own and operate a golf course.
- The Quinault, Lummi, Swinomish and several other tribes in the Northwest and Alaska own and operate fish canneries.
- The Blackfeet of Montana are a major player in the market for writing instruments.
- The Oneidas of Wisconsin, the Gilas of Arizona, and several other tribes own and operate office and industrial parks serving major metropolitan areas.
- The Warm Springs reservation in Oregon owns and operates a major sawmill and a large tourist resort.
- More than 100 tribes operate bingo casinos, with seating capacities often in the thousands and revenues approaching the millions.
- The Choctaw of Mississippi own and operate a factory specializing in electrical wire harnesses for the auto industry, as well as a greeting card company.

Current circumstances have created a need and an opportunity

for research — and this paper is a report on a research program in progress. The need arises from the demand by tribes and policymakers for answers to such questions as: Should the federal Bureau of Indian Affairs (BIA) be manager or consultant, or even a complete non-party, to Indian businesses? Should tribal governments try to develop and own enterprises, or should they encourage tribal members and/or outside investors to bring business to the reservations? Should tribes rely on non-members for key managerial positions? How can tribes or tribal members gain access to capital markets?

The opportunity for research arises because the deciphering of the determinants of success and failure — as well as the definitions of "success" and "failure" — among American Indian tribes provides potentially profound insights into the sources of the wealth of nations, and lessons applicable far beyond Native Americans. The move toward greater self-determination that is now taking place provides a unique context in which to observe a large number of poor, developing economies: a) make selections over their governmental structures; b) face cultural and political tensions brought on by economic change; c) deal with the ancillary sociological and political effects of economic growth; and d) implement investment and employment policies that are increasingly subject to marketplace tests of success. What is it, for example, that has allowed tribes such as the White Mountain Apaches and the Mescalero Apaches to arrive at governmental, managerial, political, and cultural structures that

yield bursts of economic development, while other tribes show economic stagnation? How much does economic development depend upon cultural, political, and governmental factors; and how endogenous are these factors in the face of economic forces? What lessons are there in the answers to these sorts of questions for the prospects of non-Indian developing economies, or even the prospects of the world's most developed economy as it attempts to remain competitive in the world economy?

Phrased in these ways, i.e., as a topic in broadly-conceived development economics, the issue of American Indian economic development obviously can not be fully analyzed in a single study. Accordingly, this paper has a much narrower goal: to tell some interesting stories that serve to generate a set of tentative hypotheses of relevance to the kinds of questions noted above. In fact, We would like to emphasize that any answers put forth are hardly definitive and are intended to provoke thought. Moreover, the "stories" we refer to primarily concern the case experiences of tribes we have been able to examine in some detail. Case studies are provide the impetus for hypotheses; they do not result in convincing tests of theories. Anything said here that sounds like generalized conclusions applicable to all tribes, at all times, and/or for all developing economies is primarily a reflection of our own inability to resist temptation. But if the Beagle taught us anything about method, it should be that starting in the field with cases can sometimes produce unusually useful hypotheses.

II. THE CHANGING PROPERTY RIGHTS OF AMERICAN INDIAN TRIBES

A revolution is taking place in the legal status of American Indian lands. The essential thrust of this revolution is the effective deregulation of broad classes of economic activity on Indian reservations. This comes about, in large part, as a result of Indians' own aggressive assertions over the last 15-20 years of their treaty and civil rights to self-determination and self-government. The resulting changes, won through many battles in the courts, administrative agencies and legislatures, have significantly unraveled the historic (not to mention demeaning) legal status of Indians as official wards of the Federal Government.¹

The component of the Indian activist movement that probably has received the most attention from the news media has been the assertion of off-reservation claims to either compensation for the loss of traditional and/or treated tribal properties or establishment of exclusive rights of use over such properties.² The legal and political wrangling that these developments have generated indeed have been newsworthy; and the resulting policy decisions undoubtedly have been economically significant to the parties involved. However, the changes in American Indian policy that are, or will be, most important and enduring are the alterations that are taking place in Indians' on-reservation rights.

The clear trend in public policy since the 1960s has

consisted of de facto and de jure transfers of property rights in reservations away from federal and state governmental units and toward the tribes themselves.³ The term "property rights" is used here in its economic, rather than legal, sense. That is, "property rights" here refers to the identity of the parties that, in fact, exercise decision making control over resources or actions (see, also, Section III below). It is this control that is effectively being transferred, albeit in fits and starts and often with strings attached, to the various Indian tribes.

Many American Indian reservations are coming to resemble so-called enterprise zones. For many purposes, reservations now occupy the status of independent state governments. They are, for example, substantially free of state-level economic, environmental, and related regulation, as well as state taxation of on-reservation tribal income and property.⁴ Tribes, themselves, have powers of self-taxation, as well as the ability to levy fees and taxes (such as severance taxes) on the export of tribal resources. In addition, most tribes have broad powers of self-government, including the capacities to institute regulation of intra-tribe commerce and relations, to adopt rules of property transfer and inheritance, and to establish legislatures, courts and police forces.⁵

With regard to economic development, Indian tribes have had the right since the 1930s to establish federally-chartered corporations for the management of tribal enterprises. Historically, however, the Bureau of Indian Affairs has been the

primary holder of property rights (i.e., the primary decision maker) in economic projects for most reservations. American Indian reservations are formally held in trust by the Federal Government, with the BIA serving as the primary administrator of the government's trust responsibility.

In order to affirm and direct a federal policy announced in 1970 supporting Indian autonomy, the Federal Government adopted the Indian Self-Determination and Education Assistance Act of 1975. This has gradually altered the governmental role in Indian management. The role and the authority of the BIA are now in flux and vary considerably from tribe to tribe. Nevertheless, there has been a clear trend toward greater autonomy for the individual tribes. While the BIA maintains administrative authority over Indian reservations, on at least some reservations, its de facto role appears to be evolving toward that of advisor, contract consultant, and funding source. As a recent Interior Department Task Force puts it:

The Role of the Federal Government is ... gradually changing from that of "guardian" to that of "mentor." The government can provide technical Assistance and advice on how to make reservation environments more supportive and attractive to business. But it cannot require -- nor should it -- that Indians accept this advice.

Department of the Interior, Report of the Task Force on American Indian Economic Development, p. V-5 (Draft).

Primary decision making authority over investment, labor policy, marketing, pricing, and production increasingly resides with the individual tribes (or individual tribal members) when demand for

such authority is asserted.

In the natural resource sector, which is of particular importance to many tribes, it is now the stated policy of the Federal Government that:

Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The federal government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities.⁶

The implied solidification of tribes' property rights to the natural resources on their reservations is not illusory. Since they are formally under BIA jurisdiction, reservations' lumber, mining, and grazing activities generally are not subject to the planning of such agencies as the U.S. Forest Service, the National Park Service, or the Bureau of Land Management (BLM) -- the federal bodies with primary management responsibility for public lands of the type occupied by many Indian reservations. Similarly, with regard to wildlife-related matters, legal decisions reached in the 1970s and early 1980s have allowed tribes to throw off any vestiges of regulatory responsibility from state game and fish departments (which otherwise have authority for regulation of fishing and hunting activities within a state).⁷ The result is that the policy move to self-management of natural resources has taken American Indian reservations a long distance toward the status of private businesses -- at least in their relations with the off-reservation world -- and away from the status of publicly-

managed lands. As the American Indian National Bank observes:

Tribes today can be viewed as ethnic land-owning communities and as "quasi-corporations" responsible for the investment of tribal resources, [and] for managing those resources... .

Indeed, to the hard-to-quantify extent that Indian autonomy has had the effect of insulating some reservations from the oversight of federal and state regulatory authorities that regulate the private sector (e.g., the Environmental Protection Agency, the Occupational Health and Safety Administration, the National Labor Relations Board, state gaming commissions, state and municipal zoning authorities, etc.), some American Indian tribes experience more extensive, complete, and secure property titles than private companies. That is, in a number of important respects reservations are more "deregulated" -- at least with respect to non-tribal governments -- than the vast bulk of the rest of the economy. This creates niches in the market that present American Indian tribes with classic opportunities for the exercise of comparative advantage. The question, of course, is how and how well tribes can respond to these opportunities.

