

# The Harvard Project findings on Good Governance

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to

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Self Government: Options and Opportunities



**BC Treaty  
Commission**

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There are a number of familiar faces to me in the room here, and some of what I have to say is going to sound quite familiar. Some of you have heard me talk about these things before. My task this morning is to summarize for you some of the research results of the Harvard Project on American Indian Economic Development, which Joseph Kalt and I started at Harvard University in the late 1980s.

I want to give you a little bit of background to what we did and why this project is still ongoing. We're still gathering results and learning about economic development and a great deal more among indigenous Nations. I'll then summarize for you both the findings of this project and what we think some of the implications may be for you.

I should say for that latter part, I'll be going out on a limb. This is work from the United States. We are working more and more often with First Nations in Canada, but compared to the work we've done in the United States, we're very much in the early stages of understanding your situations here. The more time we spend in Canada the more convinced we've become that there is significant learning from the US cases that is applicable here, but that is really something which you will have to decide, not me. You bring to these results intimate knowledge of the challenges you face and of the history that you carry and much greater knowledge of those things than I can muster at this time.

What was the beginning of this project? In the late 1980's, imagine a couple of nerd academics sitting around Harvard University and they've been looking at some data. It's data on economic outcomes in what in the United States is known as Indian country, a legal term referring to reserved lands and Indian Nations. Those data turn out to be pretty interesting because Indian country is poor in the United States, in most cases extremely poor. There is no population in the United States with such high indices of poverty, ill health, other social problems as the reservation-based, reserved land-based indigenous population. The only populations that compete with American Indians in the US for that dubious distinction are inner city black and Latino populations.

But as we looked at data across the United States, some interesting things stood out. Indian country is poor but it's not uniformly poor. Across the United States we found examples of Indian Nations succeeding in building sustainable, self-determined economies. I'll give you a few quick examples, some of which you're probably familiar with. The Mississippi Choctaws on several small pieces of land in the state of Mississippi today import labour. They import labour because they've created so many jobs, there are not enough Choctaws to fill them. Every day about 5,000 black and white workers drive on to Choctaw land to take jobs in Choctaw-owned and -operated industries. This is a Nation with one of the highest rates of indigenous language retention in the United States. The people speak Choctaw.

The Citizen Potawatomi Nation in Oklahoma: This is a Nation that today has close to 20,000 people. In 1975 they had only a few acres of land and less than one thousand dollars in the bank. Today they own the First National Bank of Shawnee, Oklahoma, and they're the economic engine of that mixed-race region. The Confederated Salish and Kootenai tribes of the Flathead Reservation in northwest Montana run a tribal college that gets applications from non-Indians because it provides the highest quality education in that part of the state.

The Cochiti Pueblo in New Mexico, an extremely traditional, conservative place where both government and culture look substantially the way they did when the Spanish arrived in the southwestern US, today has unemployment rates among the lowest of Indian Nations in the west. It has one of the most efficient and effective development corporations in Indian country.

The White Mountain Apache Tribe in Arizona in the 1980's ran the most productive sawmill operation in the western United States, tribally owned and operated and outperforming Weyerhaeuser and other timber operators in the Rocky Mountain region.

We looked at cases like that, and of course the question that came into our minds was, what in fact is going on? There's a puzzle here. Some Indian Nations are doing much better than others. How can we account for that? And we set out to try to get an answer to that question. We did so through systematic analysis of quantitative data, but the primary tool we used was several years of in-the-field case studies working with what had started out as a sample of 12 Nations and within a few years had become many more than that, including Nations who were doing very poorly and Nations that were doing very well, trying to understand why some were doing so much better than others.

Of course there's some common wisdom on this, and we started with some of these answers in mind: it must be gaming; maybe this gambling thing is the key to economic development.



Or maybe it's location. Indian Nations close to metropolitan areas are will be doing much better than those that are far from such markets. Or perhaps it's natural resource endowments or the rate of education or maybe it's just inspired leadership or something like that.

All of those answers we carried with us into the field and of course these things are useful. You'd rather have them than not, but they were not the critical differentiators between sustained economic success and continuing and persistent poverty.

So what did we find? Four factors emerged from this research, and we continue to find support for these factors across the United States. And we're beginning to gather information on other societies where the indigenous people face European settler regimes similar to the United States: Canada, New Zealand, and Australia. Sovereignty matters. That's the term in the United States. I know in Canada that's a term that has particular connotations. Someone up here said, 'that's the "S" word, don't use that word.' Let's call it "jurisdiction" if you prefer. Then there's effective governing institutions, something we call cultural match and a strategic orientation.

