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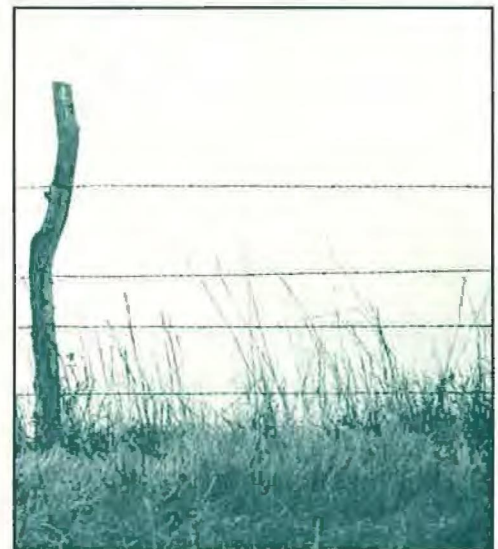
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***Sovereignty:
The Strength of Nations
— and of Business***

Sovereignty creates borders. Its essence is the power and the freedom to do things on one side of a border that can't or won't be done on the other side. Decisions of sovereignties affect individuals and families, shape communities, and encourage or inhibit enterprise.

The ongoing debate about the powers of Indian nations in the United States reflects the core issues of the debate over sovereignty, in this country and around the world. Who has the right to make and enforce what kinds of decisions, within what boundaries?



The sovereignty of the indigenous people of this continent was assumed when tribes and the U.S. government first entered into treaties and agreements. While the courts have generally upheld the sovereignty of tribes as “limited dependent nations,” just what that means is subject to heated debate. Congress, tribal members, and state officials argue about tax powers, who has rights to natural resources, and

***Sovereignty defines nations,
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national boundaries
and other political borders.***

whether tribes should be immune from lawsuits. The authority to levy taxes, educate children, and build roads and sewers may be under federal, tribal, state, county, municipal or special district jurisdiction. Over time, already complex laws continue to evolve and become even more complex.

Although the status of Indian reservations in the U.S. is unique, dilemmas over the boundaries of overlapping interests and sovereignties are common. Sovereignties around the world struggle with each other for political control. “Business wars” are fought by cities and states and nations and continents competing for jobs and prosperity.

Sovereignty defines nations, but it also defines interest areas that cross national boundaries and other political borders. Free trade zones, enterprise zones and special enti-

tlement or taxation areas such as school or water districts are defined in terms of access to services and funds or exemptions from regulations and taxes.

Philosophers, government officials, religious leaders, commercial traders and legal scholars have studied sovereignty for centuries. What can ***Community Reinvestment*** add to the discussion? We think that someplace between the broad philosophical implications and the specific legal rulings, there’s need for a pragmatic look at sovereignty as a tool for economic development. Our interests are in ensuring equal access to credit and in fostering the ongoing development that helps build a strong U.S. economy. As global corporations and cyberspace force us to develop new perspectives on regional and international sovereignty, we need both a context and practical tools for community development.

Our interest in sovereignty was piqued by Stephen Cornell, co-director of the Harvard Project on American Indian Economic Development and professor of sociology at the University of

***There’s a need for a pragmatic
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California, San Diego. The Harvard Project research indicates that tribes that use their sovereignty to create effective legal and business infrastructure are more prosperous than those that don’t. In this issue of ***Community Reinvestment*** we’ve focused on how sovereignty affects business.



We visited the Laguna, Pojoaque and Santa Ana Pueblos in New Mexico to learn more first-hand about how tribes with successful businesses have addressed sovereignty issues. We talked with a Latina business owner who established similar businesses less than a mile apart in the United States and Mexico, because the laws of these two nations enabled her to do things on one side of the border that she could not do on the other.

Sovereignty affects our everyday lives in profound ways. It's a symbol that represents freedom and power, and it's a practical matter defined by laws. It's most effectively implemented through shared understanding and unwritten custom, but negotiation, legislation, and

“Out in the field we encounter two very different concepts of economic development. One is a ‘jobs and income’ approach....The second is ‘nation-building.’”

sometimes force are needed to maintain sovereign boundaries, especially between people from different cultures with sometimes-competing interests.

We've written about the pragmatic ways in which sovereignty affects the way we exchange goods and services, and about how sovereignty can be used as a tool for economic development. But our underlying assumption is that in democratic societies, we the people shape our sovereignty as we learn about the larger issues, participate in policy discussions, and use our power to vote. People in communities influence the political and economic realities within and across the sovereign borders in which we live and do business.

We've used photographs in this issue to illustrate some of the visual ways we establish our borders. We believe that the way we define our borders makes all the difference in the world in how successful we are in using our sovereignty to our advantage. □



PERSPECTIVE

Nation-Building: Creating a Place for Business

With jobs and income rather than nation-building as the focus for economic development,” said Stephen Cornell, “you may get some quick business start-ups and some short-term successes, but you’re unlikely to build a sustainable future. A tribe that wants prosperity and sustained economic development needs to think about nation-building.”

Cornell is co-director of the Harvard Project on American Indian Economic Development, a long-term effort to understand what’s necessary for self-determined, successful economic development in Indian Country. With economist Joe Kalt, other colleagues and students, Cornell has studied reservation economic development and worked with various tribes to make develop-



ment a reality.

“Out in the field we encounter two very different concepts of economic development,” said Cornell. “One is a ‘jobs and income’ approach, in which a tribe will say, ‘We’ve got a problem here. The problem is not enough jobs and not enough income, and the solution is to get some businesses going on the reservation’.

“Usually that means calling in the tribal planner and saying, ‘go get some business going’. The tribal planner goes off and writes some grant proposals or looks for an investor of some sort, and that’s supposed to solve the problem.

“The key to economic growth is not resources. It’s institutions.”

“There’s a persuasive logic to this approach,” Cornell said. “There aren’t enough jobs on most reservations, and there isn’t enough income. Too many people are on welfare. So yes, tribes need jobs and income. But most businesses that get started using this approach don’t last very long. Those big plans usually don’t pan out, and last year’s sure-fire winner of a business didn’t go much of anywhere.

“The second approach we see to economic development is ‘nation-building’,” said Cornell. Nation-building puts the spotlight on building Indian nations that can flourish over the long

haul. It’s a concept that focuses on putting in place an environment in which people want to invest, not just because it’s right or because they owe it to the tribe, but because they believe their investment will pay off.

“If investors don’t see a possibility of a payoff of some sort, why should they invest?” asked Cornell. “The reward may be monetary profits, the satisfaction of a job well done, or the rising quality of life in the community. It may be in reduced dependence on the feds, or in bolstering tribal sovereignty.

“And those investors aren’t just people with dollars,” he continued. “Everyone who works for a tribal government, tribal program or tribal enterprise is an investor. Anyone who’s started a business on a reservation or is hoping to do so is an investor. Anybody with ideas or time or energy or goodwill or dollars or skills, who’s willing to bet those assets on the future of the nation, is an investor.

“Nation-building requires us to think about economic development in new ways and to pursue it very differently. It requires us to talk about what kinds of nations we want to build and how we can set about doing it.

“One of this country’s leading economists, a winner of the Nobel Prize in Economics, tells an interesting story about himself and other economists,” Cornell said.

“In the 1950s, one of the questions economists were being asked was where the next big burst of economic growth was likely to come. What part of the world is going to take off? The answer, to most economists, was easy. It was Latin America, and the reasons were clear: They had plenty of good natural resources, they had none of the overpopulation problems that Asia had to wrestle with, parts of Latin America already had high standards of living, they had a partly European heritage that lent itself to entrepreneurship. Their answer was Latin America—and the answer was wrong.

“In fact, said this economist, we blew it. The next burst of growth came not in Latin America but in Asia, just where the economists thought it would not happen. It came in places like Japan and Taiwan and Korea and Singapore, some of which had few natural resources. They had population problems, and they had very different cultural heritages.

'What we missed,' he said, 'is the fact that the key to economic growth is not resources. It's institutions.'

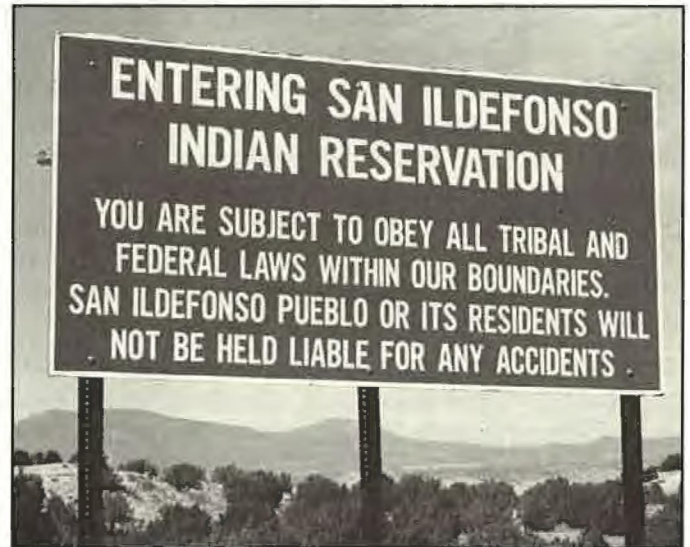
"It's things like stability in government, clear rules governing contracts and responsibilities, effective judicial systems. In Latin America we got instability, chaos, and dictatorship. In Asia, we got governing institutions that worked. That was the difference.