III. CHANGING RIGHTS AND CHANGING OPPORTUNITIES

III.A The Underlying Reality of Native American Economic Development

Before turning to a description of some of the current cases of Indian economic development, it is important to see the setting of these stories. It is difficult to exaggerate the

overall depressed state of Native American economic development, or the sorry history of associated public policies.⁹

Unemployment rates on reservations commonly exceed 50%, and many reservations run at rates of 80-90% unemployment year after year. On some reservations, the only real employment is working in a government-funded office that delivers necessary social services to the unemployed. Along with the lack of economic opportunity for individuals comes accentuated socioeconomic problems of crime, familial instability, alcoholism, mental health problems, and so forth.

On most reservations, the majority of investment dollars for enterprise development comes from the Bureau of Indian Affairs through grant and direct and guaranteed loan programs. Default and/or forced refinancing rates on the latter are quite high; about one-third of the BIA's loans are overdue, non-performing, or in default.¹⁰ Federal attempts at business creation have a long and embarrassing history of white elephant disease; and some analysts assert that, at least until very recently, there was not a single case of a successful reservation-based business of significant size that could withstand the market's profit and loss test in the absence of targeted governmental subsidy. Even now, it may be that the number of significant enterprises operating with stand-alone success may number in the single digits.

Despite tax advantages and niches in the market, many tribes and tribal members find it extremely difficult to attract

capital. Perceived and, not uncommonly, real instability and opportunism on the part of tribal governments and the BIA combine with the absence of track records to scare off investors. On the flip side, many tribes and tribal members have been burned so frequently and so severely by the proverbial fast-talking outsider that they are reluctant to pursue outside credit or equity capital, not to mention outside management and expertise.

Finally, the Federal Government and, particularly, the BIA are omnipresent, if not omnipotent. American Indian reservations remain, en masse, heavily dependent on public funding of social services -- and none appears anxious to sever this pipeline. The amount of social service funding (e.g., per capita) does not appear to decline as one looks toward tribes with evidence of economic vitality. Many reservations' economic affairs are, for all intents and purposes, run by the BIA, which routinely takes it upon itself in its role as official trustee to negotiate contracts, determine resource utilization, manage financial records and accounts, veto or approve investment decisions, hire and fire labor, and otherwise direct and control reservation businesses.¹¹ As a result, any impression that the "new era" of Indian self-determination has transformed all reservations into bustling enclaves of Indian-run enterprises and tribal self-sufficiency is false.

III.B Shifting the Opportunity Costs of Economic Development

While aggregate statistics do not paint a rosy picture, there is something new happening in reservation economic

development. The essence appears to be this: the combination of more secure property rights, the access to (potentially) profitable market niches, and the de facto ability to wrest control of tribal resources from federal and state governments has meant that tribes, themselves, are increasingly bearing the opportunity costs of their investment and management decisions.

Throughout most of their history, American Indian reservations have served as the mechanism by which non-Indian society has "kept" Indians. While original functions, such as incarceration, may have gone by the way, reservations have continued to receive bare minimum levels of subsistence support from the public sector, but have held no secure self-controlled assets upon which to build economies. Increasingly, however, tribes do have assets -- even if only the intangible assets of relative freedom from certain kinds of state and federal regulation. Thus, increasingly, a tribe's failure to take advantage of economic opportunities imposes a cost on that tribe in the form of the foregone returns from those opportunities. Some tribes (or tribal councils) may consciously choose not to act in the face of such opportunity costs.¹² As the present turmoil in the economic development strategies of tribe after tribe demonstrates, however, tribes do change and attempt to adapt.

This "opportunity cost" perspective is important because it suggests the testable prediction that the frequency of successful economic ventures should be on the rise -- finally. The

implication of the perspective is that the tribes themselves are increasingly both central decision makers and residual claimants. That is, they can both make decisions and, if they turn a profit, keep the returns themselves; and it is the prospect of the latter that motivates quality in the former. In previous times, this link was all but non-existent, as fundamental decision making power lay with federal bureaucracies (especially the BIA) and bureaucrats:

Anecdote: The historic records of the White Mountain Apaches of Arizona, like those of so many tribes, recount as standard operating procedure that Tribal Council meetings were routinely conducted with the BIA Superintendent seated next to the Tribal Chairman and that momentous decisions were turned over to the BIA because "it knows more than we do."

The public sector authorities may have been benevolently motivated, but were forbidden by law from keeping the returns to sound economic decisions. Without the prospect of meaningful reward and in the face of some perverse incentives to "sell" poverty to the U.S. Congress (see below), it is not terribly surprising that bureaucracy-based economic development has met with little success.

The 1960s witnessed a surge of Great Society federal funds and programs aimed at economic development on American Indian Reservations. The consequence was large numbers of BIA, Economic Development Administration, and related agency projects, ranging from hotel and motel construction to small manufacturing facilities. Despite the appearance of overly simplistic

caricature, it seems that a fair assessment of these projects is that, by and large, they were "trendy", socially-conscious, but economically hopeless, publicly-funded boondoggles (a technical economic term?): "Quite a few reservations have pretty scenery, so let's promote tourism by building motels" (that end up as make-work projects where employees far outnumber guests).¹³

Then, too, the sorry, but documented history of neo-colonial ripoffs of many reservations' natural resources took place within the context of BIA and other agency contract negotiation, royalty systems, and management plans:¹⁴

Anecdote: The White Mountain Apaches recently received judgment against the BIA (see note 11 above) for mismanagement of the Fort Apache reservation. Beginning in 1916 and continuing well past World War II, extensive measures were taken by the BIA to increase water runoff from the reservation to the City of Phoenix. These included the grazing by non-Indians of over 100 thousand animals on range contemporaneously estimated to have a carrying capacity of 41000, increasing the allowable timber cut far in excess of contemporaneously assessed sustainable yield, and various "vegetation management" practices (cottonwood eradication, brush chaining, and burning) designed to maximize the yield of but one of the reservation's forest products -- water.

But times are changing. The gradual solidification of Indian economic rights now means that some tribes routinely ignore BIA-directed levels of resource harvest, some tribes aggressively reject or do "end runs" around BIA-negotiated business contracts, some tribes hide economic development and investment plans from the federal authorities for as long as

possible, and some tribes undertake, individually, investment projects that exceed BIA's entire capital grant budget:

Anecdote: The White Mountain Apaches now routinely exclude the BIA from important Tribal Council meetings.

It is in this kind of environment that Native American businesses and tribal reservations are now operating. The tenor of relations between tribes and the Federal Government may vary from pleasant to hostile, but the move toward autonomy is real.

III.C Perspectives on the Policy Debate: Routes to Development

The move toward Indian economic self-determination is really a move away from the BIA (and the Federal Government). In reading through the mountains of publications, speeches, pronouncements, and reports being generated on the topic of Indian economic development, there is surprisingly little disagreement with the proposition that BIA-controlled economic development has been a marked failure in the past and provides no hope for the future. Tribes themselves rail continuously against the BIA; and even the Federal Government is unusually critical.

The Reagan Administration's Commission on Indian Reservation

Economies describes the Bureau of Indian Affairs with:

Bureau of Indian Affairs management of Indian trust resources creates numerous land, labor, and capital obstacles to Indian reservation economic development. In terms of land and resources, incompetent asset management undermines local initiative and raises costs to Indian tribes and businesses...Bureau personnel are either under-qualified to manage their present responsibilities, or unable to provide expert technical assistance for business development... A Byzantine system of over regulation actually deters investment... Exacerbating the development climate is the fact that

BIA consumes more than two-thirds of its budget on itself... The system is designed for paternalistic control and it thrives on the failure of Indian tribes.

Report and Recommendations of the Presidential Commission on Indian Reservation Economies, November 1984.

