

Before the
United States Senate
Committee on Indian Affairs

**Hearings Regarding S.2052
106th Congress**

Statement of
Prof. Joseph P. Kalt
Harvard University Native American Program
and
Harvard Project on American Indian Economic Development
John F. Kennedy School of Government
Harvard University
September 27, 2000

Thank you for the opportunity to appear here today. My name is Joe Kalt. I am the Ford Foundation Professor of International Political Economy at Harvard University's Kennedy School of Government. I am also the Faculty Chair of Harvard's Native American Program and Co-director of the Harvard Project on American Indian Economic Development. Along with my colleagues, Prof. Steve Cornell and Manley Begay of the Udall Center for Public Policy Studies at the University of Arizona, we at the Harvard Project have been working for almost fifteen years for and with tribes and tribal organizations. Our primary objective has been to research and document what is working and what is not working in Indian Country when it comes to building economically and socially successful reservations. To support the efforts of tribal leaders to build their communities' capacities for self-determination, we deliver extensive *pro bono* advisory services upon requests by tribes. Both at Harvard and through the Native Nations Program at the University of Arizona, we also provide strategic executive education programs to tribal leaders, managers, and decision makers.

I would like to address myself today to what we have learned about the impact of federal development initiatives in Indian Country, and the implications for the design of federal programs in the future. There is no doubt that there are severe needs to be met, but repetition of past mistakes is in no one's interest. What frameworks and approaches are likely to best fit the objectives of strengthening tribal economies while also respecting rights of self-determination?

To begin, it is important to recognize that the research evidence is clear on the overall direction of federal-tribal relations: Self-determination is the only policy in a century that has worked to begin to alleviate the legacy of suppression and economic dependency to which Native peoples in the US have been subjected. It is no coincidence that Indian Country is now dotted with an increasing number of reservations where



economic development is taking hold. From Flathead and Grand Ronde to Mississippi Choctaw, Grand Traverse, and Citizen Potawatomi, sustained economic development has taken hold. Improvement in economic conditions at such reservations, moreover, has been accompanied by improved social conditions.

At Mississippi Choctaw, for example, the rate of welfare dependence is only about one-fifth of the rate for the US population as a whole, unemployment is all but wiped out, and the Choctaw have been able to make large strides in protecting their culture by taking control of their schools and investing in programs such as native language promotion.¹ What is this doing to Choctaw society? As pointed out so sagely by Chief Philip Martin, people who had left are returning and those who are there want to – and can afford to – remain.² There is probably no better test of the health of a community than tribal members voting with their feet in this fashion.

As we have pointed out before,³ the research reveals a clear pattern among those tribes that are moving forward economically and socially. Without exception, such tribes are marked by aggressive assertions of sovereignty and *self*-rule. They set out and stick to strategies of breaking federal and state control over everything from their courts and police to their housing programs and schools. The tribes that are making progress toward their own, self-defined goals of community well-being are invariably devotees of what we might call the Nike strategy: Often in the face of at best ambiguous jurisdiction and occasionally hostile opposition, they “just do it.”

Importantly, in asserting rights of self-governance, the tribes that are showing ongoing economic and social success do not stop at simply winning a court case or taking over a federal program under the contracting of Public Law 638. Rather, they recognize that rights of self-rule must be backed up by the institutional *capacity* for self-rule. Accordingly, the successful tribes back up claims of sovereignty and opportunities for self-government by building and rebuilding their tribal governmental capacities. They struggle against a long history of institutional dependence that comes from having had to design their projects, programs, procedures, accounting systems, and even their laws so as to serve as funnels for federal programs. Reversing this dependence means everything from rewriting constitutions that were force fed to Indian Country decades ago (as at Northern

¹ Peter Ferraro, *The Choctaw Revolution*, 1998.

² Hon. Philip Martin, Address, John F. Kennedy School of Government, September 1999.

³ Joseph P. Kalt, Statement before the US Senate Committee on Indian Affairs, September 17, 1997.



Cheyenne and Lummi), to building either western-looking or traditional dispute resolution judicial systems that protect the rule of law from political interference (as at Flathead and Grand Traverse),⁴ to instituting efficient commercial codes and zoning ordinances (as at Kayenta Township), to taking over foster care and dental care (as at Fond du Lac).

This focus on tribal governmental capacity as a key to successful economic development should not be surprising. It is the case the world over that governmental structure and capacity are indispensable to economic development and progress against social ills. Consider, for example, the long running and malevolent experiment that the Soviet Union ran by splitting Germany in two. At the end of this experiment, West Germany was one of the economic powerhouses of the modern world and a target for immigrants looking for better lives. East Germany, on the other hand, had to use machine guns to try to keep people from leaving. The lesson here is that a common culture, substantial resources, heavy investment in education, and infusions of outside funds were not sufficient to generate economic and social success. From Eastern Europe to Indian Country, governments set down the rules of the game that give people incentives to be productive or destructive, to make investors and workers feel secure or flee. As such, governments can make or break a society's economy and social fabric.

