American Indian Entrepreneurs: Unique Challenges, Unlimited Potential

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AMERICAN INDIAN ENTREPRENEURS: Unique challenges, unlimited potential
Robert J. Miller*

Creating economic development and activity in Indian country is an absolutely crucial issue today.¹ In fact, it is probably the most important modern day political, social, and financial concern that Indian nations and Indian people face. Tribal governments and Indians need to create jobs and economic activity on their reservations and also for tribal citizens who live off reservations.

One obvious problem that plagues the development of economic activity in Indian country is the total lack of functioning economies on the vast majority of reservations.² This is caused by a near absence of small businesses on reservations and the fact that Indian people own private businesses at the lowest rate per capita for any ethnic or racial group in the United

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¹ Indian country is defined in 18 U.S.C. § 1151. Generally, it includes all land within the borders of an Indian reservation, and individual allotments of land that were granted to Indians outside of reservations.

² Robert J. Miller, Economic Development in Indian Country: Will Capitalism or Socialism Succeed?, 80 OR. L. REV. 757, 859 (2002); Felecia Fonseca, Navajo Nation reaches out to entrepreneurs, NEWS FROM INDIAN COUNTRY, March 3, 2008, at 13 (the executive director of the Navajo Division of Economic Development says there should be a thriving economy on the reservation).
States. Certainly, if tribes can increase the entrepreneurial activities of tribal citizens and the number of privately operated businesses in Indian country that would greatly benefit reservation communities.

The crying need for economic and entrepreneurial activities on reservations remains true despite the incredible growth in Indian gaming and the undeniable benefit that this activity has provided many Indian nations and peoples. Notwithstanding the phenomenal results from tribal gaming, American Indians remain as a group, the poorest of the poor in the United States. Indians suffer under the highest unemployment and substandard housing rates of any ethnic or

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3 See, e.g., Courtenay Thompson, Adviser 'stands on both sides of river', THE SUNDAY OREGONIAN, May, 17, 1998, at C1 (1992 Census shows white Oregonians owned 81.8 businesses per 1,000; Oregon Native Americans owned 14.7 businesses per 1,000, half the rate for Oregon’s Latinos and African Americans); STATISTICAL RECORD OF NATIVE NORTH AMERICANS 812 (Marlita A. Reddy, ed. 2d. ed. 1995) (Indian businesses produce smaller amounts of revenue on average than for all other racial groups).

4 Small privately owned businesses are the primary ingredient of the American economy. See, e.g., Amy Hsuan, Success, caring infuse the Sacks family tradition, THE OREGONIAN, May 15, 2008, at D1 (Austin Family Business Program at Oregon State University says Oregon’s economy is dominated by family-owned small businesses; they make up 90% of the Oregon economy, create 78% of all new jobs and pay more than 65% of all wages).

racial group. Real economies do not exist on the vast majority of the 300 Indian reservations in the forty-eight states or in Alaska Native villages. For example, there are very few bank

6 See, e.g., U.S. Census Bureau, U.S. Dep’t of Commerce, American Indian, Alaska Native Tables from the Statistical Abstract of the United States: 2004-2005, at 451 (124th ed. 2005), available at http://www.census.gov/statab/www/sa04aian.pdf (25.7% of American Indian and Alaska Natives live below the poverty line compared to 24.9% of African Americans, 22.6% of Latinos, 17.7% of Native Hawaiians, and 9.1% of White Americans) [hereinafter Statistical Abstract: 2004-2005]; BUREAU OF INDIAN AFFAIRS, 2003 INDIAN LABOR FORCE REPORT ii (2003), available at http://www.doi.gov/bia/labor.html (American Indian unemployment rate on or near reservations was 49%, the same rate as for 2001); U.S. Comm’n on Civil Rights, A Quiet Crisis: Federal Funding and Unmet Needs In Indian Country 60-64 (2003) (33% of Indian housing is overcrowded compared to 5% of U.S. housing in general); HOUSING ASSISTANCE COUNCIL, HOUSING ON NATIVE AMERICAN LANDS 1 (2006) (10% of Indian housing has inadequate plumbing, national average is 1%); http://www.ruralhome.org/manager/uploads/NativeAmerInfoSheet.pdf; Kenneth E. Robbins, Reflecting on the Numbers: Media Hype Breeds Misperception, AMERICAN INDIAN REPORT, Sept. 2000, at 22 (reservation unemployment 50.4% compared to 6.3% in the U.S.; reservation poverty rate 31.6% and 6.3% for U.S.; reservation housing without plumbing 20% compare to 1% average in U.S. and without phones 61% to 6% average in the U.S.); U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ASSESSMENT OF AMERICAN INDIAN HOUSING NEEDS AND PROGRAMS; FINAL REPORT xii, 66-67, 76-78, 80 (1996) (Indians have the worst housing problems in the U.S.; 44% is substandard as compared to 27% average in the U.S.). According to the census, Indian household income is the second worse for all ethnic groups. Statistical Abstract: 2004-2005, supra, at 441 (African Americans median household income is $29,423, American Indian and Alaska Natives $30,599, Latinos $33,676, Whites $44,687).

7 Miller, supra note 2, at 829-37; Fonseca, supra note 2; Gregg Paisley, Economic Development: Defining It and Keeping Score, TRIBAL FIN. REV., Fall 1995, at 5-6 (claiming that one of the biggest economic problems for reservations is that Indians cash their checks and spend their money off-reservation because goods and services are
branches on reservations, few large grocery stores or retail outlets, and an almost complete absence of businesses where people can spend their discretionary recreational dollars. Adequate roads and housing, clean water and sanitation, telephones and electricity are also in short supply on many reservations. Most Indian people on reservations today live under conditions that

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8 John M. Glionna, *Rural tribe give new meaning to ‘wireless’*, The Sunday Oregonian, Aug. 12, 2001, at A25 (Yuroks of California live in third world conditions with nearly half the homes without electricity or phone service; 85% live below the poverty level and unemployment is 80%); U.S. Department of Energy, *Indian Energy Study* (March 28, 2000) (14.2% of Indian homes on reservations have no access to electricity, compared to just 1.4% for all U.S. households); Ward Churchill & Winona LaDuke, *Native North America: The Political Economy of Radioactive Colonialism*, in *The State of Natives America: Genocide, Colonization, and Resistance* 246 (M. Annette Jaimes ed. 1992) (reservations are like third world countries with the highest infant death rate, unemployment and malnutrition, shortest life expectancy, lowest per capita income and formal education levels of any group in the U.S.); Brenda Norrell, *Clinton's New Market Focus on Indian Country*, Indian Country Today, May 3, 2000, at A1 (reporting that only 22.5% of Navajos on the reservation have phone service compared to 94% national average).
other Americans would not tolerate. In addition, urban Indians who live off reservations have incomes and family wealth far below the United States averages.10

This intolerable situation has been tolerated for too long by federal and state governments and the public, and endured for too long by tribal governments and citizens. It is time to unleash the historical entrepreneurial spirit of American Indians to remedy the absence of economies and privately owned businesses in Indian country and for urban Indians. This Article addresses why there are so few Indian owned businesses today on and off reservations; the unique legal, practical, and social challenges Indian entrepreneurs face; what can be done to increase their number; and why, despite these challenges, their potential is nearly unlimited.

Section one analyzes the unique social, cultural, legal, practical, and financial issues that American Indian entrepreneurs face that are rarely encountered by other American business people. Section two examines the unlimited potential for American Indian entrepreneurs. The Article then concludes with the hope that this unlimited potential can be realized to benefit American Indian Nations, their citizens and families, their communities, and the local, state, and national communities as well.

9 Michelle M. Taggart, Challenging the Traditional View of Tribal Economics, AMERICAN INDIAN REPORT, Oct. 1999, at 17 (President Clinton compared reservations to third-world countries).

10 Urban Indians are three times more likely to be homeless than the general population; homeownership rates for urban Indians is 46% versus 62% for the general population; poverty rate for urban Indians is 20.3% compared to 12.7% for the general population, and the unemployment rate is 1.7 times higher. Mark Fogarty, Study: More data needed on urban Indian issues, INDIAN COUNTRY TODAY, April 14, 2008, http://www.indiancountry.com/content.cfm?id=1096417030.
I. UNIQUE CHALLENGES FOR AMERICAN INDIAN ENTREPRENEURS

All entrepreneurs in every jurisdiction and country face challenges in starting, operating, and building permanent economic enterprises. But American Indian entrepreneurs face historical, legal, financial, cultural, and social challenges that are not encountered by anyone else in the United States or in most of the world.

A. Cultural issues

“Traditional Navajo values do not include poverty.”

American Indian entrepreneurs face important cultural and social issues when determining whether to start a business and whether to locate it in Indian country. This must surely be one of the most unique of challenges faced by entrepreneurs almost anywhere in the world. What culture could be against starting businesses, making money, and becoming financially independent?

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11 RICHARD H. WHITE, TRIBAL ASSETS: THE REBIRTH OF NATIVE AMERICA 277 (1990) (quoting an unnamed Navajo tribal chairman). See also Richard Cockle, Reservation shows no signs of slowing, THE SUNDAY OREGONIAN, April 20, 2008, at B4 (quoting Alanna Nanegos, a representative of the Confederated Tribes of the Umatilla Indian Reservation’s Cayuse Technologies: “My kids are going to have it better than I did. We have every right to feel good about ourselves.”).

12 THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 8, 11, 90 (1999) (arguing that a country can avoid free-market globalization for cultural and social reasons but this will come at a “steep price” as the country gets left out of economic gains).
But the reality is that cultural and social traditions impact business development in Indian country, and elsewhere, and is an important and often discussed topic.\textsuperscript{13} In addition, the history of federal Indian policies and economic development and activities on reservations has left many tribal communities leery of the “businessman” and the “get-rich” development scheme that is going to “save” the reservation. A long history of having their lands, sacred sites, and assets exploited by the majority society has understandably made many tribes and Indians cautious about business.\textsuperscript{14} In fact, the very word “capitalism” causes a visceral reaction for many Indians. In this situation, Indian entrepreneurs stand out, and they ignore cultural and social concerns at their peril.

Many commentators have noted this fact. One law professor stated that for “many Indians development is the road to cultural ruin . . . a further walk down that non-Indian road to

\textsuperscript{13} This topic was the title of a panel presentation at the April 2008 conference of the Oregon Native American Business & Entrepreneurial Network. http://www.onaben.org/modules.php?name=Content&pa=showpage&pid=17; Ronald Jepperson & John W. Meyer, \textit{Analytical Individualism and the Explanation of Macrosocial Change}, in \textit{ON CAPITALISM} 273-74 (Victor Nee & Richard Swedberg eds. 2007) (there is new interest in examining the role of cultural factors in economic development).

assimilation and ‘civilization.’”\textsuperscript{15} He also adds that many Indians have “a profound ambivalence about the ethos of economic development that values only production and acquisition.”\textsuperscript{16} Another author has stated that Indian tribes were historically non-property oriented (a view that I vigorously disagree with) and that “the capitalistic principle of industry and commercial enterprise is arguably incongruous with Native American culture.”\textsuperscript{17} Moreover, at one tribal business conference in 2001, several speakers stated that the capitalist model does not fit the culture of many Indian people and that business and who Indians “are” is in conflict.\textsuperscript{18} As must be evident, Indian entrepreneurs face an important issue at the very start of their decision making process whether to attempt to start a business. Is business and economic development, is starting and owning your own business, a “sell out” for an Indian person? Will your reservation support


\textsuperscript{16} \textit{Id.} at 185.

\textsuperscript{17} Karin Mika, \textit{Private Dollars on the Reservation: Will Recent Native American Economic Development Amount to Cultural Assimilation?}, 25 \textit{New Mex. L. Rev.} 23, 31-32 (1995); \textit{see also id.} at 31-34 (stating that some tribes will agree that cultural purity will be lost through economic development); \textit{but see} Miller, \textit{supra} note 2, at 767-98 (Indians and tribes utilized multiple forms of private property and entrepreneurial economic activities across North America throughout many centuries).

the kind of business you are developing? Those are difficult questions for potential entrepreneurs to face.