There are, in fact, three primary conceptions, or "models", of the BIA afoot in public discussion; and at least one of them is hinted at in the foregoing passages. Ranging from the benevolent to the accusatorial, the competing conceptions of the BIA in its role as development agency are:

1. The BIA is staffed by well-meaning people who pursue the interests of American Indians — sovereignty, preservation of cultural values, and economic well-being — within the broad mandate of trust responsibility provided by Congress. The BIA takes its trust responsibilities seriously and, in particular, cannot simply give up control of Indian assets and affairs in the absence of concrete evidence, so far largely lacking, that tribes possess the experience, expertise, management systems, governmental stability and planning capacities to manage their own economies successfully.

Anecdote: The BIA is now heavily staffed, in Washington and in the area offices, by Native Americans who are intended to be sensitive to Indian problems and perspectives.

2. The BIA is a typical "Byzantine" bureaucracy primarily interested in its own power and survival. It is not interested in working its way out of a job by turning reservations over to tribes or by bringing real economic development to Indian Country. The BIA budget depends, in a classic Niskanen way, on Congress' perception that American Indians are poor and have little prospect for progress. Accordingly, the BIA has become very adept at producing and marketing poverty to Congress.

Anecdote: The BIA has shown considerably more willingness to contract social service delivery (still funded by the BIA budget) to tribes than to give up control over economic management and assets: as of 1985, 51% of social service appropriations were funding

contracts for social service delivery, compared to 30% for economic development, 31% for natural resource management, and 14% for trust management.¹⁶

3. At least currently, the BIA and its policies are designed to implement a racist policy of terminating reservations and the special legal status of reservation peoples; or at least the BIA is intended to keep the land, water, and resource assets¹⁷ from really being owned and controlled by Indian tribes.

Anecdote: The primary sources of this view are Indian leaders who view the Reagan/Swimmer Administration's "privatization" movement (see more below) as a means of transferring tribal assets out of the hands of tribal governments and, ultimately, out of the hands of tribal members.

Anecdote: The BIA continues to set allowable timber cuts (and, whether by design or circumstance, associated water runoffs to Phoenix) for the White Mountain Apaches which far exceed the levels the tribe will accept.

A full examination of the BIA is beyond the scope of this study (although our reading of the record of the BIA resonates with the Byzantine bureaucracy model). It does seem fair, in fact an understatement, to say that the record of BIA-managed economic development is bad enough to warrant turning to radically different approaches. If nothing else, the BIA operates under an incentive scheme that leaves any link between sound performance by Indian enterprises and bureaucratic reward tenuous, if not perversely twisted (per the Byzantine bureaucracy model).

III.D Alternatives to Federal Management and Control

In its barest essentials, the keys to Indian economic development have two crucial components: Reservations need capital, both human capital and financial capital; and reservations need an economic and legal environment that can attract and hold that capital. Human capital means expertise -- in management, labor relations, business planning, law, manufacturing, technology, communications, and on and on. It is the case, and will be for a long time to come, that many Indian communities lack the experience and expertise needed to run successful businesses. Financial capital, meanwhile, is needed to pay the bills that building a viable enterprise entails. The BIA and other agencies historically have been ill-equipped, (if not ill-intentioned) to supply either the expertise or the financial capital at the levels and under the terms that are needed to generate successful economic development.

In reality, there are only two generic alternatives to BIA/Federal management of Indian economic affairs. First, there is the bringing of private (member and non-member) capital and private employers to the reservation. Second, there is the creation of tribally-owned capital and businesses on the reservation. Obviously, these two approaches are not mutually exclusive, but they are distinct enough as development strategies that they have polarized much of the current debate.

The Reagan/Swimmer Administration has made the expansion of private business development on reservations the centerpiece of

its development policy. This policy was enunciated in the 1984 Report and Recommendations of the Presidential Commission on Indian Reservation Economies, which recommended that tribal governments transfer existing enterprises to private ownership (initially) in the hands of tribal members, and that the attraction of private enterprises to reservations constitute the central objective of tribal development policies. In order to overcome risks that private businesses perceive when contemplating operating on a reservation under that reservation's laws and government, tribal governments are urged to: divorce tribal judicial systems from their political interference, consider surrendering certain rights of sovereignty (such as the right to adjudicate some types of business disputes and the right to exemption from suit), and opening tribal court decisions to federal court review where constitutional or statutory rights are involved.

At the core of the private-enterprise-based policy on Indian development is the observation that many tribes are unable to attract capital and employers because of the perception that tribal governments are unreliable in business dealings. Essentially the view is that some combination of "meddling" by tribal governments and unintentional political instability that translates into vacillating business policies increases the risk and hassle of doing business on reservations. This view is not without foundation (although the 1984 Commission Report noted that "there is a reluctance throughout the commercial banking

industry to deal with Indian reservations because of the unresponsiveness of the BIA").

When one party to a bargain or contract is also the enforcer (sovereign adjudicator) of that bargain or contract, strong incentives exist for the enforcing party to engage in opportunistic behavior — changing implicit or explicit terms and conditions for the purpose of economic gain. If there are any sunk costs once a relationship is undertaken (as when a mine or factory is opened), an opportunistic enforcer has some ability to alter the terms of the bargain unilaterally without causing the sunk investment to pick up and walk away.¹⁸ Such alteration may be explicit, as when the length of a contract is unilaterally changed or the level of a royalty is raised above that initially agreed upon; or opportunistic behavior may simply take the form of less-than-promised diligence in meeting contract terms (because "the pressure is off"), thereby raising the captured party's costs or worsening its efficiency.

The problem with opportunistic behavior is that it can give a party a bad reputation and raise the cost of attracting future investment dollars. Opportunistic expropriation through conscious action or unintended instability, if anticipated, can cause investors either to refuse to commit capital to reservations or to stiffen the conditions and charges under which capital is committed. Many large international corporations, for example, employ systematically higher hurdle rates of return (i.e., the rates that prospective ventures must promise before

they are undertaken) when dealing with developing economies with opportunistic records or unstable property rights. This, of course, limits the flow of capital to the affected countries.

The discouragement of private investment, business formation, and business relationships on reservations through the perceived threat of opportunistic action by tribal governments is a severe handicap to economic development. This threat arises because sovereign tribal governments necessarily find it extremely difficult to bind themselves credibly to long-term, arm's length agreements regarding on-reservation property rights of private businesses and investors.¹⁹ To be sure, measures such as the adoption of appropriate reservation business codes and constitutional separations of political and economic authority can be helpful to a tribe. Ultimately, however, as the enforcer of such agreements, even a well-intentioned tribal government cannot readily bind its successors. And, of course, a tribe may not want a form of government that binds it in long-term economic relationships, despite the price paid in the form of discouraged development.

How do well-functioning marketplaces handle the problems of binding parties to non-opportunistic behavior when the threat of such behavior is present? There are really two ways that are of relevance here. First, parties submit their long-term agreements to third-party enforcement, either through courts or arbitration. For American Indian tribes, this submission to outside enforcement and authority is often seen as a relinquishing of

sovereignty. Second, parties integrate themselves into a single firm in order to give each the same objective -- overall firm profitability.²⁰ For American Indian tribes, this integration into a single economic unit means tribal ownership and control of enterprises.

Tribal government ownership is frequently characterized as non-capitalist, or incompatible with private enterprise, or a form of central planning, or even socialism. This is silly. To the extent that a tribe has property rights in its reservation -- rights to use, control, and disposal -- and can engage in economic transactions over those rights with the rest of the economy, a tribe is most reasonably thought of as, itself, a firm with respect to its dealings with others. And, a tribe's internal organization (e.g., its government) is the analogue to the forms of corporate governance that typical private sector firms or, perhaps even more appropriately, municipal corporations employ. Indeed, contained in the economic definition of a firm is the observation that firms are institutions that, internally, are fundamentally non-market allocators of resources who use some form of non-price, central planning to achieve their objectives.²¹

The dichotomy that pits privatization as free enterprise against tribal ownership as non-capitalist obscures the reality that the transfer of property rights toward tribes that is now taking place is transforming tribes into firms in so far as their economic relationships with outside parties are concerned. The

subjugation of the authority of the BIA and other governments is the same thing as the creation of private property rights for the quasi-corporations that are tribes. To own its own resources and to have the right to make its own decisions on their use is to confront a tribe with categorically the same choices that a firm faces (e.g., to allow bingo or not, to allow non-member wildlife harvesting or not, to buy a good or service from another firm or make it in-house). The appropriate questions to be asking are not residing in misdirected and ideologically-laden inquiries into free enterprise versus central planning. Rather, the appropriate questions to be asking concern the optimal boundaries between within-firm (i.e., tribally controlled) and outside-firm transactions.