The successful tribes are also demonstrating that one size does not fit all when it comes to building the capacity of tribal institutions and implementing economic development strategies. The Harvard Project research consistently points to the finding that, to be effective, tribal governmental structures and economic development policies have to possess "cultural match." That is, they must fit with each tribe's own culturally-based standards of what is legitimate and proper when it comes to such questions of who has what power, what economic system will work, and what economic development projects are viable.

I hasten to add that our findings in this regard are not naïve endorsement of ill-defined "pop" notions of "culturally appropriate" economic development. Instead, there are hard-edged, well-defined dimensions to cultures, Indian and non-Indian, which directly impact the design of institutions and viable economic strategies. Thus, for example,

⁴ Note that "the rule of law" is hardly a Euro-American invention. Native peoples' reliance on reference to tradition and custom to resolve disputes serves precisely the function of insulating dispute resolution from political interference. See Stephen Cornell and Joseph P. Kalt, "Successful Economic Development and Heterogeneity of Governmental Form on American Indian Reservations" (with Stephen Cornell), in Merilee S. Grindle, ed., *Getting Good Government: Capacity Building in the Public Sector of Developing Countries*, Harvard University Press, 1997.



strong and enduring allegiance to a central *tribe* and its government contribute substantially to the ability of places like Mississippi Choctaw and certain of the Apache tribes to sustain economies based largely on tribally-owned enterprises. But we should not expect the same strategy to work at Flathead (where social and private-sector economic success has taken firm root on a reservation where allegiances are split among multiple tribes) or on the Sioux reservations (where traditions of personal independence and district and sub-tribal allegiance prevail).⁵

Because institutional capacity is indispensable and because, to be effective, the key institutions that undergird reservation economies and social systems must be *self*-designed by individual reservation communities, it is clear why sovereignty and self-rule are the only policies that have built positive records for themselves. They shift the center of accountability home to reservation citizens and *their* governments and away from Washington, D.C. Then, too, the power of *self*-government maximizes the chance of “cultural match” – building institutional capacity that fits within the many distinct communities and cultures that make up Indian Country. Regardless of their intentions, “outsiders” are not going to be the ones who pull off the very subtle task of successfully designing and building the necessary institutional capacity. And if the rights and capacities of self-governance are abridged or subjugated, Indian nations are going to be consigned to on-going and intractable problems of unemployment, poverty, social ill-health, and dependence on the federal government.

The foregoing research findings serve to highlight the need for wisdom in designing federal programs intended to be of assistance to Indian Country. Federal policy must confront a very difficult balancing act: Providing assistance without forcing, by rule or incentive, tribes to adopt institutions, practices, programs, and policies that may make tribes effective in playing the grantsmanship game and garnering federal support but result in the perpetuation of the very institutional dependency that has proven so destructive. Hundreds of millions of dollars in federal assistance have been thrown at the problems of Indian Country over the preceding decades. Even the most sanguine of observers would have to agree that the results have been disappointing. Whether it is the tribe in the Dakotas that suffered through more than a score of economic development projects that invariably failed after one round of high-visibility funding or the flavor-of-the-month federal promotion of everything from rural motels to low-tech manufacturing, Indian Country is riddled with failed projects that have been destructive of Native communities. We should take this opportunity and the legislation under consideration in this hearing to

⁵ Stephen Cornell and Joseph P. Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, University of California, 1992.



learn from this sorry history.

Clearly, the need *and* treaty and trust responsibilities for federal promotion of economic development and social well-being on America's Indian reservations remain strong. While the media seem to have bought into an image of tribes as either extremely wealthy from gaming enterprises or extremely poor from lack of economic development, the reality for much of Indian Country lies toward the latter situation. While data on economic conditions since the 1990 Census are scarce, the last Census made it clear that reservation Indians were the poorest identifiable group in the United States. The economic benefits of gaming enterprises are confined to a small minority of tribes, typically those near the markets created by major population centers.⁶ On many reservations, our field observations indicate that unemployment remains above the reservation average of 48% found in 1990, and attendant problems of poor health, inadequate housing and other infrastructure, and suicide and similar social pathologies are unabated.

Based on the research results I have described here, I think several guidelines emerge for federal policy:

Adhering to the Government-to-Government Principle: The guiding principle of the federal role in Indian Country is properly the principle of true government-to-government relations, rather than government-to-dependent relations. Just as the Soviets taught us in Eastern Europe, so we should not be surprised that policies that intentionally or unintentionally result in abrogation of tribes' rights of self-rule are ultimately counterproductive. In fact, it is worth commenting that those that would seek to eliminate tribes' powers of self-governance would seem to be welcoming a future in which reservations are trapped as perpetual programs of public support, continually burdening the federal budget and killing the initiative and energy of Indian communities. Sovereignty and self-rule for Indian nations is the win-win strategy, both for those who are concerned with promoting economic development on reservations and for who are concerned with the budgetary implications of continued lack of development.