Now, I want to go through each of these and say a little bit about them and what we think the evidence says.

### **Jurisdiction matters**

First of all, the key finding on sovereignty or jurisdiction is that jurisdiction is a necessary but not sufficient condition of sustainable development. We have yet to find a single case in the United States of sustained economic activity on indigenous lands in which some governmental body other than the indigenous Nation itself is making the decisions about governmental structure, about natural resource use, about internal civil affairs, about development strategies and so forth.

It appears that this is a necessary condition of sustained development on reserved lands. It means genuine decision-making power. We've said to some indigenous Nations: "Who's deciding how many board-feet of timber get cut on your land?" If you're deciding, that's jurisdiction, if some other body — the state, the federal government, someone else — is making that decision or approving your decision, that is not jurisdiction. Who's deciding what your relationship will be among yourselves as Nations? If someone else is, that's not jurisdiction. Who's determining your development strategy? Who's determining how you spend money in your name? If the answer is the Nation is, that's jurisdiction. If the answer is someone else, then you do not have jurisdiction, and development has just become much less likely, no matter what else you do.

Why does jurisdiction matter? First of all, it puts the development agenda and control of the necessary resources in indigenous hands. Without jurisdiction, indigenous Nations are subject to other people's agendas. You can't ask people to be accountable if you don't give them decision-making power. Whoever is making the decisions has the accountability. To reserve decision-making power in one place and then tell someone else that they're accountable, is to kid yourself. Jurisdiction marries decisions to consequences, which leads to better decisions.

In the United States the equivalent of INAC (Indian and Northern Affairs Canada) is the Bureau of Indian Affairs. Throughout most of the last two centuries the Bureau of Indian Affairs was making the major decisions in Indian country. But when they made bad decisions, did they pay the price? No, the indigenous Nation paid the price. In other words, there was no link between decisions and their consequences and therefore no discipline on the decision-maker to improve the decisions.

When decision-making power moves into indigenous hands, they absorb the consequences when they screw up. They reap the benefits when they make good decisions. The consequences are that over time the quality of the decisions improves. You have to allow time for learning and time for mistakes, but our evidence is that over time indigenous Nations are much better decision-makers about their affairs and resources than anybody else is because it's their future that's at stake. And when they screw up, they say next time we'll do it differently.

Jurisdiction has concrete bottom-line payoffs. We now have tested this in the timber area, we've tested it in the area of housing, and we've tested it in the area of gaming. What we've discovered is that as decision-making power moves into indigenous hands, economic performance improves. In a systematic examination of 75 Indian Nations in the United States with timber resources, we looked at whether those timber resources were being effectively managed by the Bureau of Indian Affairs or by the indigenous Nations involved.

For every job that moved from the Bureau of Indian Affairs management to indigenous management, profits and profitability rose. We found similar indications of increased effectiveness and efficiency in housing and in the gaming market. There's a bottom-line payoff to jurisdiction.



## Governing institutions matter

But it turns out that jurisdiction is not enough. The second of our findings is that effective governing institutions are necessary. You have to back up power with the ability to exercise it effectively. In some ways the sovereignty/jurisdiction piece is entirely about the relationship between indigenous Nations and other sovereigns. When you move to this second finding on effective governing institutions, the focus turns to indigenous Nations themselves and whether or not they can deliver what has come to be known as good government.

What does this mean? Our evidence focuses on four things. *First: stability.* That's not stability in terms of who's calling the shots; it's not stability in elected leaders or something like that; it's stability in the rules of the game, the way things are done. We have one Nation, a very successful Nation in the US, where there is a 100 per cent turnover in the senior leadership in the tribe every December 29, because they run a traditional governing system in which the senior spiritual leader of the Nation appoints the civil leadership every December 29.

But in this particular Nation, which is one of the most successful in the United States, the rules of the game, the way things are done, don't change. So despite the fact you get 100 per cent turnover in tribal administration, anybody dealing with that Nation knows everything is going to be done exactly the same way, it's predictable, it's stable. There are new faces but the same decision-making patterns.

The second part of the good governance equation: Is there separation of politics from business and program management? We've been gathering evidence for some time now about how businesses and programs are organized within Indian Nations in the United States and we've been asking two questions really. Number one: Do elected leaders have direct management control over either businesses or government programs? That is, do they can control the hiring and firing, do they control day-to-day management of those programs. Are they micro-managing?