"I like to tell this story for three reasons," Cornell said.

- "First, it points to the critical role that infrastructure plays—and by infrastructure, I don't mean roads. We're talking about the organization of government, the rules that people follow.
- "Second, it's a useful reminder that a lot of the problems that Indian Country is dealing with are not Indian problems. These are problems that countries around the world—from Africa to Eastern Europe to Latin America—are wrestling with. Some are doing a better job of solving these problems than others, but they are problems of sovereign societies everywhere.
- "And third, it seems to me that this economist could have been talking about Indian Country. There's a similar puzzle at work here. We think of Indian reservations as poor, and many of them are. But there are also major successes out there.

"The Mississippi Choctaws are now the fourth or fifth largest employer in the state of Mississippi," said Cornell. "The White Mountain Apaches' forest products, skiing, recreation, and other enterprises have made it the economic anchor of the economy of east central Arizona, and their timber operation is one of the most productive in the western United States. In Montana, the Salish and Kootenai Tribes of the Flathead Reservation have built a successful private sector economy based on tourism, agriculture and retail services.

"There are similar stories that could be told in much of Indian Country," said Cornell. "If



economists had been asked twenty years ago where economic development was most likely to occur in Indian Country, I'm not sure they would have picked the Indian nations that are, in fact, successful." □

Sovereignty, Prosperity and Policy in Indian Country Today

The following is from Dr. Stephen Cornell's presentation to the Nation-Building Conference: Building Tribal Legal Infrastructure for Economic Prosperity, sponsored by the Montana-Wyoming Tribal Leaders Council and the Federal Reserve Banks of Kansas City and Minneapolis in April 1997 in Missoula, Montana. It has been edited for length. Cornell is co-founder of the Harvard Project on American Indian Economic Development and chair of the Department of Sociology at the University of California, San Diego.



"nation-building" concept of economic development has a goal of building viable, sovereign nations. Its purpose is to build an environment that encourages investors to invest, that helps businesses last, and that allows investments to flourish and pay off. Key elements of that environment are the governing infrastructure, the legal infrastructure, and the rules and procedures by which the society is run.

A "jobs and income" approach seldom leads to economic prosperity. We've learned through our research that we need to think differently about economic development. The solution has to be much more comprehensive and ambitious

than just starting businesses. The solution is to build a nation in which business can flourish. It involves creating an environment in which the governing infrastructure and the legal infrastructure—the rules and procedures by which the society is run—support prosperity.

Sovereignty.

The first key to economic development is sovereignty. “De facto” sovereignty, meaning genuine decision-making control over affairs, is a necessary prerequisite for economic development. Who is really deciding the economic strategy? Who is deciding how many trees will be cut? Who is deciding whether the joint venture agreement with an outside investor will go forward? Who is deciding how the housing money will be spent? In Indian Country, when the answer to these questions is ‘the tribe’, we have de facto sovereignty—sovereignty in fact and in practice.

While sovereignty as a legal phenomenon waxes and wanes with federal court decisions and legislation, today the potential for de facto sovereignty is substantial. An assertive and capable tribe can take effective control of many

A “nation-building” concept of economic development has a goal of building viable, sovereign nations.

economic decisions away from other contenders for that control, such as the Bureau of Indian Affairs and other federal agencies.

In virtually every case that we have seen of sustained economic development on American Indian reservations, the primary economic decisions are being made by the tribe, not by outsiders. In every case, the tribe is in the driver’s

seat. In every case, the role of the Bureau of Indian Affairs (BIA) and other outsider agencies has shifted from decision-maker to resource, from the controlling influence in decisions to advisor or provider of technical assistance.

The logic of this is clear. As long as the BIA or some other outside organization carries primary responsibility for economic conditions on Indian reservations, development decisions will reflect the goals of those organizations, not the goals of

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the tribe. Furthermore, when outsiders make bad decisions, they don’t pay the price, the tribe does.

As long as the decision makers don’t pay the price of bad decisions, there’s no incentive for them to make better decisions. Making the feds bear responsibility for making things better on Indian reservations may be good political rhetoric but it is bad economic strategy. The research shows that when tribes take responsibility for what happens economically, they have started down the path to improving economic conditions. Assertions of sovereignty can have very concrete payoffs.

For example, a Harvard Project study analyzed the performance in the marketplace of 75 tribes with significant forestry operations. In the late 1980s, 49 of those tribes shifted some portion of their forest product industry control from BIA to tribal control. For every highly skilled position transferred from BIA to tribal



control, both production and revenue to the tribe increased, and did so on a sustained-yield basis. Tribal control typically resulted not only in better forest management but in better marketing as well. The bottom line was increased prices for forest products and increased revenue to the tribe. In other words, the effective exercise of sovereignty has concrete, bottom line results.

This illustrates another finding that emerges from our research. It often has been asserted that if tribes wish to be sovereign, they

The reinforcement of tribal sovereignty should be the central thrust of public policy.

must first establish sound economies. We think this is backwards. What the research indicates is that if you want a sound economy, you need first to be sovereign. There are three reasons for this.

- First, sovereignty brings with it accountability. Those whose resources and well being are at stake are the ones calling the shots.
- Second, the sovereign status of tribes offers distinct legal and economic market opportunities, from reduced tax and regulatory burdens for industry to unique niches for gaming and the commercial use of wildlife.
- And third, sovereignty secures the bases of development itself: control of one's own affairs and resources.

It is no coincidence that after tribal self-determination became federal policy in the 1970s, a significant number of tribes have begun to break the relentless pattern of reservation poverty and dependence. Before self-determination, there was very little in the way of sustained economic development on Indian reservations.

There is a major policy lesson in this. The lesson is that sovereignty is one of the primary

development resources a tribe can have. The reinforcement of tribal sovereignty should be the central thrust of public policy. One of the quickest ways to bring reservation development to a halt and prolong the impoverished condition of reservations would be to undermine tribal sovereignty. We are aware that this is a very 'pro-Indian' conclusion, but it comes from the data. It is what the research shows.

Indian nations enjoy certain rights and powers, first by virtue of their inherent sovereignty, and second as a result of extended negotiations and interactions with the United States that have led to various specifications of the substance of their sovereignty. That sovereignty is the first key to successful reservation economic development, but sovereignty, in and of itself, is no guarantee of success.

Institutions.

Institutions are the second key to economic development. Any nation—Indian or not—that wants to be economically successful over the long haul must have capable institutions of self-governance, from commercial codes to effective and independent judicial systems, to controls on opportunistic politicians. Our research strongly indicates that sovereignty without the ability to



exercise it effectively is a poor basis for economic development.

We work with one tribe that is among the wealthiest tribes in the country in terms of nat-

ural resources, but the reservation economy is a shambles. Unemployment is sky high, there are almost no viable enterprises on the reservation, and the tribe is dependent on federal money to keep many of its activities going. Social problems such as alcohol and suicide are major concerns. The political struggles have at

What matters is not only rights and powers, but the ability to put those rights and powers to work in effective, productive ways.

times threatened to turn violent. This sovereign Indian nation has a long history of battling in the courts to affirm its sovereignty. It has won the right to control its own destiny. It is resource-rich and people-rich, but it remains poor.

The problem is the inability of this tribe to exercise its power effectively. Its constitution provides a system of government in which it is extremely difficult to get anything done. Its governmental system encourages recurrent factional battles that sap the energies of the tribe's leaders and distract them from the real tasks of government.

The instability in tribal government means that massive personnel changes occur overnight following the changes in administration. Few good records are kept; skilled people get hired and soon throw up their hands and quit. It's difficult to keep track of the money. Tribal plans change from one day to the next; leases made by the last administration are canceled by the next. Enterprises fail because of government interference.

This is hardly a promising environment for economic development. Outside investors won't invest—they don't like the risks such an environment creates. Equally important, inside investors—tribal members who might not have a lot of money but who do have ideas or energy or skills—won't invest either. Why should they invest their energy in the tribal future when the environment is one of uncertainty, political favoritism, and instability? As a result, the



tribe gets little return on its resources, development is stagnant, and its people live in poverty.