I have addressed this idea of whether Indian culture is anti-business. I have argued that throughout known history, American Indian people and nations were not opposed to economic activity, private property rights, and entrepreneurship. In sharp contrast, entrepreneurship, individual Indians and their families operating private economic activities, has been a major part of American Indian history, culture, and economic life. The very principles of operating a business at the free will of individuals and families and then protecting the private rights that they create are excellent matches with almost all tribal cultures, traditions, and histories. The evidence shows clearly that almost all American Indian Nations supported the free will and private decision making of individuals and families to pursue and operate private economic concerns for profit, and recognized and protected the private rights they created in goods and

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19 See, e.g., Tim Funk, *Cherokees caught between desires for revenue, reverence*, THE CHARLOTTE OBSERVER, June 11, 2001; Brett Pulley, *‘Leisure virus’ begins to divide tribes*, THE SUNDAY OREGONIAN, March 21, 1999, at A18 (stating that development on one reservation caused complaints that religion, culture, and sovereignty were being sacrificed); Naomi Mezey, *The Distribution of Wealth, Sovereignty, and Culture Through Indian Gaming*, 48 STAN. L. REV. 711, 728-29 (1996) (arguing that gaming has introduced another materialistic evil into tribal communities, fostering cultural destruction and assimilation, promoting values incompatible with tribal teachings).

20 Miller, *supra* note 2, at 767-98.
services. In fact, private business ownership is an expression of Native American traditional values and supports tribal cultures.\textsuperscript{21}

Many other commentators agree with these conclusions. For example, one of the leading studies of tribal economic development, the Harvard Project on American Indian Economic Development, has concluded that it is “not necessary to stop being tribal or ‘traditional’ to develop economically.”\textsuperscript{22} Bill Yellowtail, of the Crow Nation and an ex-Montana state legislator, says that “we must give Indians permission to pursue that age-old . . . paradigm of entrepreneurial self-sufficiency.”\textsuperscript{23} And, a native person who is both an academic and an experienced tribal economic development planner states that “developing reservation economies

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\textsuperscript{23} Yellowtail, supra note 21, at 83.
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is vital to sustaining and developing Native American cultural identities.™

Moreover, as the tribal chairman’s quote at the start of this section notes, poverty is not an Indian cultural trait. No culture that I know of demands that its people live on the edge of poverty. Instead, the historical proof shows clearly that most American Indians were well-fed, healthy, and quite prosperous pre-contact,™ that many tribal peoples sought and even openly displayed the accumulation of property,™ that tribes protected private rights in many different items,™ and that Indians attained status by pursuing individual and family economic activities as their right and as a duty to support their families and nations.™

By no means am I ignoring or downplaying the very serious and important concerns of preserving and perpetuating tribal cultures and traditions in the face of new economic activities

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24 DEAN HOWARD SMITH, MODERN TRIBAL DEVELOPMENT: PATHS TO SELF-SUFFICIENCY AND CULTURAL INTEGRITY IN INDIAN COUNTRY 80 (2000); accord id. at 3, 62, 71, 110-11.


26 Miller, supra note 2, at 767-98.

27 Id. at 773.

in Indian country. There is no question that new types and significant expansions of reservation business development, and tribes joining the globalization movement, for example, could lead a tribe towards cultural homogenization.\textsuperscript{29} Many foreign countries have decried this very effect of economic development and the take over of their cultures by American materialistic and economic thought, the “McDonaldization” of the world if you will.\textsuperscript{30}

But the decision whether to participate in the global economy or to support individual Indian entrepreneurship is for each tribal nation, community, and individual to make. It is an exercise of economic sovereignty when tribal governments and communities decide what types of businesses to allow in Indian country and what business endeavors a reservation community will support. It is also the individual right of tribal entrepreneurs to pursue their own goals and economic self-sufficiency. If there is one factor that stands out in the history of America’s native people, it is that the individual and the family had the right to pursue the activities they decided were necessary to support themselves and that what they produced was protected as their

\textsuperscript{29} FRIEDMAN, supra note 12, at 90 (stating that standardized economic systems can cause “cultural homogenization”).

\textsuperscript{30} See, e.g., http://en.wikipedia.org/wiki/McDonaldization (a sociologist coined the term “McDonaldization” to describe the process by which a society takes on business characteristics and moves “from traditional to rational modes of thought, and scientific management.”); Donald Morrison, The Death of French Culture, TIME, Nov. 21, 2007 http://www.time.com/time/magazine/article/0,9171,1686532,00.html (France actively resists Americanization and cultural changes).
property.\textsuperscript{31} That right should also be enforced for modern-day Indian entrepreneurs. Entrepreneurship is not antithetical to Indian cultures and history.

A separate question for Indian entrepreneurs, one that might be considered a unique social challenge, is where to locate their business. At first blush one might think that Indians raised on a reservation would naturally open a business on their reservation where they know the market, the potential client base, and the employment pool, for example.

But some commentators have pointed out that successful Indian business owners stand out on many reservations and sometimes encounter resistance for seeming to have pushed ahead of others.\textsuperscript{32} This phenomenon has been called “social jealousy” and is a well known idea in many cultures, especially in poorer areas that are beginning to develop economically.\textsuperscript{33} This principle is often referred to by Indians with the “crabs in the bucket” analogy where any crab

\textsuperscript{31} Miller, \textit{supra} note 2, at 773-75.

\textsuperscript{32} \textsc{Klaus Frantz}, \textsc{Indian Reservations in the United States: Territory, Sovereignty, and Socioeconomic Change} 171-74, 182 (1999); Miller, \textit{supra} note 2, at 855.

that tries to climb out of the bucket is pulled back in by the others.\textsuperscript{34} This is a serious issue that Indian entrepreneurs have to understand, deal with, and factor into their business analysis and decision. Will reservation inhabitants support your business, seek employment with your company, and support you in the community, legal, and bureaucratic issues you will face? Some Indian entrepreneurs have addressed these questions and made the conscious decision to locate their businesses off reservation for these very reasons.\textsuperscript{35} That is a sad thing to see: beneficial economic development purposely located off reservation.

Social and cultural issues can also seriously affect the success of a business in Indian country if reservation residents will not patronize a particular business.\textsuperscript{36} Some Indian entrepreneurs have stated that this concern and others have led them to locate their business off reservation because of questions about profitability. They also mention specifically being expected to extend credit, employment, and assistance to relatives and tribal citizens who would

\textsuperscript{34} Panel on culture, Trading at the River conference, April 15, 2008, Portland, Oregon (notes on file with author).

\textsuperscript{35} FRANTZ, supra note 32, at 171.

\textsuperscript{36} See, e.g., Cornell & Kalt, supra note 22, at 245-46 (the cultural fit of economic development is important to whether people will support it); Raymond Cross, De-federalizing American Indian Commerce: Toward a new Political Economy for Indian Country, 16 HARV. J.L. & PUB. POL’Y 445, 486-87 & n.186 (1993) (tribes should propose economic development that is compatible with cultural values; the cultural paradigm of a tribe will help it identify development efforts that will be supported).
not be granted such under usual economic standards.\textsuperscript{37} There may be other cultures in the world where entrepreneurs face these same kinds of issues, but in the United States they appear to be unique to American Indian cultures.

In conclusion, it appears obvious that if these types of social and cultural issues are present on a reservation then one necessary change, before entrepreneurs will be able to operate there successfully, is for those tribal communities and governments to decide whether they want economic development and whether they will support businesses operated by their fellow citizens and relatives instead of only patronizing and helping off-reservation non-Indian businesses.\textsuperscript{38} I can only think that the general Indian cultural trait of sharing and cooperation would lead reservation residents to help their friends and relatives by supporting reservation

\textsuperscript{37} Frantz, supra note 32, at 171.

\textsuperscript{38} An audience member from a mid-west tribe commented that it is hard for Indian entrepreneurs to sell on their reservations. Oregon Native American Business & Entrepreneurial Network “Trading at the River” conference (April 15, 2008) (notes on file with author). See also Frantz, supra note 32, at 182 (commenting that it is a tribal and cultural decision whether to emulate the American economy); Thomas R. Berger, A Long and Terrible Shadow: White Values, Native Rights in the Americas Since 1492 138 (2nd ed. 1999) (“Native people do not oppose industrial development; they believe, however, that they are entitled to a measure of control over the pace of such development.”); Stephen Cornell & Joseph P. Kalt, Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations, in What Can Tribes Do?, Strategies and Institutions in American Indian Economic Development 19-20, 43, 46-47 (Stephen Cornell & Joseph P. Kalt eds., 1992) [hereinafter What Can Tribes Do?] (economic development works best when it matches the tribe’s cultural traditions).
based, Indian owned private businesses instead of off-reservation businesses, and to help themselves and their tribal community by supporting Indian entrepreneurs and businesses that will benefit all reservation residents and help create a reservation economy. \(^{39}\) Depending on the presence of these kinds of community issues, it appears that Indian entrepreneurs face unique cultural challenges in starting, locating, and operating a business.

**B. Capital**

All entrepreneurs need financial capital to start a business and a sufficient amount of human capital, whether that is their own labor and abilities or a capable and available employee pool, to start and operate a business. American Indians face some unique challenges in these arenas.

**1. Poverty**

As already pointed out, Indians and Indian country are the poorest group of citizens and communities in the United States. Each year, for example, at least four of the ten poorest counties in the U.S. are located on Indian reservations. \(^{40}\) This history and modern day situation

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means that most Indian entrepreneurs have few resources to work with, and that poverty creates an extremely difficult challenge for starting businesses.\footnote{It is no surprise that there are social and family problems in Indian country when the unemployment rate on reservations runs from 30-90%. By comparison, the city of Detroit has an 8.2% unemployment rate that is the highest in any major urban area in the United States, and that figure is considered a disaster and is blamed for the “struggling economy [and] an environment characterized by social breakdown.” Rich Lowry, \textit{Detroit’s real scandal isn’t about illicit sex}, \textsc{The Oregonian}, April 2, 2008, at E5.}

American entrepreneurs generally find capital to start their businesses in one of three ways: accumulated family wealth, bank loans backed by home mortgages, and regular bank loans.\footnote{Miller, \textit{supra} note 2, at 841.} The vast majority of Indians, however, do not have access to any of these regular avenues for business capitalization. First, due to the long history of destitution, poverty, and lack of economic opportunities in Indian country, very few Indian people have accumulated family wealth that they can use for starting businesses. Second, most homes owned by Indians in Indian country are located on “trust land,” that is land in which the legal estate is owned by the United States and the Indian family is the beneficial owner and is unable to grant a mortgage on the real property.\footnote{Jim Adams, \textit{Feds to Rez: Credit Will Make It Happen}, \textsc{Indian Country Today}, May 10, 2000, at A3 (declaring that credit is hard to find on reservations; American homeowners can give mortgages but that is impossible on reservations); Frantz, \textit{supra} note 32, at 180 (observing that Indians have very little land to mortgage, few have savings accounts and there are few banks on reservations); White, \textit{supra} note 11, at 111 (most Indian owned homes are on trust land and cannot be mortgaged); U.S. \textsc{Dep’t of Housing & Urban Development, Assessment of}}
loans in the majority of cases. Finally, Indian people have difficulties getting regular uncollaterized bank loans, or signature loans. In addition to the historical fact that most banks did not even consider loaning in Indian country, tribal entrepreneurs face unique challenges in getting bank loans. Due to the poverty and the near absence of economic activity in Indian country, many tribal people do not have the permanent employment histories and near-perfect credit scores needed to acquire bank loans. The extreme poverty of Indian country, and urban

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AMERICAN INDIAN HOUSING NEEDS AND PROGRAMS: FINAL REPORT 146, 190-91, 229-30 (May 1996) (trust status of Indian land creates a major disincentive for private financing of home construction since the U.S. holds legal title and the land cannot be mortgaged; trust status of tribal lands prevent their use for loan collateral or mortgaging).