What are the strengths and weaknesses of managing a tribe's economy predominantly as a tribally-owned corporation versus a collection of separate markets? To return to the discussion above, perhaps the natural thing to think is that tribal ownership by unreliable tribal governments provides no solution to the capital market's concern over opportunism. This misses the point that when a business enterprise is tribe-as-corporation property, rather than outside party property, the tribal government has no incentive to engage in opportunistic expropriation of that business any more than a private sector corporate manager has an incentive to run one of his/her divisions into the ground. This is not to say that a tribal government would not lack the expertise or would not constitute

the wrong form of corporate governance for effective management of a particular enterprise. Such problems might make it very hard for a tribe to attract capital to fund the enterprise, but such inefficiency is the inefficiency of a particular corporate structure, rather than a symptom of opportunistic governments. By integrating the interests of tribal businesses with the interests of tribal management, the tribe-as-corporation finds it easier (all else equal) to raise capital because it can more credibly (albeit still imperfectly) bind itself with commitments to the sound performance of on-reservation enterprises.²²

Anecdote: The Mescalero and White Mountain Apaches are arguably the most aggressively anti-BIA control, pro-tribal control tribes in the country. They also appear to be relatively very good at raising capital.

The boundaries of the well-functioning firm and, by implication, the economically appropriate tribe-as-corporation are determined by the strength of within-firm economies of scale and scope relative to the costs of allocating resources through arm's-length, market transactions.²³ Under certain circumstances, it is easy to identify the kinds of factors that determine a firm's economies of scale and scope. One of the limits of the effectiveness of markets arises when there are significant spillover effects among economic activities, such that one firm's actions impose uncompensated costs (or benefits) on other firms. Without some mechanism for making spillover costs internal to the offending firm, that firm is effectively subsidized by others and has incentives to engage in too much of

the spillover-generating production. The textbook example of this situation is, of course, environmental pollution. It is not that markets cannot solve these kinds of spillover problems if tradable property rights are present (i.e., allowing damaged parties to charge culprits for spillovers). Rather, markets can often encounter very high transactions costs and simply be too expensive to use in such contexts. Under such circumstances, bringing all affected activities under the control of a unitized firm offers a viable non-governmental solution to the control of spillovers; if division A imposes costs on division B, unitized management can directly balance the tradeoffs between A's productivity and B's productivity.²⁴

For American Indian reservations, the most obvious settings in which significant environmental spillover problems are likely to arise are in agricultural, forest and natural resource-based economies. A forest-based economy, for example, confronts the reality that the timber cut affects harvestable wildlife resources and hydrology which affects grazing which affects hydrology which affects wildlife... and so on. Unitized economic management provides a mechanism by which the implied tradeoffs between the various outputs that a forest economy can yield can be optimally balanced. The direct implication is that an approach to development based on the tribe-as-unitized-firm is likely to be particularly well-suited to agriculture, forest and natural resource based reservations. By the same token, a reservation economy of independent private enterprises organized

through formal and informal market transactions is likely to be best suited to reservations without spillover-linked production processes, e.g., reservations whose comparative advantages lie in the provision of labor and/or regulatory havens.

An obvious drawback to tribes-as-firms is that sovereign tribes are also governments. As such, they are susceptible to all of the commonplace problems of governments acting as economic enterprises. These range from political factionalism and patronage to nontransferability of ownership and rationally ignorant voters-shareholders. We recognize these impediments to tribes-as-firms; but tribal governments are de facto owners of firms located within their jurisdictions, by reason of their sovereignty. The tribe-as-firm goes to the heart of the problem by moving the tribe closer to the role of residual claimant and raising the opportunity costs of poor performance. Whether this positive influence is strong enough to counteract the negative aspects of governmental ownership in any particular case turns on political, cultural and economic factors discussed below.

At an operational level, the most obvious drawback to tribes-as-firms is the implied need for top-quality management talent and expertise. While private sector corporate leaders "rule" through effective politicking with boards of directors, other managers, stockholders and employees, the kind of politicking that is required to become a tribal leader may not frequently come packaged with the managerial, financial, and strategic skills that control of tribal enterprises requires:

Anecdote: The most frequently cited impediment to reservation economic development in testimony before the Presidential Commission was "weak business management by tribal governments."

Moreover, when a tribe lacks necessary expertise and skills in its member population, tribal members' mistrust or distaste for outsiders may prevent the tribal government from going off-reservation in search of needed human capital. In short, tribal ownership may improve access to capital markets, all else equal; but everything else may not be equal, because tribal ownership may translate into a shortage of managerial skill by placing greater demands for such skill on tribal members themselves.

From many tribes' perspectives, the central advantage of the tribes-as-corporation approach to development over the privatization approach is the strengthening of tribal sovereignty that is implied by the former. Any talk of reducing or surrendering any amount or dimension of tribal sovereignty is a red flag to tribal governments and the bulk of their constituents. Within six weeks of the appearance of the Presidential Commission's Report... in November 1984, the National Tribal Chairman's Association voted 84 to 18 to reject the Commission's recommendations, primarily upon the perceived diminution of sovereignty that the Commission's recommendations envisioned. As one tribal leader explained:

The thing is that the Federal Government wants to gain control of tribal resources, and the way they're going to do it is to bring in these outside investors the Commission's talking about, which is a pretty

clandestine way of going about it.²⁵

Why is the privatization of reservations so objectionable to so many? Like other bureaucrats and top corporate managers who fight budget cuts and takeovers, some tribal leaders are undoubtedly threatened by the prospect of losing control over reservation resources. Less cynically, however, there is legitimate concern among leaders and rank-and-file tribal members that privatization of the reservations could lead to losses of sovereignty more profound than surrenderings of certain judicial powers. The prospect of tribal assets being spirited away by sophisticated but unscrupulous outsiders preying on desperately poor and ill-informed tribal members may be thought to belong to a bygone era of allotments and assimilation. The recent experience of many Indians under the Alaska Native Claims Settlement Act, as well as the Navajos and many other energy-resource tribes, indicates that times are not so different.²⁶

Even if it is financially enriching, the appearance of significant non-member capital on the reservation introduces new, non-Indian players into tribal politics and tribal social structures; and severe social strife frequently undermines tribal cohesion under such circumstances.²⁷ Economists, in particular, are just coming to recognize the roles that cultural mores and cultural institutions play as social organizers and implicit contract enforcers.²⁸ Culture is a public good subject to free riding (by individual tribal members responding

to expanded private sector options, in this context); if tribal members themselves choose to forgo their free riding in favor of tribal autonomy and a tribe-as-corporation approach to economic development, imposing a policy of privatization from Washington is unjustified paternalism. The bottom line benefit of tribal control of tribal resources lies, to a substantial degree, in allowing American Indian reservations the chance to achieve success on their own terms. These terms, as with all societies and all individuals, involve both narrowly-defined economic goods and services and broader cultural values.

IV. TRIBES AS CORPORATIONS: TAKING PROPERTY RIGHTS FROM THE BIA

The vast majority of American Indians on reservations and the vast majority of tribes continue to be largely controlled in their economic affairs by the BIA. The opportunity to observe the relative performances of privatization and tribe-as-corporation strategies of economic development are quite limited. The listing of significant, capitalized reservation enterprises is discouragingly short, and almost every time an apparent success story is uncovered, another information source confounds the picture by pointing out on-going subsidization, stark operating problems, deep managerial difficulties, or resulting intra-tribal strife.²⁹ Still, as best as can be determined, there are some notable examples of sustainable economic development. The most successful tribes that can be found appear to be stridently independent of the BIA and emphatically designed

on the tribe-as-corporation model of development, rather than the privatization-of-reservation-markets model. Tellingly, they occur on forest-based reservations, well-suited to unitized, tribe-as-firm management. Moreover, tribal government has a decidedly corporate structure and management expertise has been imported from off-reservation.