Many nations across the world have sovereignty to a much greater degree than Indian nations do, but a lot of them have not found the way to exercise that sovereignty effectively. As a result they are not only often extraordinarily poor, but they are not taken seriously in the councils of the world.

Not only are we unlikely to invest our money or our energy in the economy of a country with a government that is unstable, riddled

A tribe must create laws, rules, and procedures that are appropriate to its situation and its heritage and that can get things done in the real world that tribes confront.

with conflict, that operates at the whim of its leaders, in which my investment of time or money or energy is not protected, in which contracts are subject to impulsive revision, etc., but why should I even negotiate with such a government? If it cannot put its own house in order, why should I take it seriously as a partner or as an antagonist?

What matters is not only rights and powers, but the ability to put those rights and powers to work in effective, productive ways. Sovereignty is meaningful only when it can be exercised effectively, and that is a matter of institutions—of the organization of government itself.

One of the unfortunate consequences of a century of federal control of Indian nations is a legacy of institutional dependency, a situation in which tribes have had to rely on someone else's institutions, someone else's rules, someone else's models, to get things done. On many reservations, tribal government has become little more than a grants-and-programs funnel attached to the federal apparatus. On others, tribes have simply adopted the institutions of the larger society without considering whether those institutions in fact are appropriate to their situations. Such dependency and blind imitation are the antithesis of self-determination, and the challenge is to break these patterns.

To do so, a tribe must create laws, rules, and procedures that are appropriate to its situation and its heritage and that can get things done in the real world that tribes confront. The reforms needed vary from tribe to tribe, ranging from complete constitutional overhauls to the establishment of sound, genuinely independent judiciaries, to the development of commercial codes and the adoption of explicit rules of administrative procedure. Our research indicates there are three institutional factors that are of primary importance if a tribe is going to effectively exercise its sovereignty.

Separation of politics and business.

The first institutional factor in the effective exercise of tribal sovereignty is the separation of politics from day-to-day business management. On many reservations the tribal government—typically the tribal council or the tribal president—controls tribal businesses. Business decisions are made by the council, administrative and personnel disputes are referred to the council, and the council or president intervenes in the day-to-day running of the enterprise.

At first glance, this may make sense. After all, tribal enterprises belong to the tribe; the government represents the tribe; therefore, the government should run the enterprises.

However, we don't typically elect our leaders because we think they know how to read market conditions or manage a manufacturing labor force or negotiate purchasing agreements with suppliers. We elect them because we trust their vision of the future, their ability to make wise long-term decisions, and their integrity. When it comes to running a business, what we want are the best business people we can find, people who know how to make those businesses succeed so that they become lasting sources of income, jobs, and productive livelihood for our people.

The elected tribal leadership is responsible for the long-term future of the nation. Among other things, they properly consider strategic issues: what kind of society are we trying to build? What uses should we make of our resources? What relationships with outsiders

Our research indicates that chances of being profitable rise 400 percent if the business is isolated from political interference in day-to-day operations.

are appropriate? What do we need to protect and what are we willing to give up? These are matters of political debate.

When it comes to hiring the new foreman at the plant, or working out the payroll at the casino, or dealing with personnel issues, or purchasing, or operating hours, or putting together the business plan for the next year, or deciding how much the middle manager should be paid—these are not appropriately political matters. They are business matters, and they should be decided by skilled business people free of the interference of tribal leadership. When politics gets involved in business operations, businesses typically fail. They cannot compete successfully in the marketplace when the decisions are being made according to political instead of business criteria.

In an ongoing survey of tribally-owned businesses, our research indicates that chances of

being profitable rise 400 percent if the business is isolated from political interference in day-to-day operations, with management by a board of directors and a corporate charter that are beyond the direct control of council members or the tribal president. For sustainable enterprises on reservations, tribal leadership needs to take the crucial step of setting strategic direction, then put the day-to-day decisions in the hands of others.

Some tribes might say they are interested in jobs, not profits. They want to employ as many people as possible, and while it's great if it also makes money for the tribe, the point is to give people jobs. The problem with this is that enterprises that are run as employment services have trouble competing. Labor costs are high, products therefore are expensive, sales fall, soon the tribe is subsidizing the business, and eventually the business fails.

The lesson is that if a business is not competitive in the market, the jobs created won't last very long. A competitive business in which profits are reinvested into the business, on the other hand, will grow or provide capital to invest in new businesses, thereby eventually employing more people. This approach may not produce as many jobs today, but it will result in more jobs tomorrow.

Separation of government powers.

The second institutional factor in the effective exercise of tribal sovereignty is the separation of powers. Basically, this means having a strong and independent judiciary. It means assuring people that their claims and disputes—including disputes with the tribe itself—will be fairly adjudicated.

On many reservations, the tribal court is controlled by the tribal council. Either the judges serve at the council's pleasure and can be fired by the council or president, or the decisions of the court can be appealed to the council. If an investor—for example, a tribal member trying to start a small business on the

With a nation-building strategy, the focus is on creating a system that reassures investors, levels the playing field, and gives businesses the opportunity to flourish.

reservation—has a complaint against the tribal government, then ultimately the tribal government is going to have the last word. The person making the decision may be the same one the complaint is about. Under those circumstances, business persons are going to be

skeptical. They're likely to take their money, their ideas, and their time and energy and invest them elsewhere.

Again, the data are persuasive. We have examined 67 tribes for which comparable information is available, and have found that those tribes that have strong, genuinely independent judicial systems economically outperform those that don't. The measure we used was unemployment, and after eliminating other factors, we found that simply having an independent judicial system reduces unemployment, on average 5 percent. If you're a tribal council member and you're looking for ways to reduce long-term

The legitimacy of governing institutions depends on a match with the values and culture of the people they govern.

unemployment on your reservation, one of the best things you can do is establish a strong, genuinely independent, effective judiciary that can fairly settle disputes and adjudicate claims.

With a jobs and income strategy, the focus is on starting a business. With a nation-building strategy, the focus is on creating a system that reassures investors, levels the playing field, and gives businesses the opportunity to flourish. Governing power is used not to personally make judicial decisions, but to build an institutional foundation for real sovereignty and lasting prosperity.

Effective bureaucracy.

The third institutional factor in the effective exercise of tribal sovereignty is an effective



bureaucracy. A tribe—or any other community—has to be able to get things done, consistently, fairly, and predictably. A civil service, established administrative procedures that are consistently observed, solid record-keeping, independent audits, and a commercial code are essential. They bring to tribal government and to potential investors a set of clear, consistent guidelines on which both can depend. They bring certainty and stability into daily operations. They clarify the rules by which businesses and programs operate, and they specify the appropriate relationships between businesses and the tribe.

The business world is an uncertain world at best. It tends to be especially uncertain on reservations. To keep investors involved, and to keep tribal members investing in the future of their community, the uncertainties they deal with need to be reduced. An effective, dependable bureaucracy is a crucial part of doing that. Without effective institutions of self-governance, sovereignty is hollow. The question of where to get those institutions brings us to the last of the three keys to economic development.

Cultural match.

The legitimacy of governing institutions depends on a match with the values and culture of the people they govern. That doesn't necessarily mean reviving all traditional governments. We live in a very different world today, and government has to be designed to work within that world. But the government has to have the support of the people if it is going to work.

For example, two of the tribes we work with at the Harvard Project on American Indian Economic Development are the White Mountain Apache Tribe of the Fort Apache Reservation in Arizona and the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota. Both of these tribes have governments organized under the provisions of the Indian Reorganization Act (IRA) of 1934, which many tribes established in the aftermath of that act. The two government structures are almost identical, with boilerplate IRA government provisions: centralized power, strong executives, no independent judiciary, executive oversight of business operations. But while the institutions of governance are essentially the same, the performances of these two tribes are radically different.

Economically, the White Mountain Apaches are one of the most successful tribes in the country. They run a number of economic enter-

When [the White Mountain Apache Tribe] adopted the IRA constitution...they got a government that in many ways resembled their traditional government.

prises that are consistently in the black. Their timber company outperforms non-Indian timber operations throughout the West. Their ski resort is one of the economic engines of that region of Arizona.

The Pine Ridge Reservation, on the other hand, is possibly the poorest reservation in the country. It has a history of repeated failure in tribal enterprises. It has some of the highest rates of unemployment and related social problems in Indian Country.

Resource differences cannot explain the very different record in the performance of tribal enterprises. The Fort Apache Reservation is blessed with a rich natural resource endowment, while Pine Ridge has comparatively little to work with. But the difference in resources does not explain why businesses at Fort Apache produce and last and businesses at Pine Ridge typically do not.

We think the difference is in the cultural fit of the governments. If we look at both tribes in

Where people don't think the institutions are much good, they're unlikely to invest.

the middle of the nineteenth century, before either tribe had come under the effective control of the United States, we see some important differences.

