



Nation-building and the treaty process

Remarks by Stephen Cornell¹

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Introduction.....	2
The Puzzle in the Pattern of Native Poverty	3
Harvard Project Research Results	4
(1) Jurisdiction matters.....	4
(2) Governing institutions matter.....	5
(3) Culture matters.	6
(4) Strategic thinking matters.	6
Implications for the Treaty Process.....	8
Implications for First Nations and Other Governments	9

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¹ Stephen Cornell is Director of the [Udall Center for Studies in Public Policy](#) at The University of Arizona, where he also is Professor of Sociology and of Public Administration and Policy. In addition, he co-founded and continues to co-direct the [Harvard Project on American Indian Economic Development](#), Kennedy School of Government, Harvard University.

Introduction

I hope you will forgive me if I begin with some disclaimers. I am not an expert on aboriginal affairs in Canada. I have worked with some First Nations in Canada, and I have made a number of presentations to aboriginal audiences, including First Nations leaders, to government officials from DIAND and other organizations, to a parliamentary committee, and to an assortment of other audiences in various parts of this country, but I have not studied the situation of Canadian Indians in detail. And while I am familiar with the treaty process in British Columbia, I cannot claim to be an authority on it.

You may wonder, then, why I am here and what I might conceivably have to offer you. I am here because the Commission was generous enough to invite me, and I am grateful to them for doing so. As for what I have to offer: I am a long-time student of American Indian political affairs and economic development, and, to a lesser degree, of the situations of indigenous nations in other parts of the world. I am not naïve enough to think that lessons learned in the United States or elsewhere are necessarily transferable to Canada. But the more time I spend here, the more I learn about the situations of First Nations, and the more I interact with citizens of those nations, the more convinced I become that there are important continuities and similarities between the situations of Native peoples in our two countries.

Perhaps most importantly, for the last fifteen years I have been directly involved in a major, research-based effort to understand the dynamics of self-governance and economic development on American Indian reservations. Part of what I want to do this evening is to summarize some of the key findings of that research.

Now what, you might ask, does research on Native nations in the United States have to offer to a group such as this, whose primary interest is in a contemporary treaty process that is attempting to reorganize relationships among First Nations, the province of British Columbia, and Canada? Is this just another presumptuous American headed north with a bunch of irrelevant information? Good questions. I'm going to leave the second of those two questions aside; you can determine for yourselves the extent to which I confirm your apprehensions or lay them to rest. But the first question-about whether or not research results on indigenous nations in another country, operating under different demographic, political, legal, and situational conditions, have much to offer north of the international boundary-demands at least a brief comment here.

In much of the world today, relations between indigenous peoples, on the one hand, and various kinds of settler societies, on the other, are in transition. Certainly in a number of societies of European settlement, from Canada to New Zealand, the U.S. to Australia, indigenous peoples are engaged in a massive effort to regain control of their resources and their futures, to restore their communities, to reestablish the right to govern themselves, to escape legacies of poverty and powerlessness, and to build societies that work. In some sense they have always been trying to do that, but in the last few decades this effort not only has become a major social movement; it has had some significant success. Thanks to legal and political decisions and to the assertions of indigenous nations themselves, aboriginal self-determination has been on the rise-admittedly to widely varying degrees-in these and some other countries.

Yet there is precious little systematic research that speaks directly to these efforts. Are indigenous peoples in fact improving their lives through these actions of various kinds? What impact are their efforts having on non-indigenous populations? What are the relationships between political assertions on the one hand and economic development on the other? What is happening in those situations where indigenous peoples are actually gaining substantive power? Are there lessons, not only for indigenous peoples but for policymakers at all levels, from the experience of political assertion and development so far? Surely the answers to such questions would have value for policymakers, both in indigenous nations and in the countries of which they are a part.

To date, however, the most comprehensive effort—perhaps the only comprehensive effort, in the sense of looking comparatively across a significant number of indigenous nations within a single society—to examine such questions is the project whose results I am going to summarize. In 1986, at Harvard University, an economist named Joseph Kalt and I founded the Harvard Project on American Indian Economic Development. That project continues to the present day. I hope that I can persuade you this evening that the results of our work are in significant ways relevant to your situations, although, given the limits of my knowledge, that is something you will have to decide for yourselves. And I will close by making my own suggestions of what the implications of this research might be for First Nations and for the treaty process in British Columbia.