44 See, e.g., Heidi Bell Gease, Pine Ridge Subway under Construction, THE RAPID CITY JOURNAL, May 22, 2008 http://www.rapidcityjournal.com/articles/2008/05/22/news/local/doc483504bf24cd7440293493.txt (copy on file with author) (Pine Ridge reservation BIA superintendent and his wife, both experienced fast food restaurant operators, were unable to obtain a regular bank loan to open a Subway shop on the Pine Ridge reservation; used the Lakota Fund community development organization; people noted “My gosh, if you can’t get financing . . . .”).

45 See, e.g., FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL, NATIONWIDE SUMMARY STATISTICS FOR 2002 HMDA DATA tbl. at 3 (2003), http://www.ffiec.gov/hmcrpr/hm_fs02.htm (American Indians had the second highest denial rate for conventional home loans at 23.3%; African Americans had a denial rate of 26.3%).
Indian people, definitely presents a challenge to entrepreneurship and acquiring financial capital to start businesses.\(^46\)

2. Academic and employment education

Indian people have among the lowest educational attainment rates of any ethnic or racial group in the United States.\(^47\) And, as pointed out above, reservation and urban Indian unemployment rates are far above the general American rate. Thus, it is no surprise that there is a lack of general business education among many Indians and that this is a challenge for entrepreneurs. Because so few Indians are private business owners, there are also very few mentors to train others or to pass on such information, and there is little work experience due to a dearth of employment opportunities on reservations. These factors obviously impact several aspects of entrepreneurship. Dealing with banks, legal, business, and accounting issues, federal, tribal, and state bureaucracies etc. are surely more difficult for the relatively undereducated and inexperienced entrepreneur.

\(^{46}\) Compare Hunter R. Clark & Amanda Velazquez, *Foreign Direct Investment in Latin America: Nicaragua--A Case Study*, 16 Am. U. Int'l L. Rev. 743, 759 (2001) (stating that Nicaragua's extreme poverty is one of the reasons investors are reluctant to invest there).

\(^{47}\) See, e.g., Frantz, *supra* note 32, at 138-48; Alan L. Sorkin, *Health and Economic Development on American Indian Reservations*, in *Public Policy Impacts on American Indian Economic Development* 129, 151 (C. Matthew Snipp, ed. 1988) [hereinafter PUBLIC POLICY IMPACTS] (according to 1982 statistics, Indian educational levels were far below national averages and less than 50% of reservation Indians over 25 had high school diplomas); *id.* at 40, Joanne Nagel, Carol Ward & Timothy Knapp, *The Politics of American Indian Economic Development: the Reservation/Urban Nexus* (Indians are less well educated than the American average).
The lack of economic activity in general and the horrendous unemployment rates on most reservations and among urban Indians results in other ancillary challenges for Indian entrepreneurs. These entrepreneurs and their potential employees usually lack a long term job history, good credit rating, and varied employment and management experiences in the business world. Reservations that lack nearly all economic activities are often nearly devoid of business role models, mentors, and job training for youth and adults to gain experience. Consequently, the workforce on most reservations is under-trained and inexperienced.\textsuperscript{48} The workforce is even oftentimes unmotivated, which is no surprise due to generations of under-employment, a lack of meaningful employment, and little opportunity to experience the benefits and pride that come from earning a living and supporting your family.\textsuperscript{49} These endemic types of issues pose major challenges for Indian entrepreneurs and their potential employees.

3. Health

A further challenge to business ownership is that American Indians suffer from the lowest life expectancy, the worst health issues, and several diseases that plague their communities.\textsuperscript{50} Health care is at an abysmal level in Indian country and has been for over a

\textsuperscript{48} Miller, \textit{supra} note 2, at 837-38.

\textsuperscript{49} \textit{Compare} Cockle, \textit{supra} note 11, at B4 (quoting a representative of the Confederated Tribes of the Umatilla Indian Reservation’s Cayuse Technologies: “My kids are going to have it better than I did. We have every right to feel good about ourselves.”).

\textsuperscript{50} Indian Health Service, \textit{Indian Health Disparities}, (2008), http://info.ihs.gov/Disparities.asp; DAVID H. GETCHES, CHARLES F. WILKINSON, & ROBERT A. WILLIAMS, JR., \textit{FEDERAL INDIAN LAW} 17-19 (5th ed. 2005); Center for Rural
century. The United States has woefully under funded its treaty and trust responsibilities in this arena. The U.S. Indian Health Service budget increases for decades have not even kept pace with inflation, and that assumes the budgets started at some reasonable level to being with, which they did not.\textsuperscript{51} The U.S. spends, for example, far less on health care for American Indians, for whom it owes health care trust and treaty responsibilities, than it does for other Americans in general and for incarcerated federal prisoners.\textsuperscript{52} These issues also cause challenges for Indian entrepreneurs and their employees.

\textbf{C. Tribal governments}

Opening and operating a business in Indian country has other well-recognized and unique challenges that relate specifically to tribal governments.

\textsuperscript{51} National Indian Health Board information sheet on reauthorizing the Indian Health Care Improvement Act http://www.nihb.org/docs/ihcia_fact_sheet.pdf.

\textsuperscript{52} Center for Rural Health, \textit{The Indian Health Care Improvement Act: Implications for North Dakota Tribes}, (Nov. 2004), http://ruralhealth.und.edu/pdf/policybrief1.pdf; Chris Casteel, \textit{U.S. Senate OKs Indian Health Plan}, THE OKLAHOMAN, NEWSOK.COM, Feb. 27, 2008.
Many tribal governments and reservations are not considered business friendly locations. This is not necessarily because they are anti-business but because they often have not yet enacted the laws and regulatory codes considered crucial for the success of business and for attracting new businesses and investments. Many tribes, for example, do not have incorporation, business standards, or uniform commercial codes.\(^{53}\) Some tribal court systems might also lack the experience and expertise to decide complex business and contractual disputes and, in fact, less than half of the federally recognized tribes in the United States even have court systems.\(^ {54}\) Due to the relatively recent organization of many modern-day tribal governments and the creation of court systems, there is also an absence of precedent in written tribal case law for the incorporation, existence, and operation of businesses, and the enforcement of contracts and various related rights and responsibilities. For these reasons and more, many non-Indian

\(^{53}\) Miller, *supra* note 2, at 847. See also Charles F. Sabel, *Bootstrapping Development: Rethinking the Role of Public Intervention in Promoting Growth*, in *ON CAPITALISM* 305 (Victor Nee & Richard Swedberg eds. 2007) (governments need to provide legal rules that induce investments and broadly protect property rights if they want to attract investment).

investors and businesses no doubt fear that they will not receive the benefit of the doubt in tribal courts.\footnote{See, e.g., Clark & Velazquez, \textit{supra} note 46, at 760 (stating that investors lack confidence in Nicaraguan courts); Sabrina Tavernise, \textit{Glimmers of an Investor-Friendly Russia}, \textit{N.Y. Times}, February 15, 2003, at C1 (Russia attracts far less foreign investment per capita than other ex-communist countries because it has no culture of playing by the rules; property rights are not well protected; legal system is fragile).}

In addition, most tribal constitutions do not contain a prohibition on ex post facto laws or on the impairment of the obligation of contracts.\footnote{“No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” \textit{U.S. Const.} Art. I, § 10, cl. 1.} This is actually an ironic situation that can be blamed initially on the United States because most tribal constitutions were originally suggested and nearly imposed on tribes by the federal government in the 1930s and these boilerplate constitutions did not contain these important provisions.\footnote{The constitutions the BIA distributed in the 1930s for tribes to adopt did not have separation of powers, impairment of contracts, or ex post facto provisions. Tribes have been amending their constitutions in the modern day and some have been placing these principles into their constitutions.} Entrepreneurs are rightly concerned about the powers of the government they are thinking of operating under, and the absence of legal protections in Indian country against ex post facto laws and impairment of contracts raises serious questions for all private businesses.

These concerns are well known. In fact, a 2007-08 tribal initiative to draft an economic development treaty between American tribes specifically requires the tribal governments that
sign the treaty to develop and maintain a specific list of tribal codes and to enact bans on ex post facto laws and impairment of contracts.58

Most Indian governments also have bureaucracies that can impose challenges and costs on entrepreneurs.59 It is almost a truism that businesses hate government bureaucracies and “red tape” and the resulting costs.60 “Time is money,” and time and money spent dealing with governments and business regulations is time and money lost that could have been used to develop and run a business. Like all governments, tribes have good and bad bureaucracies. Entrepreneurs will encounter varying levels of bureaucratic knowledge, experience, and helpfulness on different reservations. But one bureaucracy that is present on almost all reservations is the Tribal Employee Rights Office (“TERO”). Tero ordinances, for example, usually require on reservation businesses to register, file paperwork and reports, give hiring preferences to tribal citizens and Indians, and perhaps pay certain fees.61 Entrepreneurs have to


60 Haddock & Miller, * supra* note 25, at 210.

understand and comply with these laws and that is an obstacle for business startups and ongoing operations.\textsuperscript{62}

Additional challenges that new businesses on reservations face is finding a location to operate and obtaining site leases. One might think of the average reservation as being full of wide open spaces. But in actuality many reservations have limited spaces where industrial and economic activities can take place or can take place profitably due, for example, to the remoteness of the reservation or the land under consideration, a lack of infrastructure, social and cultural concerns, and land ownership issues arising from federal trust status and from federal Indian policies. On many reservations it is also difficult to obtain site leases to operate a business even on a piece of appropriate land.\textsuperscript{63} For example, at the Navajo Reservation it is reported that it takes at least a year to get a lease and that an applicant must secure a bond, a

\begin{flushright}
\textit{Business Perspective}, http://www.modrall.com/0927071190921606.art (last visited Apr. 18, 2008); Montana Dept. of Transp. v. King, 191 F.3d 1108, 1111 (9th Cir. 1999) (Fort Belknap Indian Community’s TERO requires hiring, promotion, transfer, and reduction preferences for Indians, filings and permits, cross-cultural training, and payments of fees, including a project fee up to 2\% of the total amount of each contract).
\end{flushright}

\textsuperscript{62} An anecdote related at the “Trading at the River” conference demonstrates the possible impact of Tero and other tribal regulatory burdens on entrepreneurs and on attracting businesses to reservations. One audience member stated that a northwest tribe was negotiating recently with Boeing to work on the reservation but as Tero and other tribal regulatory issues were raised “the relationship went south.” Audience comment, Oregon Native American Business & Entrepreneurial Network “Trading at the River” conference (April 15, 2008) (notes on file with author).

\textsuperscript{63} SMITH, supra note 24, at 63, 68, 96.
certificate of deposit, a letter of credit, or make a cash deposit equal to one year’s rent. Few entrepreneurs can afford that investment of their start-up capital.

Moreover, if the land in question is tribal trust land, tribal and federal approvals must be obtained. If the land is individually owned trust land, then all of the individual owners and the federal government have to approve. This can be a daunting and even impossible task. Due to the lingering effects of the Allotment Era of federal Indian policy, many individually owned plots of reservation trust land have hundreds and even thousands of owners and it can prove impossible to get all the necessary approvals from individuals, the BIA, and even perhaps the tribal governments to secure a business site lease.

Furthermore, tribes possess the inherent sovereign powers of taxation and jurisdictional authority over Indian country, tribal citizens, tribally charted businesses, and many of the non-Indian people and businesses found on reservations. As with all governments, tribes are

64 Fonseca, supra note 2 (ex-Navajo Nation attorney estimates that about 80% of persons seeking site leases cannot afford to get a bond or put up a year’s rent).