*Number two:* If they are businesses, are they profitable? And if they are programs, are they effective? Our evidence indicates very strongly that separating politics from day-to-day business and program management yields in the business area a 400 per cent increase in the chances of profitability, other things being equal. Getting the politics out of the management again has bottom-line payoffs. It's harder to quantify these things in the program management area, but in case after case we see more effective social programs when you separate strategic decision-making by elected leadership from day-to-day program management by administrators.

*Third part of the good governance finding:* Is there effective and non-politicized resolution of disputes? One of the distinguishing features of the United States' indigenous Nation situation, vis-à-vis Canada, is the presence in most indigenous Nations in the United States of tribal judicial systems, tribal courts that have significant power in many cases. But in many cases they are heavily politicized. The route of appeal from the tribal court is to the council or the chairman or chief executive of the Nation.

We found that getting the politics out of dispute resolution reduces unemployment rates on average across Indian country in the United States by five percentage points, controlling for other variables. That's a relationship between unemployment and whether or not you've got a good court system. Why? Because having a good court system that deals with people effectively and in which court outcomes do not depend on who you voted for or who your relatives are, turns out to be a critical message to investors, including tribal members deciding whether or not they'll bet on the future here at home or move to Los Angeles. And when the court is depoliticized, the number of jobs starts to rise.

*Finally, and still within the good governance finding:* Is there a bureaucracy that can get things done, that can actually deliver the goods?

Why do these governing institutions matter so much? Because what governments do is to establish and enforce the rules of the game by which communities and their members organize, engage in action, interact with outsiders, cooperate, initiate businesses, etc. Those rules send a message to investors,—again I mean investors very broadly here, everybody from some person thinking of taking a job in First Nations' government to someone thinking of starting a small business on reserve land — and the message is, either do or don't invest here. But not just any governing institutions will do.



## Culture Matters

So the first factor in success is genuine decision-making power, and the second is effective governing institutions. The third finding that's emerged from our research is something we call cultural match. This has to do with the nature of the institutions with which you govern. Two of the more successful tribes in our sample are the Confederated Salish and Kootenai Tribes at the Flathead Reservation in Montana and Cochiti Pueblo in New Mexico. Both of these tribes have been very aggressive in taking control over their own affairs, but they organize their affairs radically differently.

At the Flathead Reservation in Montana there are three tribes, Salish, Kootenai and Pend d'Oreilles, located by treaty on one reservation. They govern themselves through a set of governing institutions that look as if they came out of my high school civics textbook. I recognize all the pieces. It's classic, liberal democracy in action — parliamentary system, independent judicial system, election code, commercial code.

At Cochiti Pueblo in New Mexico there are no elections. There is no constitution, there is no legal code, there is no commercial code, there's no codification of law at all, other than in the memories and traditions of the people. And yet that Pueblo, as I said, is one of the more successful tribes in the United States, because in effect it does have a Constitution. That Constitution exists in the culture of the Pueblo itself, which today remains viable enough and powerful enough to compel certain kinds of behaviour from elected officials. Radically different solutions to the institutional problem, but there's cultural match.

The Flatheads have found a set of institutions that may not be anybody's first choice — the Salish might rather they were Salish institutions, the Kootenai might wish they were Kootenai institutions and the Pend d'Oreilles might wish they were something else. But what they have found is a set of institutions that is everybody's second choice, a set they can agree on as being effective for the things they need to get done. At Cochiti Pueblo they have a set of institutions that are so deeply embedded in the culture that their own legitimacy is never challenged.

So what we see is different answers to the same set of problems: designing governing institutions that match indigenous Nations' expectations of how authority should be organized and exercised. Why does it matter? Because if they're going to be effective, governing institutions have to have support from the people, they have to have legitimacy. Governing institutions that have legitimacy in Washington, DC, but don't have legitimacy in Pine Ridge, South Dakota, are not going to be effective at either governing or producing economic development at Pine Ridge. The question is what's legitimate in the community whose future is at stake.

Cultural match is about that. Institutions that match contemporary indigenous cultures are more successful than those that don't. On the other hand, there's no blank cheque: institutions have to perform. We've seen Nations who have admitted their traditional way of doing things isn't up to the challenges they currently face, but that doesn't mean they just grab a set of institutions off the shelf and plunk them down there. It means they spend some hard time trying to invent new institutions that they believe in and that are capable of getting the job done.