The Puzzle in the Pattern of Native Poverty

Let me begin with a puzzle. In the United States, as in Canada, most indigenous nations are poor. American Indians living on reserved lands have long led the U.S. parade in unemployment figures, ill health, poor quality housing, and a host of other negative economic and social indicators: in the aggregate, they are among the poorest of the poor. But something interesting has been happening over the last three decades. Some Indian nations have been breaking out of this picture of relentless poverty. Here are a few quick illustrations.

First example: In the 1960s, the Mississippi Band of Choctaw Indians in the state of Mississippi was mired deep in poverty with high unemployment and more than half of Choctaw families earning less than \$1,000 per year. A third of Choctaws had no formal education at all; fewer than ten percent had finished high school. The better-educated tribal members were leaving, year after year, for economic opportunities elsewhere: not an unusual story on American Indian reservations (as reserved lands in the U.S. typically are called), where the brain drain among the young and education is substantial. But since 1978, in a remarkable economic turnaround, the Mississippi Choctaws have created more than 6,000 on-reservation jobs in a host of tribally-owned businesses. The tribe has become the largest employer in east central Mississippi, a mixed-race region of few opportunities and a long history of Black, white, and Indian poverty. The tribe now imports Black and white labor because there aren't enough Choctaws to fill the jobs they have created. For the last ten years Choctaw incomes have been rising faster than the state average while unemployment has fallen to just over half the state average: in other words, the Choctaws are outperforming the state of Mississippi economically. Furthermore, in the 18-34 year-old age group, Choctaws today have one of the highest rates of Native language retention in the United States.

Second example: At one point in the 1970s, in the state of Oklahoma, the Citizen Potawatomi Nation, which has only a few acres of tribal land, had about \$500 in the tribal bank account, few jobs, and little in the way of economic prospects. Today, the Citizen Potawatomis own the First National Bank of Shawnee, Oklahoma, as well as an array of retail and media businesses. The tribe is a major regional employer offering jobs not only to its own members but to non-members. In 1997, its unemployment rate was 10 percent—high enough, but dramatically lower than the average on American Indian reservations—and only 16 percent of tribal members holding jobs were employed in the tribal or federal government sectors, which are the sectors that employ a huge majority of Indians on most reservations.

Third example: In the 1980s, a decade in which economic conditions on aboriginal lands in the United States generally were deteriorating, the White Mountain Apache Tribe in Arizona was running nine tribally-owned and -operated businesses, including a trophy-quality elk hunt, a manufacturing enterprise making helicopter parts for the U.S. Department of Defense, a ski resort, and a forest and sawmill operation that was outperforming private sector operators in the western United States. Today, local, non-Indian chambers of commerce look to the Apaches as key to the economic future of the region.

Fourth example: The Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana oversee today a successful, diversified economy based on agriculture, tourism, and a vibrant retail and other private enterprise sector. The tribally-owned and -operated college now

receives applications from non-Indians because it offers the highest quality education in the region.

Last example: In the 1980s and 1990s, Cochiti Pueblo—one of the 19 Pueblos in northern New Mexico—brought its own unemployment rate down to just over 10 percent. It put together one of the most efficient development corporations around and built an economy based largely on recreational and retirement services. According to *Golf* magazine, this tribe runs one of the finest public golf courses in the United States. Relative to other Indian nations in the US, Cochiti is a significant success. Yet it is one of the culturally most conservative tribes in the country, still governed today in ways essentially continuous with what the Spanish conquistadors encountered in the 17th century. It is a nation where indigenous culture remains elaborate, powerful, and vibrantly alive.

I could give you other stories as well, but these should provide you with a sense of what has been happening in the U.S. over the last three decades. And, in conjunction with the broader picture of poverty with which I began, they outline the puzzle: How do we account for these interruptions in the prevailing pattern of poverty? How do we account for these breakaway cases? Some things seem to be working in Indian Country. Why?