Maximizing Tribal Control of Programs: The systematic evidence makes it clear that contracting and compacting, whereby tribes take over the management and

⁶ In fact, even in such settings, the lessons I have noted above hold: Just as with natural resources, opportunities created by substantial markets for gaming services can be squandered when a tribe is unable to build the institutional capacity of its courts, administration, and programs.



delivery of programs otherwise within the domain of the federal government (e.g., under P.L. 638), have been successful in both promoting economic development and enhancing tribes' experience in the business of self-governance. In large-sample statistical research for the Harvard Project, Dr. Matthew Krepps finds that 638 contracting of forestry programs by tribes substantially improves the economic contribution of forestry to the tribe. Based on a sample of seventy-five 638 and non-638 tribal forestry programs, Dr. Krepps reports that shifting from BIA-employed forestry workers to tribally-employed forestry workers raises labor productivity by tens of thousands of board feet of harvested timber per year (without altering the "allowable cut" limit set by conservation and environmental criteria).⁷ Similarly, shifting to tribal management from federal management, but selling the same timber in either case, results in tribes receiving as much as 6% higher prices for their timber – amounting to hundreds of thousands of dollars per year in extra income for the typical forestry operation.

Parallel results have been found in research on tribal contracting and compacting for control of tribal health services. Prof. Alyce Adams of the Harvard Medical School and the Harvard Project finds, for example, a significant motivation for tribes to take over their health programs is the unresponsiveness of health services provision under federal auspices and inadequacies of federal resources.⁸ The National Indian Health Board reports that tribes are not mistaken in seeing tribal control as a solution to the problems with federal control that Adams has identified. In its recent comparison of service provision under contracting and compacting, NIHB reports not only a sharp decline in inflation-adjusted federal funding of the Indian Health Service, but also that contracting and compacting tribes reset priorities by increasing the allocation of resources to health care. In addition, tribal control of health care services is more often seen as getting better than is the case with federal control.⁹

Finally, the program in Honoring Contributions in the Governance of American Indian Nations, directed by Mr. Andrew Lee at the Harvard Project, annually identifies excellent programs in tribal governance and management. Whether it is the organizing of

⁷ Matthew B. Krepps, "Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry" in Cornell and Kalt, *What Can Tribes Do?...*, *op. cit.*

⁸ Alyce Adams, "The Road Not Taken: How Tribes Choose Between Tribal and Indian Health Service Management of Health Care Resources," Doctoral Dissertation, Harvard University, October 1999.

⁹ National Indian Health Board, *Tribal Perspectives on Indian Self-Determination and Self-Governance in Health Care Management*, completed 1998.



a new township at Kayenta, gray wolf recovery efforts at Nez Perce, the Navajo Supreme Court, or bison ranching at Cheyenne River, the excellent programs are marked by the “just do it” approach, capable institutions of self-government, and the implicit and explicit incorporation of tribe-specific cultural values and techniques. In cases such as Fond du Lac’s pioneering foster care program and Jicarilla Apache’s wildlife management policies, the Indian models are clearly outperforming state government approaches – to the point that the non-Indian governments are now turning to the tribes for advice and counsel.

Why does tribal control improve programs and service delivery? Two factors stand out. First, our research indicates that tribal control shortens the lines of accountability. While there are both successes and failures under tribal management (just as with federal management), the general pattern is one of putting *tribal* leaders and decision makers on the hook if things go poorly. In the course of our work for tribes, more than one tribal leader as told us some version of the following: “This self-determination is a two-edged sword. We’re more in control, but if we mess up, my tribal members hold me accountable.” Such accountability is a cornerstone of improved program performance. It needs to be brought into the economic development arena.

A second reason that tribal takeover of control and management tends to improve performance is found in the notion of “cultural match”. Digging deeper into the data on 638 contracting in forestry, Dr. Miriam Jorgensen, our Director of Research, finds that 638 tribes with combinations of high language and high blood quantum requirements for membership – i.e., tribes with strong degrees of social cohesion – significantly outperformed 638 tribes lower in such measures of cohesion.¹⁰ Evidently, stronger social cohesion allows for clearer signals regarding cultural values and enhances accountability by improving the informal means of controlling leaders’ and managers’ performance. Overall, the data on tribal control under contracting and compacting, as well as the Honoring Nations results, indicate that, when given the chance, tribes can, indeed, manage their own affairs.