In the Apache tribe, enormous power was given to single, charismatic leaders. Those leaders selected the tribal council to whom they looked for advice. There was no independent judiciary; the leader resolved the disputes. The leader made most of the economic decisions as well.

That looks a lot like the contemporary IRA government at Fort Apache. When they adopted the IRA constitution suggested by the United States government, they got a government that in many ways resembled their traditional government. As a result, people tend to believe in and support that government. It fits with their concept of how authority ought to be organized and exercised.

At Pine Ridge, however, traditional Sioux government looked radically different from their IRA constitution. There, decisions were traditionally made by the "Big Bellies"—all the men over forty—with very little power in the hands of single individuals. That council chose four executives, called the Shirt Wearers. It also selected a police force from among the warrior societies, called the *akicita*, who enforced the law and settled disputes. The *akicita* were remarkably independent. There are cases on record of the *akicita* physically beating Shirt

Wearers—chief executives—for failing to observe the law.

There was a clear separation between strategic decisions and day-to-day business management. The council might decide where to move to, or when to gather for the buffalo hunt, but when it came time to actually move, or camp, or hunt, or go to war, the council chose individuals known to be superbly skilled in those activities, and those individuals took charge of the activities themselves. Once the hunt began, skilled and knowledgeable hunt leaders were in charge, and you did what they said, not what the leaders of the nation said. This was a very sophisticated system of government, with a separation of powers, checks and balances, and clear lines of authority. And it worked.

Today, the IRA government is the opposite of how the Sioux, under conditions of freedom, chose to govern themselves. It places power in the hands of single leaders, has no separation of powers, muddies the lines of authority, fails to place checks on the behavior of leaders, and offers no independent, impartial means for settling disputes. As a result, few people really believe in it, and where people don't think the institutions are much good, they're unlikely to invest. Those who do invest eventually get burned, resources are squandered, and the chances of long-term prosperity disappear.

Tribal sovereignty has value not only for Indian nations but for non-Indian communities as well.

What's at stake is the legitimacy of governing institutions with the community itself. The institutions of governance at Fort Apache have legitimacy with the people. The institutions of governance at Pine Ridge, which on paper are virtually the same as Fort Apache, have little legitimacy with the people. They don't match the culture.

Conclusion.

So the keys to economic development are sovereignty, institutions, and legitimacy. In

other words, nation-building. Economic development is not primarily an economic problem. It is first and foremost a political problem.

Tribal sovereignty has value not only for Indian nations but for non-Indian communities as well. Around the country, economically successful Indian nations are beginning to become major players in local and regional non-Indian economies.

The most abundant evidence of this comes from gaming tribes, whose operations are having major economic impacts not only on Indian communities but on non-Indian ones: creating jobs, providing new business to non-Indian vendors of various kinds, attracting increased tourism, expanding sales by local retailers, moving people off state welfare rolls, and increasing state income and sales tax receipts. That doesn't begin to include the major investments in non-Indian enterprises some gaming tribes are making with their profits.

Gaming is an easy example to point to. The money involved is substantial, it makes a big splash, and it gets most of the attention. But other tribes with successful economies—whether gaming is involved or not—also become net contributors to the larger economies around them.



The Choctaws in Mississippi, for example, have built a highly diversified economy and in the process have become one of the biggest employers of non-Indians in their region. They're importing non-Indians because there aren't enough Choctaws to fill all the jobs they've created, and some non-Indians now look to the Choctaws for a secure economic future.

The research is clear. What's good for Indian nations is sovereignty. That means tribal sovereignty is good for non-Indians, too, because it leads to the sort of activity on reservations that benefits the entire country. Sovereignty and the ability to exercise it effectively—that's where the value lies for everybody.

Overcoming reservation poverty has enormous benefits for Indians and non-Indians alike. The federal government, the courts, and the states all need to know that the best way to perpetuate reservation poverty is to undermine tribal sovereignty. The best way to overcome reservation poverty is to support tribal sovereignty, and support for tribal sovereignty has benefits well beyond the reservations.

The research is equally clear on another point. Indian nations need to know that the connection between sovereignty and economic development runs through institutions of self-governance. Those tribes that build governing institutions capable of the effective exercise of sovereignty are the ones that are most likely to achieve long-term, self-determined economic prosperity. The name of the game, in other words, is nation-building. □

SOMEONE SAID...

"It is true that around every man a fatal circle is traced beyond which he cannot pass; but within the wide verge of that circle he is powerful and free; as it is with man, so with communities."

— Alexis de Tocqueville
1805–1859

PROFILES

Practical Sovereignty

The principles of effective sovereignty that Stephen Cornell talked about made sense to us, but we wanted to see and hear first-hand how sovereignty worked. We asked around for suggestions about whom to talk with, then headed to New Mexico, where we talked with representatives from three pueblos with successful businesses and the owner of a business located on the U.S.-Mexico border. These four settings gave us new insights into the practical application of the principles of sovereignty.

The Pueblos.

The character of the pueblos we visited has been shaped by their history. All of the more than 550 federally recognized tribes in the United States are unique, but the pueblos in the Southwest have an additional character of their own.

Pueblo Indian lands were under Spanish rule ("pueblo" is Spanish for village) in the 16th and 17th centuries, after Spanish conquistadors came looking for gold, followed by Roman Catholic missionaries looking for converts to the church. The pueblos were then under Mexican domination until after the Mexican-American War in 1848, when they came under United States sovereignty.

At that time, the pueblos held communal fee simple ownership of their land, which was later confirmed by Congress. Their land was not given federal protection or reservation status until 1913, by which time many non-Indians had been allowed to settle on pueblo land. Today, the pueblo ownership is recognized, but at the same time the land is treated like other reservation land that is held in trust for tribes by the federal government.

The form of government today for many pueblos is a theocracy, with leaders appointed by church officials. Some pueblos have adopted

The key characteristic the tribes we visited have in common is an ability to successfully meld their tribal values, personal values, and sovereign concerns.

a constitution and others have implemented contemporary administrative policies, but the church often remains a strong institutional influence.

"Some of our 'traditional' ways were decreed by Spain in 1620," said one tribal leader. "It no longer makes sense to have a *majordomo* whose responsibility is overseeing everyone's participation in cleaning ditches. Our theocracy, with the church as the primary decision-making institution, was designed for an agricultural community in which everyone was involved in



the church. That no longer fits for us.”

“Religion” is not a separate word in any of the pueblo tribes’ languages. It is a way of life

***“[Tribal] theocracy,
with the church as the
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That no longer fits for us.”***

and part of all life. In the same way, economic development is in some ways not a separate issue, but simply one part of an ongoing effort to ensure a high quality of life for tribal members.

The pueblos we visited had different histories, different circumstances, different approaches and different reasons for their business development initiatives. One has a constitution, the other two don’t. One deals primarily with large businesses, the other two mostly with small businesses. Two have casinos that provide substantial income, another doesn’t. One has only tribally owned businesses, others have formed partnerships or leased businesses to outside companies.

One tribe wishes it had a bank on the pueblo to more conveniently handle its substantial volume of financial transactions. Another tribe is creating its own entity to make loans on the reservation. And another, which replaced one bank in their shopping center with another that was more willing to make loans to them, wishes it had several banks or ATMs to choose from instead of just one.

These three pueblos have the luck of being in attractive locations near urban centers, with good roads and access to transportation. The research indicates, however, that more important than the resources is how tribes build on what is available. The key characteristic the tribes we visited have in common is an ability to successfully meld their tribal values, personal values, and sovereign concerns.

We found what we were looking for at the Laguna, Pojoaque and Santa Ana Pueblos: con-

firmation that sovereignty comes in many forms, and that it can be shaped and applied to fit values and goals both within a community’s boundaries and in interaction with those on the other side of a community’s borders.

Laguna: Partnerships for Business.

The Laguna Pueblo consists of six villages in the Rio San Jose River valley in west central New Mexico, about 45 miles west of Albuquerque. The reservation is 533,000 acres of buttes, mountains, and high desert terrain, and it is crossed by Interstate Highway 40. Tribal membership is about 7,300 and reservation population is almost 4,000.

The Laguna adopted a constitution in 1906, amended it to conform to Indian Reorganization Act guidelines in 1949, and amended it again in 1958 and 1982. Tribally owned businesses include Laguna Industries, Laguna Construction, and a convenience store/gas station. The Tribal Council is composed of two village representatives elected by each village, six staff officers, and a pueblo secretary, treasurer and interpreter.

“We’ve always had sovereign authority within our communities,” said Roland Johnson, governor of the Laguna Pueblo. “Not so much authority that has control over everything, but authority shared by different societies within the community.