This is the puzzle that motivated our research. A decade and a half ago, we set out to try to understand this phenomenon. We did so via both statistical studies of large numbers of Indian nations and through extended, field-based research on smaller samples of tribes. As our research expanded, we found ourselves working closely not only with Indian nations in the U.S. but with some First Nations here in Canada and with Maori groups in New Zealand. Over time, as both data and analysis accumulated, we became increasingly confident in a set of robust, core findings.

Harvard Project Research Results

What are those findings? First of all, let me tell you what they are not. Like most people, we entered this research with a number of top-of-the-head answers that made good intuitive sense but turned out to be wrong or incomplete. For example, the key to successful economic development on reservation lands is not natural resource endowments, although certainly natural resources help. Neither the Mississippi Choctaws nor the Citizen Potawatomis have significant natural resources to work with, but they are startlingly successful, while other Indian nations, such as the Crow Tribe of Montana, have lavish natural resources that they have been unable to translate into productive economic activity and an improved standard of living. Likewise, the key to successful economic development is not location, although certainly a location with good access to markets is a major boost. And the key to successful economic development is not education, although I certainly would rather have skilled and educated labor and leadership than not. This is not to say that these factors do not matter, but they do not appear to be the key determinants of tribal economic success.

So if these things are not the keys to development, what is? Our research points to four things.

(1) Jurisdiction matters.

In the U.S., we talk about tribal sovereignty, but sovereignty is a more loaded word here in Canada and is often equated with secession. Think of it instead as genuine self-rule or jurisdiction: Native power to control what happens on Native lands. Put simply, self-rule appears to be a necessary but not sufficient condition for sustained economic development on American Indian reservations. After years of research, we have yet to find a single case of an American Indian nation demonstrating sustained, positive economic performance in which somebody other than the Indian nation itself is making the major decisions about resource allocations, project funding, development strategy, and related matters. In case after case, we have seen development begin to take hold when Indian nations succeed in moving outsiders from decision-making roles into resource roles and take their place as primary decisionmakers in indigenous affairs.

The reasons for this are several, among them the fact that it puts the development agenda in Indian hands. As long as some outside agency carries primary responsibility for economic conditions on Indian lands, development decisions tend to reflect those outsiders' agendas. In the U.S., this has meant that considerations such as protecting agency budgets or expanding agency authority or avoiding media-worthy disasters were frequently given disproportionate weight in decision-making. When tribes begin making the decisions, those decisions begin to reflect tribal agendas in which sustained economic development often has primacy.

But there's a still more important reason for such a shift: the link between decisions and their consequences. Outsiders bear fewer of the consequences of their decisions and therefore are subject to a much less dependable-i.e., less disciplined-learning curve. When outsiders make bad decisions, they seldom pay the price. The community instead bears the brunt of the costs, but it has no power to respond with better decisions in the future. Once decisions move into the hands of those whose fortunes are at stake, the decision-makers themselves begin to bear the consequences of their decisions, reaping the rewards of good decisions and paying the price of bad ones. As a result, over time and allowing for the learning experience, the quality of the decisions improves. In the long run, Indian nations repeatedly demonstrate that they are better decisionmakers about their affairs and their future than outsiders are. After all, it is their affairs and their future that are at stake.

This has concrete, bottom-line payoffs. In the timber industry, for example, a Harvard Project study of 75 U.S. Indian nations with significant timber resources found that for every job that moved from U.S. Department of the Interior control to tribal control, profits and productivity rose.

My colleague Joseph Kalt has pointed out that our finding on self-rule is predictable from other cases around the world. We are not surprised, for example, that economic development failed to take hold in Eastern Europe as long as the Soviet Union in effect was making the major decisions about resources, development strategy, and other matters. Why, then, should we be surprised to learn that Indian nations, too, benefit when they take the place of outsiders in the major decisions that affect their lives?

(2) Governing institutions matter.