65 Id.


67 Id.; Business loans up on reservations, BILLINGS GAZETTE.COM, Oct. 17, 2000, www.billingsgazette.com/content/wyoming/loans.php (Department of Agriculture employee said it is difficult for individuals to open businesses on reservation because of numerous tribal and BIA regulations and approvals needed).
increasingly interested in taxing reservation businesses as they search for operating funds and a
tax base, and tribes expect to regulate the activities occurring in their territories, including
economic development.\textsuperscript{68} Tribal courts are also the presumptive venue for many suits arising in
Indian country.\textsuperscript{69} So entrepreneurs in Indian country can expect to deal with tribal governments.

One of the most significant areas of concern for entrepreneurs and businesses in Indian
country is that tribal governments have been known to interfere in economic activities. One
professor has noted that some tribes have a problem distinguishing their governmental role from
their proprietary role and that they will politically intervene in business affairs and “even
legislatively terminate a particular project . . . .”\textsuperscript{70} Another Indian law expert noted that some

\textsuperscript{68} See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) (upholding tribal authority to tax oil and gas
production on reservation); Kenneth E. Robbins, \textit{State Support for Healthy Reservation Economies: A Win-Win
Strategy for All!}, AM. INDIAN REP., June 1999, at 18 (proposing that business can create a tribal tax base; a township
on Navajo started a 2.5\% sales tax and raised $670,000 in eighteen months); Brenda Norrell, \textit{Catching the Dream of

\textsuperscript{69} National Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985); Stock West Corp. v. Taylor, 964 F.2d 912
(9\textsuperscript{th} Cir. 1992) (\textit{en banc}); but see, \textit{e.g.}, Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001).

\textsuperscript{70} POMMERSHEIM, \textit{supra} note 15, at 170. This same author also states that tribes must reduce uncertainty for
businesses and help them to be free from political pressure. \textit{Id.} at 171. \textit{See also Yankton Sioux Tribe sues to stop
hog farm}, Indianz.com, http://lawlib.lclark.edu/blog/native_america/?p=1421 (April 21, 2008) (tribe is suing to stop
private party from operating a hog farm on reservation on privately owned land due to environmental concerns);
Cornell & Kalt, \textit{supra} note 22, at 235, 237 (arguing that tribes need to keep business separate from politics so that
investments will be safe from political manipulation). \textit{Cf.} ROBERT KAGAN, DANGEROUS NATION
343 (2006) (in the 1880s naval projects were routinely pared back or ended by Congress to favor their supporters).
tribal governments have changed the rules on investors and engaged in “opportunistic behavior [that] can go a long way toward discouraging Indians from investing their resources in their own businesses.”

There is no question that this issue is of great concern to reservation business investors and entrepreneurs.

It is only fair to note, of course, that it is the extreme example of tribal governmental interference in private business that makes the news and the even more egregious incident that results in litigation. The thousands of examples of tribes assisting and working cooperatively with businesses never gets reported because that is not newsworthy. Instead, it is the few highly publicized instances of tribes intervening in business affairs that makes the news and gets litigated and gives entrepreneurs and investors pause when considering investing in Indian country.

In sum, it is clear that Indian entrepreneurs and business investors have to study and know the reservation where they are planning on operating and they must understand the tribal economic history and enforcement of private property rights and law. This is an important and unique challenge that entrepreneurs face when deciding to locate on a reservation.


73 *Id.* at 199-206.
D. Federal and state governments

The federal and state governments also impose challenges for businesses in Indian country that are quite different than what they cause for off-reservation entrepreneurs. As with all governments, these entities are eager to apply broadly their taxation, regulatory, and jurisdictional authority, even into reservations. That is nothing unique for entrepreneurs, but Indians are faced with conflicting and perhaps unsettled federal claims of regulatory authority and state claims of taxation and jurisdiction that overlap with tribal claims to the same authority. Businesses can get caught in the middle of these disputes and the uncertainty alone, one of the worst enemies of business and investment, is often sufficient to convince Indian and non-Indian entrepreneurs to avoid reservations as business locations.

In addition, the federal government plays a major role in the majority of the day-to-day economic activities in Indian country. The United States assumed this role due to the Constitution; hundreds of treaties the U.S. signed with Indian Nations; the fiduciary responsibilities it owes tribes and individual Indians in many circumstances; and its ownership as the trustee of much of tribal land and assets and about 11 million acres of individual Indian

74 Federal taxation is not a plus or minus factor for Indian entrepreneurs because they pay full federal income tax on almost any business activity they undertake on or off reservation. GETCHES, supra note 50, at 701-02.

75 Compare Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) with Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989) (Supreme Court decided that both tribe and state could tax the same mining company for the same oil extraction on reservation; company was exposed to double taxation and a decidedly reduced economic situation). See also Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001) (Supreme Court reversed decisions of the federal district and circuit courts that a non-Indian owned hotel had to pay Navajo Nation tax).
owned trust land.\textsuperscript{76} Since the United States holds the legal ownership of many of the assets of tribes and individual Indians, federal law requires that anyone seeking to buy or lease tribal or individual Indian trust assets has to secure the approval of the United States.\textsuperscript{77} Moreover, tribes and individuals cannot pledge these assets as collateral for loans, or even develop, or sometimes even use the assets themselves without time-consuming federal bureaucratic approvals.\textsuperscript{78} Needless to say, this situation slows down and increases the cost of economic activities regarding these assets and interjects enormous uncertainty and sometimes even completely stymies certain

\textsuperscript{76} Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . . .” U.S. CONST. art. I, § 8; Treaty with the Cherokee, Nov. 28, 1785, Art. IX, 7 Stat. 18; Treaty with the Choctaw, Jan. 3, 1786, Art. VIII, 7 Stat. 21; \textit{reprinted in} 2 INDIAN AFFAIRS: LAWS AND TREATIES 80, at 10, 13, 15-16, 20 (Charles J. Kappler ed., 1904) (“the United States shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as [the United States] think proper” and the tribes acknowledged themselves “to be under the protection of the United States of America, and of no other sovereign whosoever”); United States v. Shoshone Tribe of Indians, 304 U.S. 111, 115 (1938) (the U.S. holds legal title to reservation trust lands; tribes hold the beneficial interest); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831) (the United States has assumed a guardianship responsibility towards its ward, the Indian tribes); Morton v. Mancari, 417 U.S. 535, 551-52 (1974).


\textsuperscript{78} Miller, \textit{supra} note 2, at 804-06.
types of economic activity in Indian country.\textsuperscript{79}

A few examples will suffice to demonstrate some of the problems federal control and bureaucratic red tape can cause Indian entrepreneurs. The U.S. General Accounting Office reported that as of 2003 the Bureau of Indian Affairs had a 113-year staff backlog for title search requests.\textsuperscript{80} These searches are needed for many reasons including to facilitate acquiring private mortgages and perhaps site leases. A person can get a title search off reservation in a few days, but some Indians have waited up to six years to get a BIA title search!\textsuperscript{81} No business and no entrepreneur can operate under that kind of regulatory climate. In addition, federal employees are often required to review tribal and individual economic plans for reservation and trust land

\textsuperscript{79} See, e.g., Sangre de Cristo Dev. Co. v. United States, 932 F.2d 891, 893 (10th Cir. 1991) (BIA and other federal bureaucracies took four and one half years to finish the environmental impact statement on a Pueblo development project), \textit{cert. denied}, 503 U.S. 1004 (1992); Cross, \textit{supra} note 36, at 5, 450-51, 473, 489 (federal domination and over-regulation of commercial relations suppresses the economic development efforts of Indians and non-Indians in Indian Country; federal regulations have a pathological effect and create perverse incentives for business; federal review of tribal contracts chills deals without any offsetting benefits); RUSSEL LAWRENCE BARSH & JAMES YOUNGBLOOD HENDERSON, THE ROAD: INDIAN TRIBES AND POLITICAL LIBERTY 237 (1980) (“federal law imposes higher costs on Indian businesses” and an administrative hierarchy regulates the economic decisions of Indians).


\textsuperscript{81} Stomnes, \textit{supra} note 80.
developments and pass judgment on whether federal approval should be granted. These federal employees often have no expertise in the business subjects that they are reviewing and approving. That is an intolerable obstacle for Indian entrepreneurs.

Furthermore, persons desiring to operate businesses on reservation should check out the Indian traders’ license requirement. Many entrepreneurs and businesses have overlooked or ignored this provision in recent times. But the necessity of obtaining a federal license to sell goods on reservations has been a part of federal law for over two hundred years and is still the law today.

82 Haddock & Miller, supra note 25, at 212-13; George Pierre Castile, North American Indians: An Introduction to the Chichimeca 272-73 (1979) (the BIA is dedicated to maintaining reservations, not developing them, and “possesses neither the inclination nor the ability to effect development” and “often stands in its path”); C. Matthew Snipp, Public Policy Impacts and American Indian Economic Development, in Public Policy Impacts, supra note 47, at 8-9 (Indian tribes and the BIA did not have the technical and negotiating skills and the information needed to negotiate long term mineral leases and thus reservation resources were nearly given away).

83 The Articles of Confederation Congress in 1786 and then in 1790 the first Congress under the Constitution both required federal licenses for non-Indians who wanted to trade with Indians. Ordinance for the Regulation of Indian Affairs (August 7, 1786), in 31 Journals of the Continental Congress, 1774-1789 8, 490-93 (ordinance restricted trade with Indians to those who were licensed by the government; traders had to put up a $3,000 bond); Trade and Intercourse Act of July 22, 1790, ch. 23, 1 Stat. 137, 137-38; Francis Paul Prucha, The Great Father: The United States Government and the American Indians 91-93 (1995 ed.).
State governments wreak their own special brand of business and investment uncertainty on reservations. They are often interested in what they can get from Indian country, either tax dollars or jurisdictional control. States have often attempted to tax individual Indian and tribal enterprises on reservations and to control economic activities there.\textsuperscript{84} State governments and courts have also intervened in the on reservation activities of Indian entrepreneurs.\textsuperscript{85} And Congress contributed to this situation and uncertainty in 1953 when it granted certain states criminal and civil jurisdiction on certain reservations.\textsuperscript{86} Clearly, in light of the foregoing discussion, federal and state governments impose numerous obstacles, obligations, and uncertainties on Indian entrepreneurs.

\textbf{E. Reservation infrastructure}


Entrepreneurs considering locating on reservations face other unique challenges pertaining to infrastructure.

The first issue is the same faced by all rural economic concerns; the distance from markets, cities, clients, employees, resources, etc. Reservations were often purposely located by the United States far from valuable resources and population centers and many remain very isolated today.\(^87\) This is an important factor in inhibiting Indian entrepreneurship because even experienced non-Indian entrepreneurs, who do not face lots of the other challenges that Indians do, are having a hard time succeeding in rural areas. In fact, the rural areas of America are losing their populations, their economies, and their wealth.\(^88\) Concurrent with the remoteness issue, reservations are often poorly served, if at all, by railroad lines, and by highways.\(^89\) Most reservations are served only by two lane highways and many of the other roads on reservations are unpaved. Many reservations also suffer from other infrastructure issues such as a shortage of

\(^{87}\) Charles F. Wilkinson, American Indians, Time and the Law 14-16 (1987) (reservations were designed to create a “measured separatism” between Indians and non-Indians).


clean water, sufficient electricity and internet service, and a lack of telephone service. The average American entrepreneur is just not faced with these types of problems.

In conclusion, it appears certain that Indian entrepreneurs have many unique challenges to overcome in starting, locating, and operating their businesses. Many of the issues discussed above impact Indian entrepreneurs no matter where they locate their business. It is no wonder then that Indians are underrepresented per capita in private business ownership. This fact is not due to a cultural prohibition on economic activity and private initiative but it is instead rooted in commonly understood obstacles to business formation and entrepreneurship.