***“One of the lessons
we learned was not to have
all our jobs in one industry.”***

“Pueblos don’t have treaties with the United States,” said Johnson, “because our people were organized into communities that were permanently located when Americans first came here. Our way of life didn’t require us to be nomadic or to make war, and there was no reason for the federal government to enter into treaties with us.

“We were always sovereign tribes, and the lack of treaties between the pueblos and the federal government doesn’t make us any less sovereign,” said Johnson. “We’ve always had the power of government and the power to deter-

mine who would be a member of our community. We've always considered ourselves to have the right to self-government."

The Laguna were traditionally farmers and herders, but over the last 100 years the tribe has evolved from being agrarian to having a wage economy. In 1883, the Laguna negotiated for jobs and transportation when the Atlantic and Pacific Railroad wanted to build tracks across the reservation. Eventually, communities of Laguna were established at Gallup, New Mexico; Winslow, Arizona; and Barstow and

"I think every tribally owned business that is still in existence today has had a partner...who has been willing to share their expertise."

Richmond, California. They also used their access to free transportation to send students to boarding schools such as the Haskell Institute in Lawrence, Kansas.

"Our ancestors had a lot of foresight," said Johnson. "They established a scholarship program that provides opportunities for tribal members to attend colleges and universities. Now we're getting a second generation of people applying that learning in the community, with mentors who can help people develop experience to go with their education."

The largest employer on the reservation today is the tribally-owned Laguna Industries, which manufactures sheet metal components, electrical cables and harnesses, electrical mechanical assemblies, mini-intercom components, and other high-technology and communications products contracted for by the U. S. Department of Defense. The business was started in the early 1980s, after uranium mines on the pueblo, which had employed up to 800 people for 30 years, were closed.

"One of the lessons we learned was not to have all our jobs in one industry," said Ron Solimon, president of Laguna Industries. "When the mines were closed, we knew we had to find a way to create new jobs. We went through a strategic planning process with the six villages on the Laguna Pueblo. That process of discus-

sion and consensus building led to strong support for the proposal to develop Laguna Industries. We could offer a manufacturing facility, a good work force, and strong motivation to work.

With clear ideas about what they wanted and what they could offer, Laguna leaders went to a national manufacturer's convention, where they talked with people about possibilities of becoming a manufacturer for national defense products. The response was positive, and further discussion led to a consulting relationship with the Raytheon Corporation. "It had to be a win-win proposition," said Solimon. "They're not a philanthropic organization, although for some key individuals I think there was an inherent sense that this was the right thing to do. But the contract was a bottom-line, win-win deal.

"I think every tribally owned business that is still in existence today has had a partner at some point in time who has been willing to share their expertise," said Solimon. "We've had several very good experiences like that, with companies like Raytheon, Motorola and GTE. They have provided guidance in a teaming arrangement, and we've developed unique relationships over the years.

"In addition to teaming, we've worked out subcontractor-contractor relationships with large companies, to capture some more complex

"We've learned the value of having continued outside experience and perspective."

business. For example, we used the DVM Corporation in Albuquerque as a major subcontractor for an Intercontinental Ballistic Missile (ICBM) testing system.

"The kinds of opportunities that are available when large American corporations are willing to assist tribally owned entities is significant," said Solimon. "We knew we needed a partnership initially, when we were new at this and needed expertise to get started. Laguna Industries has since developed its own expertise, and our managers and employees are consulted, borrowed—and sometimes wooed away—by other manufacturers.

"But even now, when we have our own

expertise,” said Solimon, “we’ve learned the value of having continued outside experience and perspective. We have some positions opening on the Laguna Industries Board of Directors, and we’ll select people with experience-based leadership ability, not only in manufacturing but also on the management and finance side.”

“We have created corporations to run our business enterprises that are separate from the tribal council,” said Governor Johnson. “They

“It’s no different from the U.S. doing business with a foreign country.”

are independently operated by boards of directors, and we’ve authorized them to exercise limited waivers of sovereignty so that someone can have legal recourse against the company without impacting the pueblo. This allows financial institutions and others to feel comfortable in doing business with us.

“Too often, non-Indians lump all Indians together,” said Johnson. “We’re separate sovereign nations, and we’re different from one another. We’re sometimes asked to explain the actions of another tribe that has nothing to do with us or the way we do business.

“Financial institutions need to recognize that we are unique sovereign entities,” Johnson continued. “We have rules, processes and traditions appropriate to the communities in which we live. Our practices may not conform to those of the dominant society, but it’s no different from the U.S. doing business with a foreign country. We need to look at ways of becoming true partners, and find ways to look at one another across the table as equals.”

Pojoaque: Investing in Independence.

The Pojoaque Pueblo is approximately 16 miles north of Santa Fe, New Mexico, on the main highway between Santa Fe and Taos between the Sangre de Cristo and Jemez Mountains. With 11,600 acres, a population of about 2,500, and tribal membership of 280, it is the smallest of the New Mexico pueblos. The government conforms to the provisions of the 1934 Indian Reorganization Act, with a General Council

composed of enrolled members and a Regular Council, made up of elected officials.

The tribe was almost wiped out by smallpox near the turn of the century, and the pueblo was abandoned until 1932, when a few people returned and began rebuilding their culture. Today, tribally-owned businesses include the Cities of Gold Casino, a convenience store and gas station, restaurant, shopping center, a horse racing track, and a hotel that is under construction. The tribe also has a museum and cultural center.

“The goal of the Pojoaque Tribe is to become completely independent of direct federal funding within the next few years,” said tribal attorney Joe Little. “We plan to do this by building a community that includes both Indian and non-Indian residents and businesses.

“We’ll still go after grants and special funding for projects,” said Little. “We recently received a grant from the Commerce Department for construction of an industrial park. We consider that to be infrastructure money that will help us establish a tax base to produce future revenue, but we want to get away from direct daily federal money. We only receive about \$200,000 through the Bureau of Indian

“The goal of the Pojoaque Tribe is to become completely independent of direct federal funding within the next few years.”

Affairs, which is used to support the police force—which costs about \$900,000 a year to maintain.

“Every tribal member who wants a job has one,” said Little, “and in addition, tribal enterprises employ between 1,100 and 1,400 non-Indians. We want businesses now with a high profit margin that will produce income we can invest in more business and infrastructure. The tribe owns most of the businesses on the reservation and hires management, but we do lease space to some outside businesses, such as the Dairy Queen and the bank.

“We’re not real hot on partnership arrangements,” said Little. “We’d rather be in charge.

In our tribe, everybody over age 18 is eligible to be on the council. You have to have been at two successive meetings to vote, so we don't have a lengthy process of explaining what we want to do to the community—everybody pretty much knows what's going on. That's given us the ability to make quick business decisions. We can close on a deal in 60 days or less. And we have no qualms about going into a situation, checking it out, and dropping it if we don't like it."

"We don't want to take out as many loans as we have in the past, and we're generally trying to move away from using credit," said Little.

"We want businesses now with a high profit margin that will produce income we can invest in more business and infrastructure."

"During the last recession, the tribe came close to losing the property our shopping center is on, and we don't want to take that risk again. Furthermore, going through the process of getting a loan is time consuming and expensive for us, and if a project is one we can afford, we'll do it on our own.

"It's not so much a sovereignty issue," said Little, "but with the type of land we have, it just takes a lot to get a deal done. We want to get away from dependency, and we've learned that when you do business a long time with one bank, or one construction company, or one of anything, you can end up as a captive business partner in a lop-sided arrangement. I'd like to see more competition from the outside—bidding a construction job with three or four companies rather than just one or two, and having several ATMs rather than just one bank.

"We initially had trouble getting credit with a bank, for the same reasons other tribes had," said Little. "You can't alienate the land, you have questions about what happens if somebody gets sued. You have to deal with those things.

"We have created several different levels of corporations, including Pojoaque Gaming Industries, the Pojoaque Pueblo Economic Corporation, which is in charge of the businesses at the



shopping center, and a construction company that's sanctioned by the tribe but also registered as a foreign corporation with the state of New Mexico.

"We have provided limited waivers of sovereign immunity. Our court system has a good reputation—there aren't many people who are afraid to come into our courts. We've hired a judge who is an attorney. The court system is not completely separate from the tribal council, but that isn't a problem.

"I formerly headed the Judicial Services Division for the Bureau of Indian Affairs," said

"If a tribe has any business dealings at all, they definitely have separation of powers in practice."

Little, "which oversaw all the tribal courts in the country. I know there was a policy push to make the separation of powers of government a reality in Indian Country. From the outside community, there was a view that you only get

fairness by having the court completely separate from the tribal council.