## Strategic thinking matters

The fourth factor coming out of this research is strategic orientation. As one tribal leader said to us: "I don't have any power. Why should I engage in strategic thinking? I just deal with what comes in the door because somebody else is making all the big decisions." Dependency and powerlessness discourage strategic thinking, lead to crisis management, firefighting, band-aid kinds of programs and that sort of funding-driven decision-making that says, "What's our development strategy? Whatever we can find somebody to pay for."

In the tribes that we see that are successful, we see long-term thinking that asks, what kind of society are we trying to build? What are our priorities in building it? What are we trying to preserve and protect? What do we want to change? And then they make day-to-day decisions within that perspective, within that way of thinking. And this appears to do two things: It provides appropriate criteria by which to make decisions. How do we judge which of these options to take? Which one supports our strategic vision of the future? Which one protects our priorities? Which one helps answer our concerns? And it encourages politicians to serve the Nation instead of themselves, because there's an explicit sense of what the Nation is trying to do, and when politicians act in ways that don't support this, it becomes obvious.

So what do successful Indian Nations, at least in the United States, have in common?



They assert the right to govern themselves and they exercise that right effectively by building capable governing institutions that match their cultures. We talk about this as nation building. We've described it in some of our work as a nation-building approach to economic development, as opposed to the standard approach to economic development in the United States where agendas have been set in Washington, DC, not by indigenous Nations themselves and where institutions have been imposed on indigenous Nations rather than developed by them according to their own political cultures, and in which those institutions seldom function to encourage investment and support the future.

### **Implications for building good governance**

Now what are the implications of this? This is where I'm speaking, in a sense, out of turn. But I'll tell you what I sense from it, from what I know of the Canadian situation. For federal and provincial governments, it means *yield decision-making power*, support indigenous jurisdiction. Without that kind of power you lose the connection between decisions and their consequences, which all human societies benefit from.

My colleague, Joe Kalt, in testimony before the United States Senate said: "You would not be surprised if I pointed out that eastern Europe was unlikely to develop economically as long as the major decisions about its future were being made in Moscow. Why would you be surprised then if I were to tell you that Indian country is not going to develop economically as long as the major decisions about its future are being made in Washington, DC? "It's the same principle. Yield decision-making power."

*Take nation building seriously.* This is not about building administrative capacities. It's not about what the United States has seen — a shift of simply, "Okay we'll develop the programs here in DC, but we'll give you the money and you can make the administrative decisions in the field." It's about things like setting priorities, about building institutions that aren't just about running social programs, they're national institutions. They're about building different futures. They're about refiguring relationships with other sovereigns. They're about what kind of future people want.

*Invest in institutional capacity building.* There are a lot of federal programs in the United States that support sending people off to college or support getting Indian country computerized and so forth, all of which are good things. We need those programs.

We have fewer programs in the United States that take seriously what an indigenous Nation legislature has on its plate and says, "How can we help that legislature become better at doing its job?" Or that takes seriously the challenge of running indigenous courts and provides programs for training judges; or that helps solve the question of how you link indigenous Navajo common law with Western jurisprudence, so the Navajo Nation can have an effective court system that operates in both worlds (which in fact the Navajo Nation has done without much support from the United States). It's a system worth looking at.

*Invest in helping indigenous Nations build institutions that resonate with their own political cultures.* It's not a "one size fits all" challenge, it's a diversity challenge that says, what all of you face is a similar set of problems, but your answers are likely to be all over the map. And what we need to do is find the answers that are yours and that work.

*Provide resources and expect and tolerate mistakes.* These are human societies — we all screw up. There's benefit in that. We need to allow it to happen. We need to resist taking the anecdote that says, look how these folks screwed up, look at the corruption here, look at this court case that clearly was abominably done, and use that as a broad brush with which, as a US senator used to say until he got voted out of office two years ago: "This is why indigenous sovereignty is a sham, we need to shut the whole thing down, get them into the cities and get them out of this reservation business."

We have to replace those anecdotes of failure with the stories — and we know they're here in Canada as they are in the United States — stories of successful indigenous Nations that are creating futures that are their own and that in many cases are outperforming non-indigenous communities across the country.



## **What do these findings mean for First Nations?**

*Take the responsibility that goes with decision-making power.* We had one indigenous Nation chief in the United States who said to us: "The only thing wrong with this nation-building model and with us having all the powers is that I can't blame the feds for everything anymore." Well that's exactly right. When power moves into the hands of indigenous Nations, they bear increasing responsibility for outcomes.

But that's what sovereignty is about.

*Take nation building seriously.* Again, take those challenges seriously of how to build Nations that work. Invest in institutional capacity building, sometimes perhaps at the tribal level. I'm very much aware that among the differences between the situations of many First Nations in Canada and the situations in the United States are issues of size.