IV.A Some (Relative) Success Stories: The Arrow-Coase Theorem as a Management Philosophy

It has been a common theme in much recent thinking about American Indian economic development that to be truly sovereign, to be independent, a tribe has to develop a strong business base. The 1984 Presidential Commission, for example, writes: "Without sound reservation economies, the concept of self-government has little meaning." This view may have things backwards. The experience of successful tribes suggests that to have strong reservation economies, tribes have to first have sovereignty. That is, a precondition of economic development must be assertions of a tribe's property rights in its own reservation. Without this and with continued BIA/federal de facto ownership of reservations, the indefiniteness of property rights and the absence of a compelling designation of the residual claimant to the use and misuse of tribal resources means that the carrot-and-stick effect of opportunity costs on tribe behavior will be lost.

Although existing case law and a fairly good record of success would suggest that almost any tribe so inclined could establish "clear title" for themselves, the number of tribes who

have actively taken a consistent and uncompromising go-it-alone approach is fairly small. The tribes who have taken this approach have done so through repeated court battles designed to secure tribal rights to charge for (i.e., tax) the sale of tribal resources, tribal rights to self-management, and tribal rights to engage as a party to contracts and the issuance of financial instruments.³⁰ It has also been achieved by the subjugation of the power (i.e., property rights) of the BIA and other public agencies (such as state game and fish departments) through adept political maneuvering and the waving of the "self-determination" flag when pressed to relinquish autonomy back to the BIA. In some cases, such as the Mescalero Apache reservation and the White Mountain Apache reservation, the result has been the creation of a bundle of property rights that is not duplicated even in the non-Indian world. Specifically, these two tribes have established themselves as for-profit owners and operators of what amount to National Forests. What are the results of this unique arrangement? Has the transfer of property rights to the tribes altered their economic performance and made them more efficient?

IV.A.1 The Apache Cases

The Mescalero Apache reservation consists of approximately one-half million acres of forest and rangeland situated in south-central New Mexico and virtually surrounded by the Lincoln National Forest. It is home to approximately 3000 Apaches. Under the long-time leadership of Chairman Wendell Chino, the

Mescaleros have embarked on a broad-based strategy of tribally-controlled and tribally-owned economic development. The tribe engages in a major logging operation and operates a year-round golf and ski resort (Inn of the Mountain Gods and Sierra Blanca). It also aggressively markets fishing, hunting, and camping opportunities to southern New Mexico and west Texas.

Although hard data are difficult to come by, anecdotal evidence and direct observation suggest that at least the skiing and outdoor recreation enterprises of the Mescaleros are profitable. The reservation's housing stock is notable for its size and modernity and employment of tribal members is high. BIA data indicate unemployment rates in the range of 30%, but these data (which play a role in BIA and other agencies' funding levels for social services) may be inaccurate; other sources indicate that there is little or no involuntary unemployment on the reservation.³¹ Obviously, if this is true, the Mescaleros truly are an outlier and represent a remarkable success story of self-managed and sovereign economic development.

The White Mountain Apaches are a tribe of approximately 9000 occupying 1.6 million acres of forest and rangeland in east-central Arizona. Like the Mescalero reservation, Fort Apache sits in the midst of National Forest land. Approximately 750 thousand acres of the reservation are covered by commercial timber, making it the largest contiguously managed ponderosa pine forest in the world. Approximately 400 thousand acres of the Fort Apache reservation is prime grazing land. The reservation

now has abundant wildlife and possesses approximately 3000 surface acres of reservoirs and 500 miles of rivers and streams. Slightly more than 60% of the waters of the Salt River, which is a primary source of water for the Phoenix metropolitan area, originate on the reservation.

First under Chairman Ronnie Lupe and now under Chairman Reno Johnson, the White Mountain Apaches have an aggressive program of tribally-directed economic development founded on a natural resource base. The White Mountain Apaches operate nine enterprises and generate approximately \$80 million per year in revenues. The largest enterprise is the Fort Apache Timber Company (FATCO), with annual sales on the order of \$30 million per year. The FATCO sawmill is fully modernized and shows labor productivity (output per man-hour) that is considerably higher than most other mills in the western U.S. A recent study of productivity indicates that average productivity in the Western Wood Products Association has been on the order of 7.4 labor hours per thousand board feet of lumber produced, while FATCO operates at 5.7 labor hours per thousand board feet. FATCO lumber is also apparently of high quality, sustaining prices which are 15-20% higher than average for the Rocky Mountain region.³²

Over 95% of the FATCO workforce consists of tribal members, and the annual payroll is approximately \$9 million. The long-time general manager is not a tribal member. FATCO annually delivers timber royalties to the tribe equal to approximately 25%

of sales. Significantly, FATCO has been consistently profitable (at a time when the lumber industry nationwide has been suffering) and is reported by some observers to be the most profitable tribal business in the country.

The White Mountain Apache ski resort (Sunrise) was begun in 1972 over opposition from some environmental interests. The resort is the largest and most heavily utilized in Arizona, servicing the rapidly growing populations of Phoenix and Tucson with seven chair lifts, fifty runs, two lodges, and a planned airport facility. Annual revenues are on the order of \$7 million per year. In seasons of good snow, Sunrise appears to now be profitable. The facility employs approximately 650 full time equivalent workers, approximately 60% of whom are tribal members. The current general manager of Sunrise is not a tribal member.

In addition to the lumber and skiing operations, the White Mountain Apaches operate a system of retail enterprises, a construction company, a tribal cattle herd, and irrigation projects. Like the Mescaleros, the White Mountain Apaches have aggressively developed an outdoor recreation business based on hunting, fishing, and camping/hiking.

Significantly, when compared to many other tribes, the vast bulk of the tribe's total employment (over 85%) is in tribal enterprises rather than tribal government. Unemployment is officially in the range of 25-30%, although this reflects a rapid growth in the number of workforce entrants. Housing in absolute terms remains well below non-Indian norms, but is relatively

better than on the majority of reservations.

IV.A.2 Optimal Management of a Forest; or Was Ronald Coase an Apache?

In the foregoing descriptions there is a somewhat hidden set of facts that, taken together, constitute a remarkable picture. Both the Mescalero and White Mountain Apaches are operating forest-based, multiple-use economies subject to marketplace tests of performance and for the purpose of making money. Interestingly, U.S. National Forests are also supposed to be managed as multiple-use units that provide forest products, grazing, recreation, and other amenities and commodities in a mixture that reflects sound environmental policy and, at least in part, economic benefits and costs. The Mescalero and White Mountain Apaches are dramatically outperforming the U.S. Forest Service and other public land agencies. For economists interested in an example of unitized, multiple-use privately owned forests, the Apaches are the premier example.

The most striking attribute of the Apaches' management is the emphasis on recreation. Following their skiing operations as flagships for both the Mescalero and White Mountain Apaches are their big game hunting operations. These provide an important window on the impact of the transfer of ownership of tribal resources to the tribes. At the present time, male ("bull") elk can be hunted in great numbers in the National Forests adjoining the Mescalero and White Mountain reservations. In Arizona, for

example, elk hunting permits (firearms and archery) are allocated by lotteries to approximately 1700 hunters at a fee of approximately \$60 each. The White Mountain Apaches, meanwhile, sell approximately 40 trophy-only (i.e., mature male) elk permits to a 2-year waiting list at a price averaging \$10000 per hunter. The tribe recently tested the market price with an auction and obtained a price of \$15000. The Mescaleros face similar competition from the State of New Mexico, plus private marketing by large ranches, and charge approximately \$6000 per elk hunt.