But self-rule is not enough to produce economic growth. Sovereignty must be exercised effectively if it is to lead to significant, sustainable development. Harvard Project results show that the chances of sustainable development rise as Indian nations put in place effective, non-politicized dispute-resolution mechanisms, such as tribal courts, shut down opportunistic behavior by politicians, eradicate corruption, place buffers between day-to-day business management and politics, build capable bureaucracies, and so forth. Our second finding, then, is that sovereignty that is not backed up with effective institutions of governance is unlikely to yield sustained economic development.

Why are institutions so important? Institutions send a message to potential investors. If the message is positive (stability, depoliticized business management and dispute resolution, procedural efficacy, regulatory regimes that are fair and make sense, etc.), the chances of investment rise. If the message is negative (instability, politicized business management and dispute resolution, and so forth...), the chances of investment fall. And I should emphasize that I intend a broadly inclusive meaning of the term "investors," embracing not only those with dollars but those with ideas, energy, time, or any other resource that can be an asset to development-regardless of whether or not they have dollars. Thus, tribal members of meager means are as much potential investors in the future of their communities as anyone else is. They may take a job in First Nations government, start a small business, or go to work in the local school. Importantly, they make investment decisions on much the same basis as outsiders or as those with greater financial resources do: where is my investment-of time, energy, ideas, or money-likely to be most productive, satisfying, and secure?

Institutions are a major part of the community's answer to this question and, therefore, are one of the central pivots on which development turns. Investors have choices. In building effective

governing institutions, Indian nations attempt to shape those choices, sending a message to investors, including their own peoples, inviting them to invest here. In sending that message and in backing it up with institutional integrity and real action, they pave the way for productive economic development. John Barrett, Chairman of the Citizen Potawatomi Nation in Oklahoma, which, as I mentioned, is one of the more dramatic economic successes not only in Indian country but in rural development anywhere in the United States, bluntly draws the connection. "If you're not talking about constitutional reform," he says, "you're not in the economic development ballgame."

For many tribes, this has meant reorganizing governing institutions to adopt separations of powers, checks and balances, independent court systems, and other tools of good governance. It means backing up governing power with governing capabilities.

(3) Culture matters.

So institutions matter, but not just any set of "efficient" institutions will meet the challenge. The third finding from our research has to do with something we call "cultural match." If Indian nations are to mobilize community energies and resources on behalf of productive economic development, these governing institutions have to have the support of the people they govern. This in turn appears to be a matter of the fit between the formal institutions of governance, on one hand, and indigenous conceptions of how authority should be organized and exercised, on the other. Institutions whose form departs significantly from such indigenous political conceptions fare significantly worse than those that build, sometimes innovatively, upon such conceptions. In other words, institutions have to be effective, but they also have to resonate with indigenous political culture if they're going to deliver the goods. People have to believe in them.

Historically, outsiders—typically the U.S. government—designed and, in effect, imposed the governing institutions through which many contemporary Indian nations attempt to achieve their goals. Most such institutions were never conceived as tools for the management of sovereign societies and, therefore, are notably ineffective. Furthermore, many are starkly at odds with indigenous political cultures and, consequently, find little support within their own communities. Small wonder many of these institutions don't work very well. The successful Indian nations we've looked at for the most part have solved this problem, either adopting or inventing institutions that match their own contemporary political cultures and that are capable of governing well.

By the way, this is not necessarily an argument for a return to "tradition." The point is to search out and organize a resonance between formal institutions and what people currently view as appropriate for them. For the Confederated Salish and Kootenai Tribes of the Flathead Reservation, this may mean classic parliamentary democracy with a strong, depoliticized, judicial system. For Cochiti Pueblo, it may mean a system of government without any written constitution in which the spiritual leadership of the tribe appoints the senior tribal administrators. Both of these tribes are notably successful; both have matched formal institutions to contemporary indigenous political culture.

(4) Strategic thinking matters.

Our support for the fourth finding remains largely anecdotal, but the evidence is rapidly increasing that those Indian nations that think strategically do better than those that don't. In the last century or so, most Indian reservations have seldom been characterized by strategic thinking. There are good reasons for this. If political and economic control lies largely in the hands of outsiders, what's the point of strategic thinking? Without the power and resources to implement a thoughtful development strategy, why spend the time coming up with one?