"I think that separation was made too much of an issue," Little said. "What matters is the kind of staff you hire and what they do. Most of the pueblos don't have a constitution, so we don't have a direct separation of powers on paper. But most of us do have it in practice. If a tribe has any business dealings at all, they definitely have separation of powers in practice.

"Judicial decisions can be appealed to our tribal council, but the council doesn't intervene

"We've looked for ways to form partnerships when we haven't had the money or the expertise to do what we wanted to by ourselves."

in legal matters unless it's a bad situation. This isn't so much for philosophical or political reasons, it's more just a practical matter. Fifteen or twenty years ago it wasn't unusual for the council to get involved, and we learned from experience that it was just bad business.

"The negative stories from the past keep echoing, and that's a shame," Little said. "There are a lot of stories, but the reality is that we wouldn't be surviving if we weren't doing business on pretty much the same basis as the outside world."

Santa Ana: Why change?

The Santa Ana Pueblo is located 18 miles north of Albuquerque in Sandoval County. The pueblo is 85,000+ acres of rolling plains near the edge of the Sandia Mountains. It includes the 1,400-acre Jemez Reservoir, and the Rio Grande River runs through the reservation. Between 620 and 680 members live on the pueblo. The government is a traditional tribal theocracy with a contemporary administrative structure. The Tribal Council, composed of the approximately 168 adult male head-of-household members of the tribe, handles internal and external affairs of the tribe. A governor and other officers are appointed for one-year terms by the Cacique, or religious holy man. The governor and lieutenant governor

also serve as chief judges in the traditional court system.

Businesses owned by the Santa Ana include a 27-hole golf course that is rated one of the top three in New Mexico, the Prairie Star Restaurant, the Santa Ana Star Casino, the Warrior Apparel Company, a nursery that features native New Mexican plants, and a xeriscaping business. Santa Ana Agricultural Enterprises sells blue corn to The Body Shop, Ltd., a London-based producer of natural-ingredient cosmetics.

"We haven't had difficulties with our traditional judicial system because in the past we didn't have economic development," said Santa Ana tribal member Bruce Sanchez. "Some things never occurred on the reservation until this century, but now we're moving into the 21st century, and we need new ways to take care of things. What we're doing is building a community—a community that's been here for thousands of years—and making it better through economic development."

Sanchez is chair of the Southern Sandoval Investments Board of Directors, which is one of the business corporations of the Santa Ana Tribe. He is also chairman of the board of the Pueblo of Santa Ana Gaming Regulatory Commission, and serves as vice-chair of the Indian Pueblos Federal Development Corporation, the business arm for a coalition of the 19 pueblos in New Mexico.

"What we're doing is building a community...and making it better through economic development."

Sanchez is proud of both the historic traditions and the more recent business success of the Santa Ana Tribe. He doesn't want to change the basic elements of the tribe's traditional ways, but he does believe some adjustments need to be made to the administrative structure to enable the pueblo to compete in a contemporary business environment. With the tribal council, he has been working to develop bylaws and operating procedures that will clarify the process for decision-making and define lines of

responsibility and accountability.

"I hope we can make changes in our judicial system," Sanchez said. "Now that we have business and economic development opportunities, we need to have a judicial system that lets people feel confident in investing. Our traditional tribal court has dealt well with internal issues, but we need to look at a contemporary court system with rules that are fair to Indians and non-Indians alike.

The Santa Ana do not have a constitution, and have no plans to adopt one. "We take action through resolutions—which can be changed if necessary, although that hardly ever happens—rather than locking ourselves in with a constitution," Sanchez said. The separate corporations established in the last 15 years to manage tribally owned business enterprises have worked well. The tribe recently zoned a district for business, and is considering potential leases with businesses that are compatible with the tribe's long range plans.

"We haven't hidden behind sovereignty. We've created businesses and agreed to limited waivers of sovereignty rights for them because we know that in order to conduct business with other private and public entities, we have to give some things up."

"Our first innovative approach to doing business was back in 1709," said Sanchez. "The Spaniards had taken our land away, and the Santa Ana people got together their beads, blankets, pottery—whatever they owned—and collectively bought it back. More recently, we've looked for ways to form partnerships when we haven't had the money or the expertise to do what we wanted to by ourselves. We've formed joint ventures, and then have looked for ways to buy out our partners so that it's a win-win deal for everybody.

"When we don't have the expertise for a job," Sanchez continued, "we'll find someone



who does. The general managers of our businesses are not tribal members, but they have the needed business experience. We do have some tribal members in key positions, and we hope to eventually have more, but what we want first is qualified people. It doesn't matter if they're Indian or not, it matters that they can take care of the business."

Income from leases for gas and utility right-of-ways and mineral rights for gravel provided capital to sustain tribal government and undertake initial business enterprises. When gaming became an option, that income was used to build and then to expand the casino. Although the casino is very profitable, there is no assumption that gaming income will be permanent. Casino profits and other business income are invested for future returns—back into business, into scholarships for education, or in building tribal infrastructure that benefits everyone.

"One of our goals has been for tribal members to be able to come home and work," said Sanchez. "But we're not saying we'll create a job for everyone. What we are saying is we'll create businesses to take care of the needs of the tribe. If tribal members are qualified for jobs, they will get them—although we don't intend for employees to be 100 percent Santa Ana, either. We can't close businesses for our religious holidays, which could happen if all

employees are tribal members. We need diversity.

“Another goal is for everyone to be educated—not necessarily to have a bachelor’s or master’s degree or Ph.D., but to have qualifications to do something,” said Sanchez. “We want our businesses to have programs that will help our people learn whatever needs to be learned.

“Our strategic goal is economic self sufficiency and independence. Partnerships with outside businesses and people are important, but they must be entered into from a position of strength and equality. We want to accumulate enough capital—our goal is currently \$50

“What we want first is qualified people. It doesn’t matter if they’re Indian or not.”

million—to generate income that will keep the tribe from having to depend on non-Indians for jobs or financing. We want diverse businesses that will generate that capital.

“One of our strategies is to create a way to make it easier to get non-tribal financial participation in future projects,” Sanchez said. “We’re working with Bill Haltom, an attorney with the Nordhaus Haltom Taylor Taradash & Frye firm in Albuquerque, to structure an innovative capital corporation to facilitate investment in tribal businesses.”

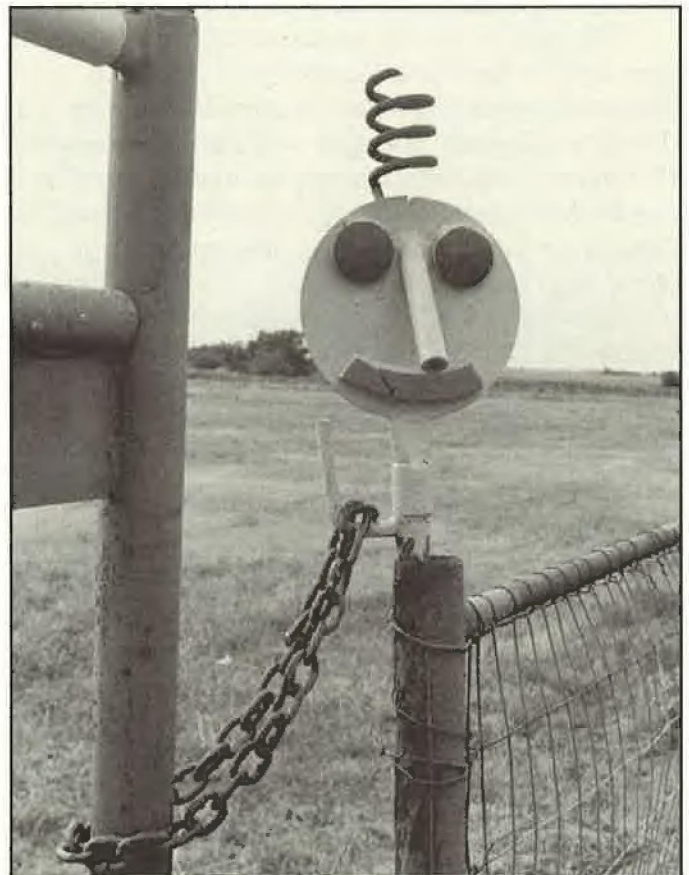
Bruce Sanchez grew up on the Santa Ana pueblo. He earned college degrees in education and business, then spent 14 years teaching kindergarten through eighth grade at schools in Albuquerque, Bernalillo and Los Lunas. When he was asked if he would be willing to come work as the aide for the Santa Ana Tribal Government Coordinator “for a couple of years”, he said yes. That was six years ago, and he has remained since. His personal goal is to help lay a strong foundation for the tribe’s future. “We won’t know for 10 or 15 years if we’ve succeeded in what we’re trying to do,” he said. “It’s like teaching—you don’t see the finished product until later.