How can the Apaches charge so much for their elk hunting? Without going into the psyches of the people who pay \$10000 for an elk hunt, the answer is that the Apaches provide a level of quality that public land officials are unable to duplicate. This quality takes many dimensions:

- Wilderness experience: While the nearby public lands are relatively crowded with hunters and their vehicles and paraphernalia traversing heavily roaded forests, the Apaches emphasize the experience of wildness in a setting more reminiscent of traditional frontier hunting grounds. Apache hunts are rugged with no guarantee of success. Given population levels, however, the Apaches provide dramatically higher success rates than public sector suppliers, as well as rates of success that exceed those offered by large for-profit ranch suppliers (such as the famous Vermejo Ranch, a New Mexico subsidiary of Pennzoil). See Exhibit 1.
- Trophy quality: The White Mountain Apache, in particular, are in the business of providing trophy hunting recreation. Elk antler size is the measure of trophy quality, and the White Mountain Apaches' average antler size is off the map relative to the public sector competition. The average White Mountain elk scores over 340 on the "Boone and Crockett" scale, compared to something in the range of 50-70 points for the state of Colorado and approximately 275 points for the Vermejo Ranch.³³ The average White Mountain elk is 7.5 years old at the age of harvest, compared to 1.5-2.5 years in

Colorado. Most other states appear to have average ages at harvest not exceeding 4 years.³⁴

- Professionalism: The Mescalero and White Mountain Apaches have reputations among their customers for being the upper crust of the market in terms of the professionalism of the tribe's staff and organization. Dealing with state game and fish departments can often be like dealing with state motor vehicle bureaus.

The Apaches' elk hunting and related fee-fishing and other fee-hunting operations were originally challenged by state officials, who asserted (among other things) that the Apaches were ill-suited to wildlife management and threatened the conservation of game and associated recreational opportunities. But the results that have actually obtained have been precisely the opposite — just as the theory of property rights would have predicted. By turning fish and game into economic resources for the Apaches, incentives were created to preserve, protect, and invest in those resources. The results are remarkable by any standard and leave the Apaches teaching the rest of the world how to manage multiple-use forests.

From available biologic information, the Mescalero and White Mountain Apache herds appear to be among (there is no single measure available) the healthiest major elk populations in the world. Not only do the reservations produce more and larger males in their populations than can be found among publicly owned herds, but the Apache populations show steady population growth under tribal management. The Mescalero herd shows a ratio of males to females far higher than major competitors (Exhibit 2). Pregnancy rates among Apache elk also tend to exceed those of

publicly managed populations. Finally, Apache elk herd populations are managed to prevent overgrazing of range and forage, while unhunted elk populations in, e.g., Yellowstone National Park appear to be causing significant, if not catastrophic, ecological damage.³⁵

Interestingly, the incentives for sound wildlife management that the Apaches confront show up in concrete differences between their unitized forest management practices and the practices seen on public lands. National Forest managers operate under an incentive system in which the funding agent -- Congress -- is able to monitor relatively gross measures of value: board feet of timber cut and visitor days. State game and fish bureaus, meanwhile, face incentives to provide maximum numbers of recreational days, with little or no ability to provide discriminating measures of high and low quality recreation to their funding agents. In the case of the National Forests, there appears to be a fortuitous synergy: as logging roads are built (often as part of timber sales that have costs far in excess of revenues), measured visitor days rise along with board feet of lumber cut as sight-seeing driving increases. It turns out that roads, however, are a major disturbance to elk populations. At \$10000 to \$15000 per trophy elk, the White Mountain Apaches' road building policy is dramatically different from that in the National Forest. Apache roads are generally required to be single track and ungraveled; upon the termination of logging, they are reseeded and blocked to subsequent travel; wildlife-

disturbing straight stretches of road are minimized; and roads are not allowed to be built within specified distances of meadows where elk congregate. In addition, the tribe has designated its own wilderness areas, requires unlogged buffer areas around meadows and streams, and forbids all travel of any kind in spring calving areas — a policy that has been fought for repeatedly by environmental groups, but not instituted in National Forests. Finally, as perhaps the epitome of Coasian management, both the Mescalero and White Mountain Apaches require members who wish to hunt trophy animals to purchase that right on the same terms as the sales made to non-members.

In fact, there is an important lesson in the Apache experience for the management of U.S. public lands. The Apaches provide an answer to the perennial question that polarizes debates over U.S. public land policy: are the public lands tilted too much in favor of industrial, non-recreational interests or too much in favor of recreational and environmental interests? Taking the American public's willingness to pay as the measure of value the public attaches to alternative uses of the public lands, the Apache experience indicates that the American public wants a bundle of multiple-uses tilted more in favor of particular kinds of high-quality recreation (skiing, fishing, and trophy hunting) and less toward the industrial products they derive from the nation's forests. That is, the most striking change in the management of Apache lands upon subjecting those lands to private market incentives has been the

rapid move of the Apaches into the high quality recreation niche that the public lands have failed to fill.

IV.B Ruminations on the Sources of Development and the Limits of Economics

While gratifying to economists (for whom all people are Adam Smith's rationally self-interested version of Pavlov's dogs), the relative economic success and the absolute ecological success of the Apaches are in some sense too easy to analyze: incentives (i.e., property rights) were changed and, pari passu, behavior changed in rational fashion. The more interesting stories are the "failure" stories. After all, the legal and political base for the property rights regime that the Apaches have forged for themselves is fundamentally the same for the vast majority of American Indian tribes. Why haven't they all taken the Apache route?

Consider, for example, the area of recreational development. The Hualapai Tribe of Northern Arizona possesses antelope and desert bighorn sheep and markets these to non-members at premium prices. Yet, the tribe was forced to suspend its antelope hunting at a time when populations elsewhere in the region were on a steady rise, and desert sheep harvesting has had to be severely curtailed. The Wind River reservation (Shoshone and Arapaho) of Wyoming took over control of its fish and game from the state, but very quickly found itself being preempted by federal authorities when common pool (i.e., unrestricted tribal

hunting) management resulted in exceedingly rapid depredation of wildlife populations.³⁶ Similar stories apply in whole or in part to tribes in Utah, Colorado, Alaska, and Montana. Many other tribes, moreover, possess more than adequate wildlife resources to tap the niche in the market that the Apaches have identified, but fail to do so by default or choice.

What is really going on with the Mescalero and White Mountain Apaches? Several facets of these cases stand out and begin to suggest hypotheses about the path to economic development by American Indians and, perhaps, other societies as well. At least in relative terms, the Apaches have acquired the two fundamental ingredients, addressed above, on which economic development is based: human and financial capital, and the legal and economic environment needed to attract and hold capital. In particular, the following attributes of the Apache context seem to be at the core of their relative success as self-determined tribes:

Leadership and the Rent-Seeking Process: A core component of any society's legal and economic environment is its ability or inability to shut down wasteful rent-seeking processes -- i.e., processes of using social resources to fight over the allocation of existing wealth, rather than directing resources and incentives toward the creation of new wealth. From Latin America to an excessively litigious U.S. society, rent-seeking can destroy or divert resources from productive use. The key to shutting down rent-seeking lies in the creation of definitive

rules of law — definitive property rights to action and resources. Without definite rights, whether private, bureaucratic or public, parties have incentives to invest in changing their rights.³⁷ Rules of law are fundamentally a problem of enforcement, and enforcement is a relationship between leaders and their constituents.

The Apaches have a long history of strong civic (as opposed to solely military) leadership by charismatic individuals — from Cochise through present Administrations. These leaders appear to embody a self-defined standard of public service in the interest of the tribe; and the tribe itself exhibits very low tolerance for self-aggrandizement or corruption. The Mescalero Apaches have had the same strong leader for 30 years, and the White Mountain Apaches have only had two Chairmen in the last 17 years. Many American Indian tribes have faced significant problems of "banana republic" corruption, or lack traditions of hierarchical leadership. The Navajo, for example, had little early history of comprehensive governance and seem to continue to exhibit more strongly communalistic or flatly democratic, consensus-building approaches to tribal decision making.³⁸ Such decision making turns leadership itself into a common pool asset that is subject to exhaustion through factionalism and instability.