II. UNLIMITED POTENTIAL

The upside for Indian entrepreneurship is enormous. Part of that ambitious statement comes from the negative aspect that so few Indians own private businesses at the present time that there is only room for improvement. The reality in Indian country and for urban Indians is

90 See, e.g., What Tribes Can Do: An Interview with Joseph P. Kalt, AM. INDIAN REP., March 1999, at 16 (claiming that there is an explosion waiting to happen in the private sector on most reservations because of the absence of local retail outlets and the distance people have to travel to shop).

an absence of private businesses, functioning economies, and an abundance of poverty. The only possible way is up.

Optimism also comes from an awareness of the abilities and toughness of Indian people and the growing tribal governmental emphasis on developing economies and helping individual Indians to start businesses.92 American Indians and nations have survived several hundred years of active political, social, and economic oppression, and even genocide; but they are still here and are growing in population and strength everyday. Those facts tell me that the potential for

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I contend that the 1997 and 2002 Census numbers do not accurately reflect conditions for urban and reservation Indians. The 1997 estimates included tribally owned businesses, were based on samplings, and used reports that did not even have a category for business owners to identify themselves as Indians. http://www.census.gov/csd/sbo/aiansummaryoffindings.htm. For these reasons, the 2002 Census report discounted the 1997 estimates. Id.

The 2002 figures are also suspect. They are again based on estimates taken from samplings, and while they do not apparently include tribally owned businesses, they do include the very successful Alaska Native corporations. Id. These corporations, while owned by individual Alaska Native shareholders, were created in 1971 by Congress to benefit Alaska tribal governments. See DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 155-86 (2d ed. 2002). Including Alaska Native corporations in this survey of individual Indian owned businesses dramatically skews the income and employee estimates of the 2002 Census report.

92 See Lorrie Kirst, American Indian Economic Development Policies, 2 J. PLANNING LITERATURE 101, 105 (1987) (arguing that Indians have the advantage of entrepreneurial skills, positive attitudes toward development, available capital and financial assistance); Fremont J. Lyden & Ernest G. Miller, Designing a Tribal Organization for Self-Governance, in AMERICAN INDIAN POLICY, supra note 22, at 19 (same).
Indian entrepreneurship and the improvement of Indian and tribal economic conditions is unlimited. And Indian country needs that kind of growth to create real economies and jobs to support Indians and their families who are often eager to move home to their reservations if they can only support themselves there.\footnote{Richard Cockle, \textit{Jobs, jobs, jobs, but no homes}, \textit{The Sunday Oregonian}, April 20, 2008, at B4 (Umatilla tribal citizens anxious to move home but there is little middle-class housing available); Egan, \textit{supra}, note 88, at A1 (proposing that economic opportunities and jobs are bringing Indians back to their reservations); Carson Walker, \textit{Reservations Revive as Native Americans Return to Roots}, \textit{The Oregonian}, Apr. 11, 2001 at A3 (reporting that the 2000 Census shows reservation populations growing with many crediting casinos for providing jobs); Diane Brooks, \textit{Tribes, Once Crippled by Poverty Now Realizing American Dream: Tulalips Roll Dice, Hit Jackpot with Casino}, \textit{Seattle Times}, July 13, 2000, at A8 (noting that economic activity and jobs on reservations bring people home).} This potential is also demonstrated by several items that we will address here; many of which help to counteract the challenges discussed above.

\textit{A. Cultural issues}

As briefly examined above, Indian nations and peoples have supported, engaged in, and enriched themselves with entrepreneurial private and family oriented economic activities throughout history. Indian cultures and traditions support the principles of entrepreneurship and do not oppose it as some people believe. I will not repeat here in much detail the extensive evidence on this point that I and others have laid out elsewhere.\footnote{Miller, \textit{supra} note 2, at 767-98; Terry L. Anderson, \textit{Sovereign Nations or Reservations? An Economic History of American Indians} (1995).} But it is necessary to make it clear that Indian cultures have always fostered, encouraged, and supported tribal people in their private economic endeavors, protected their private property rights, and allowed individual Indians to pursue their own ways. Since Indian history and culture encourages and supports
entrepreneurship, it points to the potential benefits and successes that Indian entrepreneurs can achieve.

As I have stated:

as in all societies, Indians and their governing bodies had to provide for the daily needs of their families and their tribes. Hence, Indians were continuously involved in the production of food, tools, clothing, shelter and all sorts of objects for personal use. Indians also regularly traded goods with other peoples from near and far both for survival and to make life as comfortable as possible. The majority, if not all, of this trade was conducted in free market situations where private individuals voluntarily came together to buy and sell items they had manufactured for sale and which they exchanged by barter and sometimes even sold for money. Startlingly, perhaps, it appears that the only way in which Indian principles of economics and private property differed from the European/American concepts was in the conflicting views these societies had on the private ownership of land.95

Even though most tribal peoples owned their lands in common, private usufructuary rights in real property and absolute ownership of personal property were recognized and protected as belonging to individuals and families.96 Communal land became in essence private

95 Miller, supra note 2, at 765 (citing 2 FREDERICK WEBB HODGE, HANDBOOK OF AMERICAN INDIANS NORTH OF MEXICO 308 (1910) (observing that all Indian assets except for land were privately owned); Julian H. Steward, Basin-Plateau Aboriginal Sociopolitical Groups, BUREAU OF AM. ETHNOLOGY, BULL. 120, at 253 (1938) (“truly communal property was scant” among Indians.).

property once labor had been performed on and items produced from the land.\textsuperscript{97} These rights remained in private ownership as long as they were exercised. This was true, for example, for Pueblo, Navajo, Hopi, eastern, southeastern, and many other native peoples.\textsuperscript{98} Almost every indigenous nation in what is now America recognized and protected private property rights in all conceivable items of property such as river fishing rocks, wooden fishing platforms, ocean fishing and sealing sites, beaches, housing and housing plots, fruit and nut trees, berry patches, and beached whales.\textsuperscript{99} Many of these real and personal property rights were inheritable

\textit{Ethnological Contribution to the Sociology of Knowledge}, 53 AM. ANTHROPOLOGIST 506-24 (1951) (many northern California tribes held property in individual private ownership; property was important for maintaining status and prestige); K.N. LLEWELLYN & E. ADAMSON HOEBEL, THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE 233 (1941) (“A ‘private-property’ system seems to have been, in strict law, rather clearly established, as a basic aspect of organization.”); FRANCES DENSMORE, NOOTKA AND QUILEUTE MUSIC 3 (1939) (noting that the Makah Tribe recognized property rights very similar to Americans).

\textsuperscript{97} Julian H. Steward, \textit{Ethnography of the Owens Valley Paiute}, 33 AM. ARCHAEOLOGY & ETHNOLOGY 253 (1934).


property, and some, such as fishing sites and buffalo hunting horses, were available for rent or sale.¹⁰⁰

Historically, Indians were also excellent business people and very experienced in trade.¹⁰¹ There were several major and minor trading markets and trade fairs that took place

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¹⁰⁰ Higgs, supra note 99, at 59 (noting that fishing platforms on the Columbia River and reef locations in the ocean were inheritable properties passed from father to son); Andrew P. Vayda, Pomo Trade Feasts, in TRIBAL AND PEASANT ECONOMIES 498 (George Dalton ed., 1967) (some California Indians paid clam shell beads to other Indians for the right to fish at certain river sites); E. ADAMSON HOEBEL, THE LAW OF PRIMITIVE MAN 52, 55 (1954) (California tribes had exclusive use of fishing spots and would rent them out); 2 FREDERICK WEBB HODGE, HANDBOOK OF AMERICAN INDIANS NORTH OF MEXICO 308 (1910) (individuals in California tribes owned river bank fishing rights and the rights passed from father to son); DENSMORE, supra note 96, at 3 (rights were inherited); THE CHEYENNE WAY, supra note 96, at 213-14, 216-20, 229 (the Cheyenne Tribe had well-established laws regarding inheritance of property and private property rights; some Indians rented their horses to other hunters); ANDERSON, supra note 94, at 43 (buffalo hunting horses would be loaned out for payment).

¹⁰¹ See, e.g., 7 SMITHSONIAN INST., HANDBOOK OF NORTH AMERICAN INDIANS (NORTHWEST COAST) 119-20, 123-25, 131, 150, 369, 418 (William C. Sturtevant et al. eds., 1990) [hereinafter 7 SMITHSONIAN HANDBOOK] (Indians were capable and experienced traders; explorers and traders reported their hard bargaining; Meriwether Lewis
every year across North America. Lewis and Clark and other Euro-American travelers were described the Chinooks as “great hagglers in trade”; quick to exploit economic opportunities and strategic trade locations; knew the benefit of being middlemen; cultivated trade advantages; blankets were loaned out at interest; Washington Indians were skilled technicians and artisans, and produced a wide variety of utilitarian and decorative goods); CHARLES E. CLELAND, RITES OF CONQUEST: THE HISTORY AND CULTURE OF MICHIGAN’S NATIVE AMERICANS 109 (4th ed. 1992) (stating that in the fur trade Indians were “quick and efficient as market entrepreneurs”); KALERVO OBERG, THE SOCIAL ECONOMY OF THE TLINGIT INDIANS 105 (1973) (Russian, American, and English traders all attested to Indian established trading procedures and keen trading sense); 10 SMITHSONIAN INST., HANDBOOK OF NORTH AMERICAN INDIANS (Southwest) 721 (William C. Sturtevant et al. eds., 1983) (the Papago made measuring baskets with designs of parallel lines that were used to measure and sell items); RICK RUBIN, NAKED AGAINST THE RAIN: THE PEOPLE OF THE LOWER COLUMBIA RIVER 1770-1830, 70-71 (1999) (various Indians sold products in standardized basket sizes; Chinooks offered credit, deferred payments, and sold futures in spring sturgeon and awaited payment until the fish run ended); Philip Drucker, The Potlatch, in TRIBAL AND PEASANT ECONOMIES 487-88 (George Dalton ed. 1967) (Pacific coast tribes made “loans at interest [which] were strictly commercial transactions” of money and blankets).

102 Neal Salisbury, The Indians’ Old World: Native Americans and the Coming of Europeans, in AMERICAN ENCOUNTERS: NATIVES AND NEWCOMERS FROM EUROPEAN CONTACT TO INDIAN REMOVAL 1500-1850 13 (Peter C. Mancall & James H. Merrell eds., 2000) (noting that in the 13th to 16th centuries Plains tribes, Apaches, and Navajos traded their products at semiannual trade fairs); PETER C. MANCALL, DEADLY MEDICINE: INDIANS AND ALCOHOL IN EARLY AMERICA 24 (1995) (describing a 1595 New England Indian trading market); 15 SMITHSONIAN HANDBOOK, supra note 98, at 45, 83 (claiming that long-distance trade of pottery, shell beads, and native copper is evident during 300 B.C.-1000 A.D); 9 SMITHSONIAN INST., HANDBOOK OF NORTH AMERICAN INDIANS 25-26, 71-72, 79, 127-28, 149, 201 (William C. Sturtevant et al. eds., 1979) [hereinafter 9 SMITHSONIAN HANDBOOK] (Southwest was knit together by economic trade networks that included Plains and Great Basin tribes from prehistoric times); OBERG, supra note 101, at 105, 111-12 (Tlingits traded up to 1,000 miles away; had established exchange values on
amazed at the variety and amount of goods available at these markets and the sophistication of
Indian businesspeople.\textsuperscript{103} Furthermore, many tribes prized and protected the accumulation of
most goods; supply and demand influenced values); Bruce G. Trigger & William R. Swagerty, 

textual content
wealth by individuals and thus this trade and economic activity was carried on to acquire property and profits to support families and to build personal wealth.\textsuperscript{104}