“Two years from now, six months from now, I may not be the one who’s here,” said Sanchez. “I’m building on the legacy of a former adminis-

trator, and with the tribal council, I’m working to provide a blueprint that others can use in the future. Whether that blueprint is followed or changed is irrelevant—it will give people a place to start.”

Sanchez also knows that no matter who is serving in tribal leadership positions, it will take time to bring about change. “We may not accomplish what we want right away,” he said, “but if we throw seeds in the ground, some will take root. Our tribal council will discuss the issues and look at them from every perspective before they make a decision and that takes time. A business decision that might take six months elsewhere may take two years here—but it will be a decision that we believe is most fair and equitable for everybody.

“Sovereignty is a big issue,” said Sanchez. “It’s a word that has different definitions for many different people, but realistically speaking, tribes only have limited sovereignty. We’re at the mercy of federal legislation. We’re blessed to have people in that forum who are sympathetic to Native Americans, who have been able to protect our sovereignty. The Santa Ana have been politically active, and we use



some of our funds to pay lobbyists who will make sure our positions are known. We support candidates for office who will listen to us and fairly represent not just Santa Ana but a whole population of Native American people.

“Sovereignty is an every day—and an every year—fight, but we’ve played by the rules the federal government has set. We’ve done that with gaming, and we’ve done it with our other businesses. We haven’t hidden behind sovereignty. We’ve created businesses and agreed to limited waivers of sovereignty rights for them because we know that in order to conduct business with other private and public entities, we

“We’re changing because we see the value of determining how we’re going to move from here forward.”

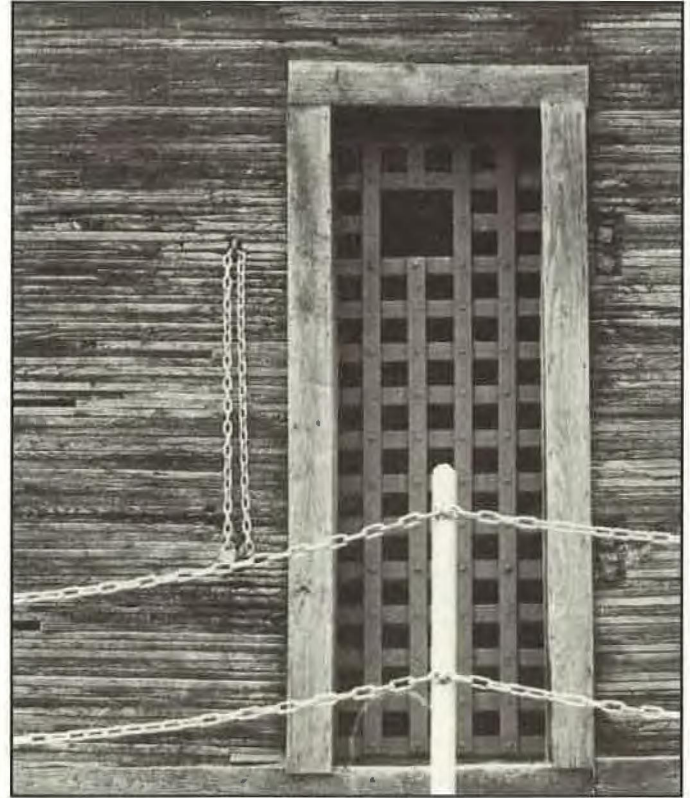
have to give some things up. We don’t impose our will on others, and we don’t want others’ wills simply imposed on us. What we want is to work in partnership with others.

“We need to create an administrative structure that supports strength,” said Sanchez, “and we have to continue to have leadership that is competent and able and willing to learn. However we are structured, we need to be able to address the concerns of the tribe, whether they are related to business, government, or social services to the people.

“We have a history of thousands of years,” said Sanchez, “and we have been able to sustain ourselves because the whole tribe works together to accomplish our goals. As we plan for the next 20 or 30 or 50 years, we’re looking at how we can continue to build our community. We’re changing because we see the value of determining how we’re going to move from here forward.”

Business on the Border.

Less than 300 miles south of the Laguna, Pojoaque and Santa Ana Pueblos of New Mexico, business owner Lourdes Gonzalez contends with some sovereignty issues that are similar to those the tribes face. Both sides of the Mexican-American border are familiar territory for the



family-owned picture frame and molding company.

The business operated in the Mexican town of Palomas, just south of the U.S. New Mexico border, from 1976 to early 1997. The business was initially located in Palomas in response to

Palomas...badly needs economic development, but ...an array of barriers makes development difficult.

incentives offered by the government—but many of those incentives failed to materialize. Gonzalez believes that policies that may have been intended to help workers have instead hamstrung both workers and employers.

The Gonzalez family scaled back operations in Palomas in 1992 in response to market changes, and opened a second plant one-fourth mile north in Columbus, New Mexico. Then in January of this year, the plant in Palomas was closed. “Our competitors in Taiwan and China could produce similar products at a lower cost,” Gonzalez said. “We need raw materials at a

good price, reasonable labor costs, and satisfactory access to markets for our finished products. Mexican laws were making that difficult.

“Doing business in Mexico can be difficult, but there are also advantages....

In the United States, the rules and regulations are more consistent...you know what you can expect.”

“We could no longer make a profit with the business,” said Gonzalez, “but we also couldn’t afford to shut down. Labor laws in the United States are nothing in comparison to labor laws in Mexico. There, a worker is like your adopted child. The law requires that when a business in Mexico closes, we pay all employees three months’ wages, plus twenty days severance pay and twelve days’ wages for every year they have worked for the company. We couldn’t do it.”

Instead, employees were given ownership of the building. They subsequently sold it at a discount to a potential chili processing business that promised jobs, but the owner had inadequate capital and the business never opened. “Everybody lost,” said Gonzalez.

Gonzalez said the town of Palomas, with its

population of 10,000 people, badly needs economic development, but that an array of barriers makes development difficult. In the Mexican Revolution of 1910-20, land was taken from rich property owners in an effort to more equally distribute wealth, and most of that land continues to be held by the government. Requirements to ensure that dollars from export businesses remain in the country added to the difficulty of doing business in Palomas.

The lack of individual ownership of the land, as in Indian Country, makes business financing more difficult. “Working capital is especially hard to find,” said Gonzalez, “and banks want 90 or 100 percent government guarantees on the loans they do make.”

The Gonzalez business in Columbus, New Mexico continues to do well. However, most employees of Concepts in Wood live across the

“I can tell you from experience that the kinds of laws different countries have certainly have an impact on people’s businesses and jobs!”

border in Mexico and commute daily to their jobs in New Mexico.

“New U.S. immigration laws will make it difficult for many people to continue to work in



the United States while living in Mexico," said Gonzalez.

"Doing business in either Columbus or Palomas can be difficult, but there are advantages to the locations," she said. Both are designated ports of entry, which gives us easy access to markets. "They don't have the traffic congestion of other ports, yet they have convenient access to interstate highways in the U.S. and Mexico.

"In the United States, the rules and regulations are more consistent," said Gonzalez. "I think the state of New Mexico should provide more support and incentives for entrepreneurs, but at least there is some stability and you know what you can expect."

The residents of Palomas are not in a position to assume responsibilities and make some of the kinds of decisions for their community that Stephen Cornell's research has indicated are essential to being able to use sovereignty as a tool for economic development.

"Having one business, either in the United States or in Mexico, would be easier," said Gonzalez. "But with the laws the way they are, it

works better for us to have a separate business on each side of the border. I can tell you from experience that the kinds of laws different countries have certainly have an impact on people's businesses and jobs!" □

AFTERWORD

Sovereignty and Nation-building

We were struck by both the similarities and the differences posed by the nature of sovereignty in the four places we visited for this issue of *Community Reinvestment*. We found people with different perspectives and different situations who have all found ways to overcome the barriers and build on the opportunities of sovereignty.

On the Laguna, Pojoaque and Santa Ana Pueblos, tribal members are making decisions about how business will be done within their boundaries. They define their goals in terms of building capital, providing jobs, or establishing independence, with a shared assumption that they can and should determine their own futures.

They have all negotiated legal solutions for the barriers non-Indians may perceive with their sovereign status. They've worked out leases on lands held in trust and granted limited waivers of sovereign immunity for business. They have all established corporations to handle business matters separately from political matters. They have judicial systems that are functionally separate from politics, or they are working on ways to formalize that separation so that businesses will be reassured about a fair judicial process. Their governmental organization is consistent with the beliefs of tribal members about leadership.

The tribes have all worked with partners—to learn from people with expertise, to expand their options for the kinds of business they can do, and to give them diversity in viewpoint and in their workforce. All encourage education. All



reinvest most of their income, rather than disbursing it to individual tribal members.