We have some of those issues in the United States, too. The Kumeyaay peoples, who are in a number of very small communities in southern California, some with populations under 100 persons, are discussing the creation of a Kumeyaay tribal court in which they could all participate, that would serve all of them, an intertribal court to overcome the disadvantages of size. This approach can help if you're small and you're to create a government capable of meeting the challenges you face in the contemporary world. In Alaska, similar kinds of things are in the works.

This raises the question of who's the self in self government? A question we've talked about a lot in the US, particularly in Alaska. At what level do you organize what kinds of power? It's not an all or nothing deal. Maybe some things are done at the First Nations level and some are done at the tribal level and maybe some things even at the regional level. There's no reason authority and power cannot be distributed across units where it can be effectively and best supported.

*Change internal attitudes towards First Nations' government.* This is a leap on my part because what I'm giving you is my sense of the United States. What we've encountered in the United States is a whole generation of young people on many reservations to whom government is solely about the distribution of resources. Elections are solely about who is likely to give me the most resources. Tribal governments are more about distributing goodies than about building a Nation and reshaping a future.

When we talk to tribal leaders in the US they view this as one of the biggest challenges they face. How they persuade their young people and themselves to rethink what tribal government is, to move from government as distributor of resources to government as a nation-builder.

## **Opportunities through the BC treaty process**

Two last points. I've been very struck in the visits I've made to British Columbia by the opportunities offered by the treaty process. When I first heard about it, the discussions were often about claims. But the more I've looked at that process, the more it has struck me that the process has enormous nation building and constitutional potential, that this is one place where nation building is in fact taking place, perhaps intentionally, perhaps in some cases inadvertently. It's where people are rethinking what their governments should look like, where they're asserting powers. That strikes me as an enormously encouraging development, and yet another reason why the dragging of the feet on the provincial side in this process is troubling.

It seems to me to be shutting down a process that has enormous potential to do exactly the kinds of things that we see have such benefit in the United States.

The other thing that we have begun increasingly to try to convey in the United States is the fact that sovereignty, what I call jurisdiction here, is a win-win proposition. In the US the enemies of tribal sovereignty in many cases are the states themselves. But in our work on economic development, what we've seen is that when you get successful activity on indigenous lands, it tends to spin off all kinds of benefits to non-Indians.

Mississippi Choctaw is the major employer in that part of Mississippi. They're one of the largest employers in the state of Mississippi. When you go talk to those 5,000 black and white workers who are working in Choctaw-owned and -operated enterprises, you're talking to supporters of sovereignty. They view the Choctaw as the key to their future.



In San Diego County in the 1990's, it was gaming tribes who were the only bright spot during a recession there. When everyone else was laying people off, they were taking people on.

The White Mountain Apache recreational activities, such as their trophy elk hunting operation that is a major stream of income to the tribe, and the ski resort that they run are what keep the motels in the towns of Show Low and Pinetop and Lakeside full during the winter, and those are non-Indian owned motels. The local chamber of commerce, when they want to think about the future, says, "What are the Apaches doing?"

If you think about things that way, you can make an argument — and our research makes this argument — that sovereignty is necessary for sustainable development on indigenous lands, and that successful indigenous development spins off benefits to non-Indians. So sovereignty is in the interests of Indians and non-Indians alike.

We're in the process of trying to gather more systematic data on that because it's a powerful and important policy argument, and we're convinced that it's right.

Finally, I was asked really to talk about governance, and I did talk about governance but we started with economic development. When Joe Kalt and I started the Harvard Project research, it was the economic issues in Indian country that motivated us. Indian country taught us that it was governance that was important. We learned that in the field. But I was reminded of it by Rocky Barrett, the Chairman of the Citizen Potawatomi Nation in Oklahoma. This is the Nation that went from having almost nothing in the bank in the 1970's to owning the First National Bank of Shawnee, Oklahoma today. And when I was talking to Rocky Barrett about how they made that transition, I said to him that the most interesting thing to me in what you've done is the work you did on your political institutions, because that seems to fit with what our research shows.

His response to me, in his own words, was: "Oh yeah, if you're not thinking about constitutional reform, you're not in the economic development ballgame."

I'd never before heard a tribal leader put "constitution" and "economic development" in the same sentence. It was his experience, learned the hard way in trying to build his Nation in Oklahoma, and it's what our research says as well. We think the focus of attention should be on helping indigenous Nations build themselves through competent governments that are of their own making.