\textsuperscript{104} See, e.g., Drucker, supra, note 101, at 247 (Nootka people of the Pacific Northwest); OBERG, supra note 101, at 35, 55-56, 60-63, 79-83, 91-94, 132-33 (“Material wealth [was] of great importance to the Tlingit”; and other tribes recognized and protected the accumulation of wealth by individuals); 7 SMITHSONIAN HANDBOOK, supra note 101, at 346, 493, 505, 540, 548, 551, 580, 591 (dentalia was used as ornaments and esteemed as symbols of wealth; among the Yuroks and other northern California tribes “the accumulation of wealth [was] a passion”); HERSKOVITS, supra note 98, at 251, 478 (the Mohave of California thought the display and destruction of property was essential for maintaining social positions); THE ENCYCLOPEDIA OF NATIVE AMERICAN ECONOMIC HISTORY 5, 43, 59, 180, 208, 210 (Bruce E. Johansen ed., 1999) (potlatches in Northwest cultures were displays of wealth; the ruling families of Powhatan villages in Virginia flaunted their status with lavish entertainments); 15 SMITHSONIAN HANDBOOK, supra note 98, at 384 (Indians engaged in trading to acquire desirable goods and converted these into social status); Indians of Cape Flattery, supra note 102, at 22-30 (the Makah became wealthy and lived a comfortable and easy economic life, “they can procure, in a few hours, provisions enough to last them for several days”); United States v. Washington, 384 F. Supp. 312, 363-64 (W.D. Wash. 1974), aff’d, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. (1976) (“the Makah enjoyed a high standard of living [from] their marine resources and extensive marine trade.”); 9 SMITHSONIAN HANDBOOK, supra note 102, at 82; James G. Swan, The Northwest Coast, or, Three Years' Residence in Washington Territory 159 (reprint 1969, 1857) (dentalia were objects of wealth and women would wear them like jewelry); id. Norman H. Clark, Introduction, at xii, xvi-xix (the Makah Tribe became rich in resources, leisure and aesthetic sensibilities); Rubin, supra note 101, at 27, 69, 71 (Chinooks and other Indians buried dentalia for safety, but would dig them up to examine, count and admire); Duane Champagne, Economic Culture, Institutional Order, and Sustained Market Enterprise: Comparisons of Historical and Contemporary American Indian Cases, in Property Rights, supra note 96, at 199, 200, 204-05 (wealth given away at potlatches honored ancestors, repaid other groups for services and labor; gained new titles, ranks and prestige); Robert Sullivan, A Whale Hunt 67 (2000) (“Wealth was everything”).
In conclusion, one sentence from 1934 perfectly sums up the foregoing brief discussion: “in the vast majority of cases Indian economic pursuits were carried on directly with individual rewards in view.”105 That statement affirms that Indian cultures have always supported individual Indian entrepreneurship.

B. Human and Financial Capital

The upside for Indian entrepreneurship is also high even in the face of unique human and financial challenges. Many positive developments point to tribes and Indians continuing to reduce the extent of these obstacles to individuals starting and operating private businesses.

1. Poverty

Indian people still have a long ways to go to even catch up with the U.S. averages, but very positive steps have been taken in improving the financial status of American Indians. The facts demonstrate that individual Indian business ownership rates and family incomes are on the rise.106

In addition, as is discussed further below, tribal and federal governments are trying to devise ways for tribal citizens to borrow money to start businesses and to overcome the fact that


individually owned trust property cannot be mortgaged. Many tribes that have the resources are making loans to tribal citizens for business startups, even up to $100,000. And some tribes are establishing tribal banks that provide special services for tribal citizens, or are using their leverage with local banks to ensure their citizens have full access to regular bank loans to start businesses.

In a few casino tribes, the financial improvements have been dramatic. A couple of tribes are even making per capita payouts of casino profits at up to $1 million a person per year. A

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108 See infra note 138.

109 Id.

college education, for example, and jobs in tribal entities are guaranteed in several tribes to any citizen who desires.\footnote{See, e.g., Silver Covenant Chain of Friendship Scholarship Program, http://oneidanationfoundation.org/covenant.html (last visited May 30, 2008) ("As of 2005, the [Oneida] Nation has awarded a total of $300,000 in scholarships to 60 [Oneida] students . . . continuing its legacy of educational opportunity for high school seniors in Madison and Oneida counties. The grants are designed to give students and their families a financial leg up during their entry into higher education.").}

There is an added benefit for entrepreneurship from addressing Indian poverty issues. It is clear that when people have savings and resources to fall back on, a safety net if you will, that they are more willing to take the chance to start their own business.\footnote{Antone Minthorn, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, Address at the Oregon Native American Business & Entrepreneurial Network “Trading at the River” conference (April 15, 2008) (notes on file with author).} Tribal citizens who can reasonably rely on falling back on tribal jobs or accumulated resources if they do not succeed at operating their own private business will be more willing to take that risk.

The poverty obstacle to starting private businesses is being lessened in Indian country.

2. Human capital

Great strides have also been made in recent decades in improving the educational level, overall health, and the work skills of American Indians. Tribal and federal governments, for example, have emphasized education in the past few decades and a new generation of Indian leaders and business persons is emerging.\footnote{Thirty-six tribal colleges now operate in Indian}
country and grant associate degrees in several subjects; and two of those colleges now grant bachelor’s degrees. Diversity efforts and scholarships are also helping Indians attend college and postgraduate schools in never before seen numbers.

One example well demonstrates this progress and the need for further higher education for Indians. An informal survey in the late 1960s found that there were only about two dozen Indian attorneys in the entire United States; the number is now over 3,000, an amazing and encouraging change. But there is still much room for improvement even in just this one

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113 See, e.g., Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 et seq. (2006); American Indian Graduate Center, http://www.aigc.com/01about/history.htm (founded in 1969, it provides $2.4 million a year in scholarships for tribally enrolled graduate school students).


116 GETCHES, supra note 50, at 21. There are also a growing number of American Indian doctors. Id. at 19.
professional field because there should be about five thousand more American Indian attorneys if Indians were lawyers at the same per capita rate as for the general U.S. population.

Moreover, as Indian employment rates improve, work experience and skills are being built into the Indian and tribal workforce. In addition, critical employee and management skills are being learned as Indians operate tribal governmental programs and economic entities.\(^{117}\) Hence, as tribal governments expand their governmental and economic activities one positive externality is the concomitant improvement of the Indian workforce.

Tribal people are also slowly improving their educational situations in other ways. Federal, tribal, and state programs are also helping. Many tribes are creating financial literacy classes based on U.S. Small Business Administration materials. And, as is discussed in detail below, many tribes operate economic development departments that assist tribal citizens to learn about business and to start their own businesses.

\(^{117}\) Matthew B. Krepps, *Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry*, in *WHAT CAN TRIBES DO?* supra note 38, at 182-83, 199; *WHITE*, supra note 11, at 77, 84-85, 105, 214, 217, 248 (noting that the Mississippi Choctaw is the largest employer on its reservation and that tribal citizens are gaining valuable work experience and bureaucratic savvy; Warm Springs Reservation's largest enterprise is government administration providing 600 of the 1200 jobs at Warm Springs; the tribe’s resort, Kahneeta, has trained almost all of the tribal administrators).
Health issues are still of serious concern in Indian country, even while Indian life expectancy and infant mortality rates are greatly improving. Diabetes, though, is replacing alcohol as the leading Indian health issue. Increased federal, state, and tribal programs and personal efforts are needed to continue to improve health concerns. The potential for improving Indian health is great and reservation and urban Indian families will prosper in many ways as gains in this arena are made.

C. Tribal governments

The potential for increasing Indian entrepreneurship is also high due to factors under the control of tribal governments. There are many positive developments that tribes are undertaking and more that they could do to help themselves, their economies, and Indian entrepreneurs. Tribal governments are well aware of some of the challenges that they face in attracting business to reservations and that entrepreneurs and investors face who are considering working in Indian country. In a study from the early 1990s, tribal leaders stated that the five main issues they faced in bringing economic development to their reservations were: 1. lack of capital;

118 U.S. Department of Health and Human Services, Indian Health Service Fact Sheets, http://info.ihs.gov/Population.asp (last visited May 23, 2008) (“Life expectancy has now increased to 74.5 years); GETCHES, supra note 50, at 18.

2. lack of economic resources and an inability to obtain capital; 3. lack of natural resources; 4.
lack of trained management, and, 5. lack of trained personnel. We have identified most of
these items as obstacles for Indian entrepreneurs too. So as tribes take on these subjects, there
will be a collateral benefit for individual Indian business owners.

Tribes are taking positive steps to address these issues and coincidentally the issues
individual entrepreneurs face. As mentioned above, many tribes lack the basic laws and court
systems that investors expect. Tribal governments are slowly adopting these laws. Many tribes
have already adopted parts of the Uniform Commercial Code or are in the process of doing so.
There is also a movement afoot to adopt a specifically drafted tribal UCC. The Crow Nation in
Montana just enacted this tribal UCC and is even relying on the state bureaucracy as the place
for filing security interest notices. Both of these moves look like positive steps for tribes to

120 Theresa Julnes, *Economic Development as the Foundation for Self-Determination, in AMERICAN INDIAN POLICY, supra* note 22, at 151 (leaders from up to one-third of American tribes responded to the survey).

121 See, e.g., *Cheyenne River First Tribe to Adopt State Business Code, INDIAN COUNTRY TODAY, Jan. 17, 2001*, at D1 (the Tribe adopted South Dakota's UCC and is cooperating with the state in filing loan information to increase business development on the reservation and make it easier for businesses to invest in Indian country and bankers to extend credit); Gregg Aamot, *Tribal Sovereignty Crucial to Economic Development, STAR TRIBUNE, Nov. 15, 2000* (the Ho-Chunk Tribe adopted a corporate code using the state's as a model; it has helped diversify the economy).

consider. The benefit of using the state recording systems is for the ease and comfort of investors and avoids the tribe having to pay to duplicate the pre-existing state system.

Very recently, an effort is under way in the Pacific Northwest by various tribes and a regional organization, the Affiliated Tribes of Northwest Indians, to draft an inter-tribal treaty for economic development purposes. This treaty expressly requires the tribes that sign the treaty to enact a list of codes, including for example, a UCC, business incorporation, and licensing and standards codes. This is a basic but major step for Indian country and will greatly aid entrepreneurs and investors. This treaty will also go a long way to solving the problems businesses have in identifying and leasing locations on reservations because each tribe is required to designate at least one “trade zone” when entering the treaty. The setting aside of trade zones seems to be an inspired idea because the defining and development of the zones will make more certain where entrepreneurs and investors can get leases to locate their businesses,

123 Miller, Inter-tribal, supra note 58, at __ (forthcoming 2008).

124 Id. at __. FRIEDMAN, supra note 12, at 15, 27 (“government is essential both as a forum for determining the ‘rules of the game’ and as an umpire to interpret and enforce the rules decided on”; governments must maintain law and order, and define and enforce contract and property rights); WHAT CAN TRIBES DO?, supra note 38, at 21-24 (investor risks go up if there is uncertainty in enforcing contracts, no commercial codes, delay in gaining approvals, or politics interferes in business).

125 Miller, Inter-tribal, supra note 58, at __ (forthcoming 2008).
where the terms of the treaty will apply, make more certain what activities can occur therein and the exact laws and regulations that will apply, and solve many infrastructure issues.

This treaty will also help tribes address issues their court systems and some of the legal impediments to business, entrepreneurship, and investment in Indian country. The treaty provides for the creation of a court system that is experienced in business and contract law or the designation by a tribe of its own court system if that is its decision. As this treaty drafting process has shown, tribal leaders are well aware of the importance of efficient, independent, and fair court systems for attracting business to their reservations, because no entrepreneur, Indian or non-Indian, tribal citizen or non-tribal citizen, is going to locate their business where they might be “home-towned” by a biased court and lose everything they have worked for. In fact, one long term study by the Harvard Project on American Indian Economic Development demonstrates that tribes that have independent, impartial court systems have a five percent higher employment rate than reservations without such courts.

126 *Id.* at __.