The tribes all have a tradition of community ownership and community benefit, rather than individual business or profit. Except for arts and crafts businesses, the pueblos had few businesses owned by individual Indians. While there was some support of the idea of more individually owned businesses, it isn't a priority, and most individuals do not have start-up money or property that can be used as collateral.

The story we heard about doing business on both sides of the U.S.-Mexico border reflected concerns similar to those of the pueblos. In Mexico, too, the government's ownership of land makes it difficult for businesses to borrow

Nation-building is a process of creating the future [tribes] want for their people.

money, and the uncertainty about the rules and their enforcement impair investment and add to the cost of doing business. Unpredictability is frustrating. Incentives are an attraction—but leave a bitter taste when promises are not fulfilled.

Although communities such as Palomas in Mexico can often find ways to incorporate mandated policies into their own approach to doing business, contending with policies that do not fit local culture and customs is a barrier to doing business for people and communities around the globe.

At the Laguna, Pojoaque and Santa Ana Pueblos the tribes are, in Stephen Cornell's words, in the process of nation-building. A strong sense of personal and tribal values has allowed them to leverage their strengths and their sovereignty to their economic advantage. They don't have a formula for doing it and they're not all doing it the same way. For all of them, however, sovereignty is a tool they are using to do business, and nation-building is a process of creating the future they want for their people. □

RESOURCES

Easing the Way for Doing Business: A Model Tribal Code

Commercial codes simplify and clarify how business will be done inside the boundaries of a reservation or a state. They promote expansion of commercial practices. They specify how routine business matters will be handled, saving time and energy that can be used to focus on working out unique aspects of a business transaction. They reassure people that a system is in place to address business issues or problems that may come up.

Codes are a tool that sovereign nations and states can use to encourage economic development. In the United States, state codes do not apply in Indian Country unless tribes adopt them. Tribes may do that, they may develop and adopt codes of their own, or they may work out agreements each time they enter into a business transaction.

Until recently, since little business was done on reservations, there was little need for commercial codes. Some tribes have adopted some

Codes are a tool that sovereign nations and states can use to encourage economic development.

types of commercial codes, but most do not have a comprehensive set of codes. Business activity in Indian Country has been increasing, however, and with different rules applying to each of the more than 550 federally recognized tribes in the United States, both individuals and companies can find the cultural and legal barriers to doing business in Indian Country daunting.

The Montana-Wyoming Tribal Leaders Council and Gerald Sherman, an Oglala Lakota banker with First Interstate BancSystem of

Montana and Wyoming, discussed this problem and decided to do something about it. With the support and involvement of the Federal Reserve Banks of Kansas City and Minneapolis, the University of Montana Indian Law Clinic, and many others, they initiated a process to develop a model tribal code. A conference was held in April, 1997 to discuss the code and tribal-bank relationships and sovereignty issues, with a diverse mixture of tribal leaders, lenders and resource people participating.

Codes are especially useful when people from different cultures... do business with one another.

The code is designed to be used as a model by tribal governments in developing their own commercial codes, with modifications to fit their own tradition and culture. Once adopted, a code can provide shortcuts for doing business by establishing "boilerplate" ways to deal with situations that often arise in business transactions. The model includes definitions of terms, and outlines procedures for doing business within a jurisdiction. It establishes guidelines for extending credit, clarifying the extent of liability, and establishing jurisdiction. It specifies what to do if there is a dispute.

Codes are especially useful when people from different cultures—who are likely to make different assumptions about common issues—do business with one another. Rather than working out the specific details for every transaction, or figuring out what to do when what was expected doesn't happen, codes provide a previously agreed upon, legally enforceable way to proceed.

Separate business contracts can further specify additions or changes appropriate for a particular deal. With clear, enforceable commercial codes in place, tribal members and non-Indians alike can more easily do business on a reservation. Standard codes that have core similarities to the codes used by other tribes and by state governments can make it even simpler to do business on reservations.

Model Tribal Code: Secured Transactions was developed by the Indian Law Clinic at the University of Montana-Missoula School of Law, with participation by Montana and Wyoming tribes, lenders and others. It is available for tribal governments to use as they develop their own commercial codes. The Model Tribal Code is consistent with the new format for secured transactions that has been proposed by the National Conference of Commissioners on Uniform State Laws, and includes cross references to that format.

Copies of the model code are available from the Indian Law Clinic at the University of Montana-Missoula (see resource listing following).□

RESOURCE MATERIALS

A Guide to Mortgage Lending in Indian Country. A booklet with sections on operating in Indian Country, the residential mortgage lending process, types of mortgage loan programs and compliance issues. July 1997, 47 pages. Available on the Internet at <http://www.occ.treas.gov/events/indian.htm> or by sending a written request with a check for \$15 to: Comptroller of the Currency, P.O. Box 70004, Chicago, IL 60673-0004.

"Banking in Indian Country—Expanding the Horizons." Summary of presentations from joint conference sponsored by the U.S. Department of Justice's Office of Tribal Justice and the Office of the Comptroller of the Currency (OCC), held in Washington, D.C. in July, 1997. Topics include bankers' perspective, community issues, home mortgage lending, acquiring/chartering tribally owned financial institutions, legislative perspective, and reaching the nonbanked in Indian Country. Available on the Internet at <http://www.occ.treas.gov/events/indian.htm>. Handout materials from the Banking in Indian Country conference are available by contacting the OCC's Public Reading Room at (202) 874-5043.

Capital Decisions: Native America and the Community Reinvestment Act. A manual providing information about banking, the Community Reinvestment Act, Indian Country experiences with CRA, and resources. June 1997, 76 pages. Available for \$10 from the First Nations Development Institute, The Stores Building, 11917 Main Street, Fredericksburg, VA 22408, (540) 371-5615, fndi@firstnations.org.

Doing the Undoable Deal: A Resource Guide to Financing Housing and Economic Development. Selected federal enhancement programs to help find resources for business and housing without having to memorize all of the programs. Summer 1996, 80 pages. Available on the Internet at <http://www.kc.frb.org/publicat/commrein/s96main.htm> or contact the Federal Reserve Bank of Kansas City, (800) 333-1010 ext. 2687.

Harvard Project on American Indian Economic Development. A list of working papers on research and economic development in Indian Country, by Stephen Cornell and Joseph P. Kalt. Available through the Malcom Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University, 79 JFK Street, Cambridge, MA 02138, (617) 495-1338, or on the Internet at <http://ksgwww.harvard.edu/socpol/wpamind.htm>.

Lending in Indian Country: Cultural, Legal and Business Issues. Explores issues related to doing business in Indian Country, with sections on economic development, banking, successful projects and communication. Winter 1994, 28 pages. Contact Federal Reserve Bank of Kansas City, (800) 333-1010, ext. 2687.

Lending in Indian Country: Cultural and Legal Issues. A five-part video series of a seminar that explores cultural differences, land and title issues, tribal powers, sovereign immunity, tribal courts, collateral, remedies, and other issues relevant to doing business in Indian Country. The

video and accompanying manual are available for \$135 from the Federal Reserve Bank of Minneapolis, 90 East Hennepin, P. O. Box 291, Minneapolis, MN 55480-0291, (612) 204-5060.

Model Tribal Code: Secured Transactions. (third draft)—A model tribal code including security agreements, perfection of security interests, rights of third parties, filing, default, and judicial procedure. Also includes a cross reference guide to the new format for Article 9—Secured Transactions as proposed by the National Conference of Commissioners on Uniform State Laws. Prepared by the Indian Law Clinic of the University of Montana. April 1997, 61 pages. Available for \$10 from the Indian Law Clinic, School of Law, University of Montana-Missoula, Missoula, MT 59812, or on the Internet at <http://www.umt.edu/law/library/lawbysub/nativeam.htm>.

Tribal Sovereignty Handbook. Provides information about the current scope of tribal sovereignty. Topics include self-governance, regulatory and adjudicatory jurisdiction, taxation, natural resource development, and doing business in Indian Country, with relevant case law and statutory citations. Winter 1997, 108 pages. Available as a work in progress from the Indian Law Clinic, School of Law, The University of Montana-Missoula, Missoula, MT 59812. Contact Maylinn Smith, Director, at (406) 243-6480 regarding cost and further information.

What Can Tribes Do? Strategies and Institutions in American Indian Economic Development, edited by Stephen Cornell and Joseph Kalt. Examines different economic strategies and outcomes designed to promote self-determined economic development based on tribes' own criteria. Available for \$15 plus shipping from the Publications Unit, American Indian Studies Center, University of California-Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024-1548, Fax (310) 206-7060.



SOMEONE SAID...

*"Sovereignty and freedom have no meaning
apart from the ability to make informed choices."*

— **Frank Pommersheim**
Braid of Feathers, 1995

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