Leadership and Hierarchical Business Management: The hierarchical structure of most business management is not a quirk of capitalism, but reflects the underlying efficiencies of specialization in ownership, management, and labor. The White

Mountain Apaches have a decidedly corporate management structure, with the equivalent of senior vice-presidents in charge of each division of the tribe's enterprises. Each of these division heads, whether tribal member or not, is a remarkably strong personality. The Tribal Chairman appears to serve the role of keeping consensus among these managers as to the overall goals and plans of the tribal economy.

Resource Endowments: Both the Mescalero and White Mountain Apaches have rich resource endowments in their timber, range, snow, and wildlife. This alone, however, seems to account for very little, and does not account at all for why the burst of development waited until the era of aggressive self-management to appear. Numerous tribes have rich natural resource endowments, ranging from oil, gas and coal (e.g., the Navajos, the Crows, the Northern Cheyenne) to non-energy minerals (e.g., the Laguna Pueblo reservation). Even prior to the collapse of market prices for their assets, evidence of sustainable economic development for the average tribal member was hard to uncover.

On-Reservation Property Rights and the Common Pool: The Mescalero and White Mountain Apaches' regulation of member access to reservation wildlife is indicative of the tribes' abilities to shut down the common pool and avoid the tragedies of the commons, i.e., resource races leading to rapid exhaustion. This may be founded in the Apaches' very long history of tribal ownership of capital assets, originating in the early 1600s with the raiding and reselling of Spaniards' livestock. Traditions of significant

capital asset ownership among, for example, Great Plains tribes were historically weak.³⁹ Recent examples of the tragedy of the commons are found on the Wind River reservation (see above) and perhaps most notably among the Navajo.⁴⁰

Labor-Management Relations: A significant problem in many Indian businesses arises from conflict in efficient hierarchical and hire-and-fire labor-management relationships. Many tribes encounter great difficulty in establishing manager-follower command systems, and in instituting layoffs when economic conditions warrant. These problems impede the specialization of labor and can emaciate businesses financially. Moreover, reputations of tribes for political "meddling" in enterprises by tribal governments are frequently earned when the layoffs problem arises. The Apache tribal councils have fairly consistently been able to back management when layoffs are needed by conveying their necessity to the tribe. In fact, the White Mountain Apaches exhibit and stick to quite high standards of performance at many levels of employment. We have little clue as to the origins of these practices among the Apaches, other than to note that they are consistent with a sense conveyed by the tribe that "we will do whatever is necessary to succeed" (see below).

Nationalism: The White Mountain Apaches are particularly notable for their willingness and ability to attract human capital and expertise from off-reservation and often non-Indian sources, as well as a willingness to engage in service-oriented commerce with non-Apaches. Very few, if any, Native American

tribes are racist in the sense (Webster's) of adopting "a program or practice of racial discrimination, segregation, persecution, and domination." Mirroring the situation in many developing countries with histories of colonialism, however, many Native Americans are strongly nationalistic -- as the debate over sovereignty demonstrates. In business dealings, this is frequently reflected in an unwillingness to hire outside experts and managers, as well as preferences for self-sufficiency and internally-generated capital. The Apaches are fiercely nationalistic and proud of their Apache identity, but do not appear to regard the infusion of outside human and financial capital, nor day-to-day commerce with non-Apaches, as the kinds of things that affect their self-identity in excessively adverse ways. Part of their identity, in fact, appears to arise from a self-image as a people who thrive on and adapt to cross-cultural confrontations. Tribal leadership, moreover, generally does not see even very high-level non-Apache managers as weakening their position at the top of the tribal power structure.

Definitions of Success: A central debate among Native Americans is whether economic success will alter or even destroy the autonomy of tribal cultures. For some, this prospective effect of economic development is regarded as a negative. While economics--qua--economics is practiced (and preached) as acultural, it seems obvious that cultural institutions provide criteria by which elements of individuals' utilities, including self-esteem and self-identity, are measured and acquired; and cultural

institutions reduce the transactions and enforcement costs of running a society.⁴¹ It is hardly irrational for individuals to trade off material goods and services in favor of a broader cultural definition of success.

The Apache notion of cultural success does not appear to be in much conflict with either the form or results of a tribe-as-corporation strategy of economic development. The operative definition of success appears to derive from a strong sense that being Apache means being able to take charge of changing situations for purposes of economic gain. To quote the Tribal Chairman of the Mescaleros:

[We are balancing] the best of both worlds — the white man's and the Indian's. From the white man, we have picked up the work ethic, while we have retained the Apache's independence... What we're aiming for eventually is an Apache takeover — a takeover of management of all of our projects.

Wendell Chino in U.S. News and World Report, April 5, 1982.

Many other tribes explicitly, and often with great intra-tribal tension, see development as involving a tradeoff between goods and services and their culture. The much-publicized recent Navajo election, for example, centered precisely on the individual tribal members' perceptions of this issue. For tribes with this kind of internal conflict, the definition of success may be incompatible with either a tribe-as-corporation or a privatization approach to development. If being a Navajo means not shutting down common pool grazing, or not accepting hierarchical labor-management relationships, then narrowly-

defined economic development and "Navajo" may be non-complementary. Indian self-determination means the right to choose either path; but self-determination will also subject tribes to the opportunity costs of their choices and definitions of success.

The foregoing does not imply that certain Indian peoples necessarily must become "westernized," "modernized," "capitalistic," or otherwise culturally altered in order to be successful societies. First, as we have already stressed, the definition of "success" is not unidimensionally economic. When individuals have preferences over such matters as the modes of social interaction that organize their societies, the pace and direction of economic development, and the political and economic institutions through which collective action is taken, the Apache route to success is not likely to be the Navajo route, which is not likely to be the Sioux route, which is not likely to be the Japanese route, which is not likely to be the German route, and so on. Second, there may be more than one path to even narrowly-defined material success. Apache quasi-corporate management styles might be effectively replaced by cooperative or partnership organizational forms at Navajo or individual entrepreneurs among the Sioux. The range of societal adaptations to the twin problems of resource scarcity and social cohesion is not so broad as to preclude pressure on cultures to adapt their institutions and definitions of success. But, as the modern world demonstrates, neither is the feasible range of social forms

so narrow as to force convergence of societies to an equilibrium of stark homogeneity.⁴²

V. CONCLUSIONS

The most remarkable thing about federal policy with respect to American Indian economic development is its failure. It is not only too easy to cite the indicators of on-going poverty; but particularly striking is how difficult it is to cite bona fide cases in which individual reservation enterprises are economically successful, i.e., are making net contributions to the economy. And it is even more difficult to uncover an entire reservation economy that absorbs fewer of society's resources than it produces.

In some ways the sorry state of reservation economies and their standards of living is surprising. Like many ethnic minorities, American Indians have a history of subjection to discrimination in both economic and legal spheres; they have ample tales of being swindled out of assets and opportunities; and they have sweet and sour relationships with state and federal governments, which serve as sources of income and services while regulating Indians' civil and economic rights. Unlike many ethnic minorities, however, American Indians have had, at least nominally, some tangible and legal assets -- their reservations and certain kinds of unique legal status. Yet, American Indians remain the country's poorest minority.

The explanation for the economic status of American Indian reservations is, of course, extremely complicated. At least a major part of the problem, however, has been that American Indians, either as tribes or as individual residents, have not really owned their reservations. Reservations have been the de facto property of the Federal Government and, especially, the BIA. Public sector property rights of this type are attenuated: The BIA (or, ultimately, Congress) is unable to claim the benefits of sound, successful economic development and may even face incentives to avoid such development; and BIA decision makers bear little penalty for poor performance. This attenuation, consequently, translates into a dilution of incentives for good performance. We should not be surprised at the results.

The gradual transfer and solidification of tribes' rights in their own reservations over the last decade or so is correlated with inklings of real economic development. This is probably not an accident and attests to the importance of de facto ownership in the explanation of the economic status of Indian reservations. As tribes come to really own their own resources, as they really come to plan, manage and bear the consequences of the use of reservation resources, tribes are more directly subjected to the incentives for development of wise economic policies and management. The advantage of self-determination is that the response to such incentives can be made in ways that are more likely to be compatible with each tribe's cultural, political,

and economic situations.