127 MILLER, supra note 2, at 842-43; An Interview with Joseph P. Kalt, supra note 90, at 16 (tribes compete for jobs and investors with everyone; Indian and non-Indian companies, and even tribal citizens, have to decide where to pursue a career; tribes have to make reservations attractive to investors by establishing a rule of law and sound business codes, and courts and agencies independent from politics; “without the building of an independent tribal court system, small business has virtually no chance”).

128 WHAT CAN TRIBES DO?, supra note 38, at 28-30.
In addition, the treaty provides law on subjects that most tribal constitutions do not address and which only a few tribal courts have yet adopted by common law decisions. The treaty will require that tribes give full faith and credit to court judgments of the treaty business court, ensure full faith and credit to the business codes of signatory tribes, prohibit ex post facto laws on business activities, and enact no law or regulation that impairs the obligation of contracts. These are important and major steps in creating “business friendly” environments.

Tribes have also been addressing the lack of work and business management experience in their employment pool and citizenry. One side benefit of tribal economic and governmental operations has been to train tribal employees in work skills and management positions. Tribal forestry, natural resource departments, casinos, business ventures, and governmental bureaucracies have created a growing body of trained and experienced tribal citizens from which future entrepreneurs will be drawn. For instance, the Mississippi Choctaw Tribe is famous for successfully operating businesses that most of Indian country has not yet been able to attract. The Tribe requires as part of each manager’s job that they train a Choctaw to replace them when

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129 Interestingly, the constitutions the BIA distributed in the 1930s for tribes to adopt did not have separation of powers, impairment of contracts, or ex post facto provisions. Some tribes have amended their constitutions to add these principles. See, e.g., Oglala Sioux vote on constitution, http://lawlib.lclark.edu/blog/native_america/?p=1433; Constitution of the Eastern Shawnee Tribe of Oklahoma, Arts. V(e) & (i), VII-IX (on file with author).

130 Public Law 93-638 allows tribes to take over and operate federal Indian programs. The experience that tribes and their citizens gain from operating these programs is invaluable. See, e.g., Krepps, supra note 117, at 182-83, 199 (tribes that operate their own forestry programs make more profits with better forest health; tribal citizens are more motivated because the profits benefit their tribe); TRIBAL ASSETS, supra note 11, at 77, 214, 248.
they retire. This process has obviously increased the potential for more Choctaw entrepreneurs in the future.

In addition, tribes have established training programs that teach individual Indians to start privately owned businesses on and off reservations. In 1992, for example, four Oregon tribes started the Oregon Native American Business & Entrepreneurial Network (Onaben) to help individual Indians on and off reservations to develop business plans, launch new businesses, and improve their business skills in pre-existing businesses. These tribes realize that creating a private business sector and functioning economies on their reservations is absolutely crucial and worthy of their attention and resources. Onaben has developed innovative, culturally specific training materials that are being used across the country to teach Indians the basics of formulating a business idea, drafting a workable business plan, and operating their business.


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

The Onaben model has been a great success and has helped individual Indians in Oregon and Washington, for example, to start many new businesses and to attain an excellent survival rate for those businesses.135

In 1999, the Cheyenne River Sioux Tribe helped create the private non-profit Four Bands Community Fund, to offer these same types of business training programs and assistance for reservation residents to secure start-up loans, and the Mille Lacs Band also created a small business development program that arranges loans and provides tribal entrepreneurs with training and technical assistance.136 Other organizations across the country run various programs which range from classroom instruction, counseling and technical assistance, to helping Indians develop and operate privately owned businesses and to find start-up loans and contract opportunities.137


136 Mark Fogarty, Cheyenne River Loan Fund Seeded For “Economic Sovereignty,” INDIAN COUNTRY TODAY, Jan. 31 2001, at B1 (new non-profit organization began its first ten-week training session in starting and operating businesses in fall 2000); Aamot, supra note 121 (since 1997 the Cheyenne River loan fund has arranged thirty-five business loans for start-ups, nineteen of which are still operating with combined grosses of about $1 million in 1999).

Furthermore, tribes are actively addressing financing issues for Indian entrepreneurs. Several tribes with the resources now provide business start up loans, business training, and have used their leverage with banks to acquire business loans for their citizens.\textsuperscript{138}

\textsuperscript{138} Mark Fogarty, \textit{Home-Grown Economics: User-Friendly and Structured for Local Control, Tribal Credit Unions Are Catching On}, AM. INDIAN REP., Apr. 1999, at 16 (five native affiliated credit unions at Navajo, Muskogee, Oklahoma, Minnesota, Wisconsin, and South Dakota have operated for decades and work to bring and keep money on the reservation and make credit available to Indians); Eric J. Greene, \textit{Blackfeet Bank Builds Community as Well as Profits}, NEWS FROM INDIAN COUNTRY, Late Aug. 1999, at 10 (a tribally owned bank helped to start more than 200 businesses and revived business on reservation; people are spending more money in town; bank offers workshops and materials and loans to start businesses); Ron Selden, \textit{Blackfeet Bank Keeps Dollars Circulating on the Reservation}, INDIAN COUNTRY TODAY, Dec. 1, 1999, at C2 (tribal bank started a nonprofit economic development corporation to teach financial and economic matters to citizens and help them start businesses; organized mini-banking operations in grade, middle and high schools); Aamot, \textit{supra} note 121 (the Mille Lacs Band of Ojibwe created a small business development program which arranges loans and provides tribal entrepreneurs with training, computer access and technical assistance; since 1997, it has arranged thirty-five business loans for new startups, nineteen of which are still operating and had combined grosses of about $1 million in 1999); Eastern Shawnee Tribe--Economic Update Bank Tribal Loan Program Outlined, in THE SHOOTING STAR: NEWS FROM THE EASTERN SHAWNEE TRIBE OF OKLAHOMA, June 1999, at 6 (stating that the Tribe bought a controlling interest in an off reservation bank and in 1998 arranged for the bank to make loans to tribal citizens); Fogarty, \textit{supra} note 136 (the Cheyenne River Sioux Tribe assisted in creating a non-profit on reservation to develop accounts to match entrepreneurs’ contributions for education or business startups); Mark Fogarty, \textit{Beyond the Jewelry Booth}, AM. INDIAN REP., July 1999, at 16-17 (the First Nations Development Institute has awarded, as of 1999, grants totaling more than $5.8 million to tribes, tribal organizations and native individuals; the Lakota Fund in Kyle, South Dakota, is a micro-lender on reservation); Adams, \textit{supra} note 43 (the New Mexico Community Loan Fund administers $4
Finally, and very importantly, tribes can help Indian entrepreneurs and increase exponentially the potential to grow more entrepreneurs by working to create reservation economies. One method to do this is for tribes to be the clients of Indian entrepreneurs; to buy as much of their goods and services as possible from Indian and tribal citizens. Tribes spend an enormous amount of money on operating their governments and economic activities. But as is well known, tribes spend too little of this money on Indian businesses. This is partially a “chicken and egg” problem. Admittedly, there are too few privately Indian owned businesses to provide lots of goods and services to tribes, but there also seems to be a disconnect between getting tribes to patronize Indian owned private businesses.\textsuperscript{139} In contrast, if even a fraction of these tribal monies could be funneled towards private Indian businesses it would go a long ways to sustaining those businesses, enticing other entrepreneurs to start more businesses, and helping

\textsuperscript{139} Interview with Gary George, Chief Operating Officer, Wildhorse Resort Casino, in Portland, Or. (June 10, 2004) (business operations of the Confederated Tribes of the Umatilla Indian Reservation create a $60 million payroll and vendor payments annually in rural Oregon; only a fraction of the vendor payments go to tribal citizens because so few Indians own their own businesses); Oregon Native American Business & Entrepreneurial Network “Trading at the River” conference (April 15, 2008) (notes on file with author) (audience member from the mid-west commented that it is hard for Indian entrepreneurs to sell on their own reservations); Dennis Thayer & Deborah Warren, \textit{What kind of message do tribes give to American Indian businesses?}, \textit{Indian Country Today}, Aug. 4, 2004, at A5.
to create real economies on reservations. Tribes need to seriously consider using their governmental expenditures and their “anchor” businesses, whether it is a casino or some other economic entity, to patronize Indian businesses and to support and develop a private market and economy on their reservation.\footnote{See, e.g., Minthorn, \textit{supra} note 112 (“Think of the combined buying power of tribal casinos.”); Kenneth E. Robbins, \textit{Gaming: A Good Bet for Tribal Economical Development?}, AM. INDIAN REP., Apr. 1999, at 20 (suggesting that tribes should use tribal businesses to build economies and to help Indians start businesses to supply and support tribal “anchor” businesses).}

This type of directed spending would go farther than one might imagine in increasing the number of entrepreneurs on a reservation. And increasing the number of businesses operating on reservations will then accelerate the process of creating and attracting even more businesses as money stays and circulates on the reservation to be spent over and over and thus to encourage even more people to become entrepreneurs.\footnote{Miller, \textit{supra} note 2, at 830-31. Despite the poverty in Indian country, Indian people and tribal governments spend a lot of money each year. But the vast majority is spent off reservation. \textit{Id.} at 830 (quoting a Navajo official from 1994 that $0.80 of all money received is immediately spent off reservation); Fonseca, \textit{supra} note 2 (70% of Indian money is spent in reservation border towns). The 40,000 citizens of just the seven Montana tribes spend $48 million a year off their reservations. Cathy Siegner, \textit{Making and Keeping Dollars on Montana Reservations}, AM. INDIAN REP., Feb. 1999, at 18. Those tribes commissioned a study in 2000 that demonstrated tribal, reservation, and BIA salaries equaled $200 million annually and created an economic benefit for Montana of $1 billion. Selden, \textit{supra} note 18. More of this enormous amount of economic activity could occur in reservation economies if this money was spent on reservation and circulated between various reservation businesses.} A reservation needs a critical mass of businesses,
public and private, to keep dollars within its borders so that entrepreneurs can develop and innovate new businesses and ideas by playing off of each others’ activities. Thus, two or three more entrepreneurs on a reservation will create a couple more, who will then create even a few more. Pretty soon, a reservation will have a functioning economy. The potential and the circularity of this process is endless.

Obviously there is much tribal governments can do, and already have done, to increase the potential of Indian entrepreneurship. The tribal role in this process is to provide leadership, financing, ordered societies with well settled laws that are enforced fairly by tribal courts, and to be clients of Indian entrepreneurs. In the long run, these efforts will benefit everyone; the tribe, the community, and individual Indian entrepreneurs.

**D. Federal and state governments**

These governments also play important roles in encouraging and nurturing Indian entrepreneurship. Indians are, of course, state and federal citizens and these governments have a responsibility to assist all their citizens to improve their economic condition. These governments

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142 Randall G. Holcombe, *Entrepreneurship and Economic Growth*, in *MAKING POOR NATIONS RICH: ENTREPRENEURSHIP AND THE PROCESS OF ECONOMIC DEVELOPMENT* 55-56, 61, 71-74 (Benjamin Powell ed. 2008) (arguing that entrepreneurs develop new businesses and innovate new ideas and businesses off the activities of other entrepreneurs; thus a market and institutions that encourage entrepreneurship will grow more entrepreneurs and businesses); *An Interview with Joseph P. Kalt*, supra note 90, at 16 (claiming that there is an explosion waiting to happen in the private sector on most reservations).
can and do provide economic, educational, and contracting opportunities for Indian entrepreneurs. They could do far more in that regard for Indian people.

State and federal governments could also learn when to stay out of tribal affairs and to quit fighting tribal governments over every tax, regulatory, and jurisdictional issue. It is probably a pipe dream to think that will ever happen, but sometimes it does. States and tribes have settled longstanding and intractable problems about jurisdiction and resources, for example, with intergovernmental compacts that help end the waste of time and money in litigation and conflict.