Another reason is the often desperate economic and social conditions of many Indian reservations. Such conditions place enormous pressures on elected tribal leadership to "get something going." The "something" can be almost anything, as long as it produces jobs. Faced with typically short terms of office, frequent political turnover, and an endless stream of

petitioners looking for relief, tribal leaders tend to look for quick fixes for development problems. Their development strategy, in effect, pursues whatever can be funded, typically via federal grants; pays less attention to sustaining businesses than to starting them; and puts a premium on hitting home runs instead of building economies incrementally. It also pays little attention to long-term goals, priorities, or concerns.

The alternative is strategic thinking: a systematic examination not only of assets and opportunities but of priorities and concerns. What kind of society do you hope to build? What do you want to change? What do you want to preserve or protect? What kinds of prices are you willing to pay for development, and what kinds of prices are you unwilling to pay? Unless such considerations are thought through, decision-making occurs in a strategic vacuum, simply reacting to the pressures of the moment or to funding decisions made thousands of miles away by governments serving diverse interests and handicapped by limited local knowledge. With a strategic perspective in hand, tribes at least have a set of criteria by which to evaluate development options.

[These four factors are summarized briefly in the following Table]

Summary of Harvard Project Research Results
For Native nations seeking development success:
<ul style="list-style-type: none"> • Jurisdiction matters-exercising control over the development agenda and resources; coupling decisions and their consequences; • Institutions matter-sending a message to "investors" that their investments will not be hostage to politics or corruption; • Culture matters-matching formal institutions to indigenous conceptions of how authority should be organized and exercised, and matching political boundaries to collective identities; • Strategic thinking matters-searching not for quick fixes but for ways of building societies-that-work, over the long run.

It is worth noting that, with the exception of the analysis of assets and opportunities that a strategic approach requires, none of these factors is something we would identify as classically "economic." This doesn't mean that so-called "economic" factors matter little in the development of reserve lands. But our research indicates that the factors that do the best job of accounting for the variance in development outcomes are indeed political. Economic development is first and foremost a political problem.

This has directed our attention to what we call "nation-building" or "nation-rebuilding," and it has focused much of our energy on working with indigenous nations on institutional and policy issues. "Nation-building" refers to the effort to equip indigenous nations with the institutional foundations necessary to increase their capacity to effectively assert self-governing powers on behalf of their own economic, social, and cultural objectives. As our research results suggest, however, it is not simply a matter of transferring institutions from the dominant society to indigenous nations. These institutions not only have to be effective; they also have to command the support of Indian peoples. This means they have to be produced by indigenous peoples themselves.

Implications for the Treaty Process

So what does all this have to do with the treaty process?

I am struck by the fact that the British Columbia Treaty Commission has suggested that the process will be concerned primarily with three things: jurisdiction, governance, and cash settlements. It is the first two of these that interest me. Jurisdiction and governance correspond to the two central factors emerging from Harvard Project research. They have to do, first, with powers of self-governance-the question of whether or not First Nations will have substantive, meaningful, determinative control over their own affairs and resources-and second, with capacities for self-governance-the institutional capability of First Nations to exercise those powers effectively in pursuit of their own objectives.

These are the central components in nation-building. I realize now that I gave Brian Hewlett a slightly wrong title for this talk: it should been "Treaty-Making as Nation-Building," for I view the treaty process as a nation-building enterprise. Whether it is an ideal process or not, I am in no position to say. I realize that it is controversial within both aboriginal and non-aboriginal communities, and I assume it has advantages and disadvantages for both. Just how those balance out is not for me to guess.

But while I might not know if this is an ideal way to do nation-building, I am convinced it represents a critical opportunity for nation-building, and one of enormous transformative potential. Much of the discussion of the treaty process, I gather, has been about correcting old wrongs and satisfying claims. But in addition, this process could-not will, but could-dramatically improve the chances of successful economic development for First Nations in British Columbia. The critical issues are these: will that process lead to genuine decision-making power in the hands of First Nations, and will it equip those nations with the necessary institutional mechanisms for exercising that power effectively?