The transfer of property rights in Indian reservations from the public sector to the tribes has arisen from the federal policy of Indian self-determination and tribes' demands for sovereignty. It is conventional wisdom that in order to be truly sovereign polities and economies, Indian reservations need strong economies and good business environments. From this has followed recommendations for one version of the privatization of reservation economies: to build strong economies, reservations need to attract independent, grass roots, entrepreneurial capital and employers. While this source of economic development should not be totally rejected for all tribes, there is evidence that to develop strong economies, tribes first need true sovereignty; and another version of the privatization of reservation economies may be that to build strong reservation economies, tribes should act -- and should be allowed to act -- as the owners of their own resources. The evidence and anecdotes discussed here suggest that this approach to development can provide some tribes with an effective route to success -- with success defined in tribes' own terms.

FOOTNOTES

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1. See U.S. Commission on Civil Rights, "Staff Memorandum: Constitutional Status of American Indians," March, 1973 at 3. On the deeper roots of Indian political activism, see Cornell, S., Return of the Native (Oxford U. Press, 1988).
2. See, for example, Hutchins, F.G., "Writing Old Wrongs," The New Republic, August 30, 1980; Williams, T., Don't Blame the Indians (GSJ Press, 1986).
3. The most comprehensive review of Indian's current legal status is probably Wilkinson, C., American Indians, Time and the Law (Yale Univ. Press, 1987).

4. U.S. Commission on Civil Rights, "Staff Memorandum: Constitutional Status of American Indians," March 1973.
5. U.S. Commission on Civil Rights, "Staff Memorandum: Constitutional Status of American Indians," March 1973.
6. U.S. President (Ronald Reagan), American Indian Policy, (Bureau of Indian Affairs), January 24, 1983.
7. Puyallup Tribe v. Wash. Department of Fish and Game, 391 U.S. 392 (1970); U.S. v. Jackson (1979); and Mescalero Apache Tribe v. New Mexico (1983).
8. American Indian National Bank, "Indian Owned Businesses: An Entrepreneurial Explosion" in Indian Finance Digest, Pilot Edition, 1984, p. 4.
9. The most recent comprehensive examination of the matters discussed in this section is the Report of the Task Force on American Indian Economic Development, U.S. Department of the Interior, 1986.
10. Nelson, H., "Analysis of Loan Performance in the Bureau of Indian Affairs' Credit Program," Project Report, Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University, April 1987 (draft).
11. To be sure, many tribes lack the experience and manpower to handle such affairs, but there is evidence that the BIA lacks such traits itself. Some tribes have successfully taken the BIA to court for mismanagement of tribal assets. See Quinault Tribe v. BIA (1983) and White Mountain Apache v. BIA (1987).
12. See, for example, Champagne, D., Strategies and Conditions of

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(Cultural Survival, Inc., 1985) and "Socio-Cultural Responses to Coal Development: A Comparison of the Crow and Northern Cheyenne," University of Wisconsin-Milwaukee (draft, 1986).

13. For a brief review, see Department of the Interior, Report of the Task Force on American Indian Economic Development, 1986, Chapter II.

14. The litany of these problems has now attained the status of folk wisdom. A very readable and representative overview is found in "The New Indian Wars," Denver Post, October-November 1983.

15. For a representative statement of this view, see the 1984 Commission Report as quoted above. On the theory of bureaucracy, see Niskanen, Wm., Bureaucracy and Representative Government (Aldine-Atherton Press, 1971).

16. From Department of the Interior, Report of the Task Force on American Indian Economic Development, Table 2, Chapter 9.

17. For a representative statement, see "Indians Resist Shift in Economic Goals Urged by U.S. panel," New York Times, January 14, 1987, as well as the repeated positions taken by the National Congress of American Indians in NCAI News since 1985.

18. See Klein, B., R. Crawford and A. Alchian, "Vertical Integration, Appropriable Rents, and the Competitive Contracting Process," J. of Law and Economics, October 1978.

19. As suggested above, a well-intentioned tribal government cannot bind the BIA, which is also a de jure and de facto party to tribal agreements; and capricious post-agreement behavior by the

BIA appears to be every bit as much a problem as opportunistic behavior by tribal governments.

20. See note 18 above.

21. See Coase, R., "The Nature of the Firm," Economica, November 1937 and Eccles, R. and H. White, "Price and Authority in Inter-Profit Center Transactions," American Journal of Sociology, Supplement, 1988.

22. Tribes-as-corporations can still exercise opportunistic tendencies in joint ventures. Consequently, the capital markets are primarily interested in supplying financial capital in the form of debt, rather than equity -- just as with most developing countries around the world.

23. See Coase, R., "The Nature of the Firm," Economica, November 1937.

24. "Unitization" is borrowed from the language that the oil and gas industry uses to describe how firms solve the problems of the common-pool when multiple parties try to draw on the same reservoir. For a discussion of unitization (or merger) as a solution to problems of externalities, see Coase, R., "The Problem of Social Cost," J. of Law and Economics, Oct. 1960 and Hirshleifer, J., Price Theory and Applications (Prentice-Hall, 2nd ed., 1980), pp. 535-37. The possibilities of unitization of spillover activities within a merged firm have led some economists to go so far as to recommend the privatization of National Forests and Parks as a mechanism for more efficiently producing the multiple, and often competing, outputs they can

- yield (see, e.g., Baden, J. and D. Lueck, "A Property Rights Approach to Wilderness Management" in Johnston and Emerson (eds.), Public Lands and the U.S. Economy (Westview Press, 1984).
25. See note 17 above.
26. See note 14 above.
27. See, again, notes 14 and 12.
28. See, for example, Becker, G., "Altruism, Egoism, and Genetic Fitness," J. of Political Economy, September 1976 and "A Theory of Social Interactions," J. of Political Economy, December 1974; Hirshleifer, J., "Competition, Cooperation and Conflict in Economics and Biology," American Economic Review Proceedings, May 1978; and Coleman, J., "Social Capital in the Creation of Human Capital," American Journal of Sociology, Supplement, 1988.
29. Compare, for example, the treatment of the Blackfeet Tribe's writing instrument industry in "The New Capitalists: Economics in Indian Country," Public Broadcasting Service, 1985 and Cook, J., "Help Wanted — Work, Not Handouts," Forbes, May 4, 1987.
30. Wilkinson, C., American Indians, Time and the Law (Yale Univ. Press, 1987).
31. See "Sierra Blanca," Boston Globe, January 5, 1986 and "The New Capitalists: Economics in Indian Country," Public Broadcasting Service, 1985.
32. Data provided by Robert Brauchli, tribal attorney, White Mountain Apache Tribe.
33. Wolfe, G., Population Dynamics of the Vermejo Park Elk Herd,

doctoral thesis, Colorado State University, 1985.

34. Mr. Joe Jojola, Wildlife Biologist, White Mountain Apache Game and Fish Department has supplied the bulk of the data reported here and below.

35. See Chase, A., Playing God in Yellowstone (Little Brown, 1986).

36. "Big Indian Elk Kill Leads to Call for Game Law," New York Times, December 18, 1983.

37. For an interesting perspective on property rights as a common pool resource, see Anderson, T. and P. Hill, "Property Rights as a Common Pool Resource" in Baden and Stroup (eds.), Bureaucracy v. Environment (Univ. Mich. Press, 1981).

38. See, for example, "Navajo Election Offers Choice Between Two Cultures," Boston Globe, November 2, 1986.

39. For an excellent account of property rights development among Eastern tribes, see Cronon, W., Changes in the Land (Hill and Wang, 1983). Other discussions of the common property problem are found in Chase, A., Playing God in Yellowstone (Little-Brown, 1985) and Martin, C., Keepers of the Game (Univ. of CA Press, 1978).

40. See Libecap, G. and R. Johnson, "The Navajo and Too Many Sheep: Overgrazing on the Reservation" in Baden and Stroup (eds.), Bureaucracy v. Environment (Univ. Mich. Press, 1981).

41. See note 28 above.

42. For a very cogent discussion of the "twin" problems, see North, D., Structure and Change in Economic History, 1981.