Changing Federal and Tribal Incentives: Federal economic initiatives in Indian Country have long been dominated by a “planning and projects” mentality. Sustained and systemic economic development, however, does not consist of or arise from building a plant or funding a single project. Economic development is a process, not a program. Throughout the world, lasting improvement in economic and social conditions comes

¹⁰ Miriam Jorgensen, *Bringing the Background Forward: Evidence from Indian Country on the Social and Cultural Determinants of Economic Development*, Doctoral Dissertation, June 2000.



about through the creation of institutions and policies that allow development to take hold. The key to tapping this process is *incentives* – in this case, the incentives faced by federal and tribal decision makers and administrators.

The danger in the legislation under consideration here is that it will turn out to be the next in a long list of well-intentioned efforts that ends up fostering institutional dependence among tribes' governmental systems and programs. Such dependence is promoted when federal authorities approach the problem of selecting the recipients of assistance within a government-to-dependent framework in which the federal grantor effectively compels the institutional design of the tribal grantee. The federal authority's incentive is to avoid mistakes and ensure compliance with procedure in the event a mistake or poor outcome arises. This conservative outlook can be inappropriately be manifested in a "checklist" approach to the planning, application, and award stages of program development. If satisfying checklists turns out to be the way to succeed under the proposed legislation, tribes will have incentives to design their institutions and projects to fit the checklists. In the process, it will be *federal* bureaucratic procedure that drives – as it has for decades – tribes' choices of development strategies and the design of tribal institutional capacity.

How can such a recipe for continued failure be avoided? The key lies in accountability, placing the emphasis on making tribal authorities responsible to their citizens, rather than to federal authorities. Two kinds of options present themselves. The first is the block grant approach. Block granting minimizes micromanaging of the allocation of funds and permits the allocation of activity and resources in accord with *tribal* priorities. In the process, block granting changes tribal leaders' and decision makers' incentives. With tribal authorities in greater control of the allocation of funds, tribal authorities then face enhanced accountability vis-à-vis their tribal members: If resources are wasted, it is tribal decision makers that are responsible.

In addition to block granting, incentives and accountability can be improved by making funding and, especially, continued funding contingent upon actual performance by the recipient tribal authorities, with performance assessed by measured outcomes in the tribal community (such as employment sustained, income generated, etc.). This approach recognizes that mid-stream and after-the-fact attention to demonstrating what has gone right can be superior to before-the-fact "checklist" screening that seeks to avoid what can go wrong. Performance-based criteria provide incentives for positive performance. Pre-screening for bureaucratic and organizational attributes provides incentives for meeting the federal checklist of attributes. That is, such an approach provides incentives for designing tribal systems and policies to fit what the federal guidelines dictate, rather than direct incentives to improve economic and social conditions. It is time that we tried more of the



former approach when it comes to promoting economic development in Indian Country.

Building Institutional Capacity: The legacy of dependence on federal dollars and systems places a premium on the building by tribes of their own capacities to manage their own affairs. “Building capacity” here does not mean sending people to accounting courses or the like. The capacity that is needed is *institutional* capacity.

From constitutional reform and the strengthening of tribal courts and codes to the implementation of culturally-matched labor grievance procedures and management systems for natural resource use and protection, the “just do it” tribes are demonstrating the importance of basic institutional infrastructure. Dr. Jorgensen, for example, finds that one of the best predictors of whether a program such as tribal housing is run well (in terms of needs met, bills paid, etc.) is whether or not a tribe has an independent (western-style or traditional) judicial system that is protected from influence of elected tribal officials.¹¹ Similarly, the establishment of separations of powers in political structures is a key determinant of overall employment and income levels on reservations.¹² Indeed, such institutional structures may be founded on western-style democracy (for example, as at Flathead) or may be embedded in traditional unwritten “constitutions” (as at Cochiti Pueblo).¹³ Without them, however, economic development does not take hold, even where tribes are rich in natural resources, have access to generous federal programs, and exhibit strong educational attainment.

Federal policy can play a positive role in fostering institutional capacity among tribes by supporting efforts at constitutional reform, respecting and fostering strong and efficient tribal courts and other dispute resolution mechanisms, and accepting the ceding of policy and program management when tribes establish their own management capabilities. “Planning” requirements that encourage tribes to jump through the hoops set out in micro-management criteria of federal programs distort institutional capacity and frequently lead to a paralysis of planning in which securing planning grants and demonstrating plans takes the place of economic development. “Planning” which takes the form of institutional capacity building, on the other hand, can turn an Indian nation, or any nation, around.

¹¹ Miriam Jorgensen, *op. cit.*

¹² Stephen Cornell and Joseph P. Kalt, “Where’s the Glue? Institutional Bases of American Indian Economic Development,” *Rationality and Society* (forthcoming, December 2000).

¹³ Stephen Cornell and Joseph P. Kalt, “Successful Economic Development...,” *op. cit.*