My knowledge of the Canadian case is limited, but my sense is that across much of Canada, the federal and provincial governments' approach to indigenous self-governance is oriented to "operational administration": allowing tribes to deliver services that once were administered by somebody else. It's a form of administrative subcontracting, in which bureaucrats in provincial or federal capitals allow indigenous nations to run the administrative show at the local level, while the big decisions still get made elsewhere. In both the U.S. and Canada, this approach to self-governance seldom takes seriously what I think of as nation-building: rebuilding indigenous power to shape and reshape aboriginal futures, to build societies of their own design, to realize their own visions in practical, day-to-day, substantive decisionmaking.

What our evidence indicates, however, is that this more ambitious self-governance agenda is just what the needed transformation in the fortunes of Native nations requires, and I salute a treaty process that appears cognizant of that fact. In 1998 the Treaty Commission described a treaty as "a unique constitutional instrument." A treaty that yields little more than administrative powers and structures qualifies as "a unique constitutional instrument" only in the sense that it is uniquely toothless, and it is unlikely to be the basis of a new era of prosperity and social health. But you appear to be working toward something much more substantial than that, and that is what makes this process a hopeful one. But the proof, of course, will be in the pudding.

Now why, someone might ask, should non-Native people care, other than on moral grounds? I think moral grounds ought to be sufficient, but let's be realistic and see what else we can offer. Forgive me if I return once more to US cases, but again, I think there may be lessons there. The evidence from the U.S. is emphatic: genuine indigenous self-government-what in the U.S. is called tribal sovereignty-is a win-win proposition. Over and over again, Indian reservation economic success spins off benefits to non-Indian communities. Our data indicates that as reservation economic fortunes improve, we see reductions in welfare rolls, decreased burdens on taxpayers, growth in job opportunities for non-Indians, and major contributions to regional economies. It takes time, and it happens in fits and starts, but in the long run, successful Indian economies add significantly to the economic pie. And at the heart of successful Indian

economies lies genuine self-rule. The evidence is that you are unlikely to have one without the other.

Implications for First Nations and Other Governments

Finally, then, what are the practical implications of this research? Let me offer, from the distinct disadvantage of an outsider, my sense of things.

First, for non-indigenous governments-the provinces and the federal government-the critical issue, it seems to me, is this: what does self-governance truly mean? Will it be limited to operational administration? Will it mean Ottawa or British Columbia ultimately calling the shots? Or will it embrace genuine control over resources; significant and consequential dispute resolution (which means, ultimately, First Nations courts); funding via block grants instead of program funds (which moves substantive decisionmaking power into indigenous hands) until First Nations can support themselves; a partnership-not consultation but a partnership-in major decisions wherever indigenous interests are at stake; and genuine jurisdictional power? If we are serious about self-government, then we have to include these things, and we have to invest not only in the treaty process, but in building the institutional capacity of First Nations to back up their power with capable and effective governing systems that operate under their own control.

Which brings me to First Nations. There are implications for them as well. Governing power without the determination and the institutions necessary to exercise it effectively won't amount to much. As Chairman John Barrett of the Citizen Potawatomi Nation said to some of us just a few weeks ago, "a tribal government without good institutional rules is just a bad family reunion." The questions are these: can you back up genuine self-governing power-by which I mean substantive jurisdiction-with good government? Can you eradicate corruption? Can you depoliticize judicial decisions and dispute resolution, so that everyone-from the First Nations citizen who is trying to decide whether to stay at home or move to Kamloops or Vancouver, to the potential non-Indian partner in an enterprise-knows that their investment will not be hostage to politics? Can you work with other First Nations to overcome the disadvantages of small size and population, perhaps forming institutional cooperatives where size demands larger organizational scale, assisting each other in providing the kinds of effective institutions without which no nation-not Canada, nor the United States, nor the countries of eastern Europe nor the developing nations in Africa-can succeed? Nation building is not a matter of power. It's a matter of power coupled to its effective, fair, judicious, and culturally appropriate exercise.

That is the nation building challenge, not only here, but around the world. It is a difficult challenge, but it also is a crucial one on which the future of First Nations may well depend.

Harvard Project work continues today through the Harvard Project itself and through the newly-established Native Nations Institute for Leadership, Management, and Policy at The University of Arizona.