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The federal government in particular has the authority in Indian country and the trust responsibility for Indians and tribes that allows and requires it to do beneficial things to improve Indian entrepreneurship. Two examples will suffice. First, in 1871, the federal government enacted what is known as section 81 and required that all contracts with tribes that were “relative to their lands” had to be approved by the United States. In fact, until 1958, these contracts had to be executed before a federal judge! It seems obvious that this federal role in tribal economic decision making slowed down and impeded that process. The litigation and uncertainty that arose from section 81 and the negative impacts on tribal business development were rampant. But in 2000, Congress took a positive step to address this issue. Section 81 was significantly amended and now federal approval is only required of contracts that “encumber[] Indian lands for a period of 7 or more years.” In contrast to the extensive litigation on section 81 before 2000, there has only been one reported case under the new statute in the past eight years. This example demonstrates that Congress can recognize problems that impact reservation economic issues and can act to correct them. Hopefully, Congress can be persuaded to fund and take other steps to assist Indian entrepreneurs.

The second example concerns Congress’ attempt to address the problems caused by the fractionalization of land ownership on many reservations. Congress has three times enacted statutes trying to consolidate some of these interests and to give tribes more of a role in fixing this issue. The Supreme Court, however, has twice struck down these laws and there will no

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doubt be challenges to Congress’ current third attempt. This is again an example of Congress attempting to help economic development in Indian country.

The federal government has also tried several different means to address Indian economic issues. In the 1960s, federal poverty programs invested millions of dollars in tribal programs to train Indian employees and to address infrastructure issues. In recent decades, the government has worked to some extent with individual Indian entrepreneurs. Congress has provided loan and grant programs for tribes and Indians for startup funding. Job training and experience has been provided to Indian individuals through several different federal programs that were also available nationwide. The Small Business Administration has also focused somewhat on individual Indians and the SBA section 8(a) program has benefited many tribes and some Indian entrepreneurs.

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150 Individual Indians received job training assistance through the Office of Economic Opportunity. The Job Corps, Head Start, VISTA, and Community Action Programs allowed tribes to develop and administer their own economic and social programs. PRUCHA, supra note 83, at 1091-1100.

Some states have undertaken a few efforts to help Indian entrepreneurs to participate in the American economy.\textsuperscript{152} They could do more to help their own citizens and to address poverty in Indian country. It is truly a win-win situation for state governments when they help all their citizens to improve their economic lives.

Plainly, we all will benefit as a society, even in tax revenues, as Indians start to reach their economic potential as entrepreneurs. Studies conducted for Onaben, for example, demonstrate that the financial assistance state and federal governments gave Onaben was repaid to those governments many times over in increased tax revenues in just one year.\textsuperscript{153} Thus, notwithstanding the duty of governments to assist their own citizens, these governments have

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\textsuperscript{153} An independent review of Onaben's activities by a University of Calgary professor in 1998 and 2000 demonstrated the value of programs like Onaben's to tribal, state, and federal economies. The new businesses created by Onaben's Indian clients generated million of dollars in new sales, created hundred of new jobs, and generated millions in payroll in the Oregon and Washington economies. James J. Chrisman, Ph.D., \textit{The Economic Impact of ONABEN's Counseling Activities in Oregon: 1998}, at 2, 11 (on file with author); James J. Chrisman, Ph.D., \textit{The Economic Impact of ONABEN's Counseling Activities of the Oregon Native American and Entrepreneurial Network: 2000}, at 2, 15 (on file with author). These studies estimated that the new businesses generated an additional $2.74 million in taxes in 1998, which represented a return to the state and federal governments of $3.27 in tax revenues for every $1 of federal, tribal, state, and private money spent on the entire operation of Onaben in 1998! Chrisman, (1998), at 2. In 2000, the study estimates that Onaben clients contributed $3 million in additional taxes--a return of $6.83 in tax revenues in just one year for every $1 spent on the entire operation of Onaben. Chrisman, (2000), at 2, 15. The study concluded: “ONABEN makes an important contribution to the Oregon economy. By every measure analyzed, whether objective or subjective, Onaben has proven to be a worthwhile investment to the small business and entrepreneurial sectors of the economy.” \textit{Id.} at 16.
\end{quote}
also benefited on the dollar and cents side by helping Indian entrepreneurs. It is both logical, reasonable, and humane for state and federal governments to assist Indian entrepreneurs.

III. CONCLUSION

“We had tried poverty for 200 years, so we decided to try something else.”

Indian people and tribal governments are tired of talking about poverty and suffering from its effects. They want to do something about it. Poverty is the past; and Indians want to look forward and move forward in all areas, including economic development. I have written this Article with that exact point in mind. How can tribes and Indians improve their economic situation? What tools are available to reach that goal?

Clearly, tribes need to build functioning economies on their reservations. This is perhaps the only way to keep money circulating on reservations and to capture the full economic value of the money that tribes and Indians already possess. Reservations need the presence of all sorts

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155 INDIAN SELF-RULE: FIRST HAND ACCOUNTS OF INDIAN-WHITE RELATIONS FROM ROOSEVELT TO REAGAN 224 (Kenneth R. Philp ed., 1986) (quoting former Commissioner of Indian Affairs that $1 million invested in most communities generates approximately $10 million in cash flow; “[b]ut in Indian communities, one million dollars generates just one million dollars of cash flow”); Selden, supra note 138, (noting that the Blackfeet Tribe started the first tribally owned and operated bank on a reservation in 1987 to help start businesses and keep people doing their business and shopping in the reservation town; “these efforts help keep money and jobs circulating within the reservation, rather than being siphoned off outside”); Siegner, supra note 141, at 18 (commenting that money turns over only once on Montana's Indian reservations; reservations lack the retail businesses necessary to keep this
of private businesses to encourage reservation residents and visitors to spend their money in local businesses to support reservation and Indian businesses. Moreover, this will grow additional reservation employment opportunities and the benefits that come from creating more entrepreneurs, from creating more role models, more jobs and more places to spend money on the reservation to acquire the necessities and luxuries of life. It takes the presence of numerous individually owned businesses and a wide variety of goods and services to create an economy. Very few reservations have a real economy today. Increasing the number of Indian and non-Indian owned businesses on reservations is a logical, reasonable, and important governmental goal that tribes should pursue.

There is no question that tribal governments and Indian entrepreneurs face some unique and even daunting challenges in increasing their rate of private business ownership and in creating reservation economies. But these are not impossible obstacles. Many Indians already operate their own businesses today and many others are learning job and management skills by working for tribal governments. The potential upside for Indian entrepreneurship is unlimited. There are positive signs that raise great hopes for the creation of functioning economies on

money in the community); Paisley, supra note 7, at 5-6 (claiming that tribes need diverse economies so money can circulate on reservation and fuel further enterprise and profit); Al Henderson, Tribal Enterprises: Will They Survive?, in ECONOMIC DEVELOPMENT IN AMERICAN INDIAN RESERVATIONS 114, 116 (Roxanne Dunbar Ortiz ed., 1979) (quoting the Navajo Nation chairman in 1979 that “[t]he border towns, where there is a better delivery of goods and services, absorb a majority of incomes earned on the reservation . . . [and we] know that wealth is flowing off the reservation”); CASTILE, supra note 82, at 273 (“Money paid to Indians is immediately spent off the reservation”; lack of reservation business fails “to provide a ‘multiplier’ effect” so the money immediately leaves the reservation instead of “bounc[ing] around from Indian worker to Indian business to Indian government.”).
reservations, for raising the rates of Indian private business ownership on and off reservations, and for moving Indian families out of poverty.

In addition, it bears repeating that culture is not an obstacle to Indian entrepreneurship. The histories and traditions of all American Indian tribes support the individual right and obligation to support yourself and your family. In fact, increasing economic development on reservations will support tribal cultures, not injure them.\(^{156}\) After all, “economic development is a tool to achieve cultural integrity and self-determination with tribal sovereignty.”\(^{157}\)

The mere fact that poverty will be reduced and that Indian families can then choose to return to their reservations if jobs are available points to an enormous benefit to tribal cultures and governments from economic development. Many commentators and situations have already pointed to the very positive effect on tribal cultures from increased economic activity on reservations as tribal people are able to afford to move home because jobs and economic activities are now available. There can be no greater benefit it seems for a tribe’s culture than to have its citizens and families move home to the reservation where they can participate in cultural activities and cultural and language preservation.\(^{158}\) In addition, when tribes, individuals, and

\(^{156}\) Miller, supra note 2, at 832-53; Yellowtail, supra note 21, at 82-83; SMITH, supra note 24, at 3, 62, 71, 80, 110-11.

\(^{157}\) SMITH, supra note 24, at 111.

\(^{158}\) See, e.g., Richard Cockle, supra note 93, at B4 (now that the Umatilla Tribe has successful economic activities ongoing and jobs available, many tribal citizens want to return to live on reservation); Kenneth E. Robbins, Doing Business Since 1941, AM. INDIAN REP., Apr. 2001, at 20 (stating that the presence of businesses on reservation lead to shopping on the reservation which keeps money in the community so that it multiplies and contributes to economic stability); Egan, supra, note 88, at A1 (proposing that economic opportunities and jobs are bringing
reservation economies have money to spare they can use it and their leisure time to support programs and activities to study tribal histories, for example, and to renew tribal cultures and traditions.

In addition, this does not even take into account that the general health, education and other important indicators will be improved as reservation and urban Indians increase their family wealth. Plainly, many of the health and social problems Indians encounter arise from poverty and they cause very negatively impacts on Indian life today. These issues can be better addressed and ameliorated with increases in privately earned money, increasing private and tribal health care, and the positive affirmation that comes from earning one’s own living.  

Indians back to their reservations); Walker, supra note 93, at A3 (reporting that the 2000 Census shows reservation populations growing with many crediting casinos for providing jobs to return to and those interested in rekindling their heritage); Brooks, supra note 93, at A8 (noting that economic activity and jobs on reservations bring people home); Edward Sifuentes, More Indians Living Off Reservation, NORTH COUNTY TIMES.NET (Escondido, Cal.) (May 24, 2001), at http://www.nctimes.com/news/2001/20010524/51710.html (experts and tribal officials say many areas are getting a boost from Indians returning to jobs at tribal casinos); Katie Dean, IT Rejuvenating the Reservation, LYCOS WIRED NEWS (May 14, 2001), at http://www.wired.com/news/school/0,1383,43718,00.html (stating that Indians want “to be able to make a living on their own reservation”); John C. Mohawk, Indian Economic Development: The U.S. Experience of an Evolving Indian Sovereignty, AKWE:KON JOURNAL 42, 49 (Summer 1992) (stating that if Indian people can acquire power and economic resources to make decisions about their future “they can choose educational paths that allow their languages, history, arts, and culture to survive and therefore can perpetuate the very elements which define them as distinct peoples”).

159 Sorkin, supra note 47, at159 (citing a 1977 U.S. Department of Health, Education, and Welfare study that anger and frustration can be a cause of alcoholism and those emotions partly arise from a “perceived lack of accomplishment. Thus, the person without a job has little opportunity to prove himself.”); Cockle, supra note 11.
In conclusion, I agree with the chairman of the Confederated Tribes of the Umatilla Indian Reservation in Oregon about the “red herring” argument that Indian culture does not support entrepreneurship and economic prosperity. Chairman Antone Minthorn stated in April 2008 at an Indian entrepreneurs conference: “We need to make it acceptable in Indian country to be in business; it’s not about rejecting culture, it builds sovereignty.”160 Indian culture is not an obstacle for Indian entrepreneurs. Instead, Indian history demonstrates that operating your own business or economic enterprise to support your family and your tribe is very much in tune with who Indian people are and with their cultures, traditions, and histories. In fact, “contemporary American Indian sovereignty depends directly upon a successful rekindling of [Indian] entrepreneurial spirit.”161

Tribal, state, and federal governments need to nurture the Indian tradition of entrepreneurship and need to grow and assist the abilities of Indian individuals and tribal governments to create privately owned businesses and real economies in Indian country. It is time to unleash the potential of Indian entrepreneurship, for the benefit of us all.

160 Minthorn, supra note 112.

161 Yellowtail, supra note 21, at 73.