POLITICAL ECONOMY OF NATIVE AMERICAN ECONOMIC DEVELOPMENT

by

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Political Economy of Native American Economic Development

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DEDICATION

To my partner, Troy, who has supported me unfailingly through my academic journey—To my parents, Kory and Debbie, whose life-long guidance has made me the man I am today—To my sisters, Brynde, Brooke, and Kaylee, who have put up with me for all these years.

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F.A. Hayek astutely observed that “nobody can be a great economist who is only an economist—and I am even tempted to add that the economist who is only an economist is likely to become a nuisance if not a positive danger.” In the process of writing this dissertation and completing my studies at George Mason University, I have gained insights from the Classical School of Economics (particularly the Scottish Enlightenment version), the Austrian School (in the tradition of Mises, Hayek, and Kirzner), the Virginia School (focusing on the work of Buchanan and Tullock), the Bloomington School (in the tradition of Elinor and Vincent Ostrom), and Economic Sociology (in the tradition of Max Weber). I am grateful for the well-rounded and interdisciplinary education at George Mason University that has contributed to this dissertation and my other work.

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LIST OF ABBREVIATIONS

Bureau of Indian Affairs	BIA
Indian Reorganization Act	IRA
Harvard Project on American Indian Economic Development	HPAIED
Center for Indian Country Development	CICD
Uniform Commercial Code	UCC
Economic Development Administration	EDA

ABSTRACT

POLITICAL ECONOMY OF NATIVE AMERICAN ECONOMIC DEVELOPMENT

Jordan Karl Lofthouse, Ph.D.

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Native American reservations are often islands of poverty within the United States. Many scholars and policymakers are concerned with facilitating economic development on Native American lands, but despite federal and tribal development initiatives, growth has been slow and inconsistent. The purpose of this dissertation is to better understand the effects of formal and informal institutions on Native American entrepreneurship and economic growth. To accomplish this, I use insights from public choice economics, Austrian economics, new institutional economics, and economic sociology to analyze the barriers to economic growth and to evaluate proposed solutions.

This dissertation consists of three chapters. Chapter 1 introduces the complex institutional structure of Native American governance that limits productive entrepreneurship and restricts individual liberty on a fundamental level. Over the course of American history, a pervasive administrative state has emerged on Native American reservations as the result of unique institutions that govern those lands. The federal trust

responsibility and an elaborate web of federal, state, and tribal policies affect the liberties and economic well-being of Native Americans. These unique institutions impose high costs on individual Native Americans when they try to engage in most economic enterprises. The pervasiveness of bureaucratic control has also spurred negative forms of political entrepreneurship, eroded the rule of law, and hampered markets from working efficiently.

Chapter 2 fills a gap in the literature by bringing market-process theory and entrepreneurship into the broader discussion of the institutional effects on Native American economic development. Previous economic scholarship has demonstrated an institutional basis for Native American poverty. Poverty is blamed largely on formal governance structures, especially inefficient property-rights regimes and excessive bureaucratic governance. Although previous scholarship has emphasized the role of formal institutions, market-process theory as it relates to Native American economies has been neglected in this literature. Economic growth and development are the direct results of the competitive entrepreneurial market process, and the quality of institutions that govern social action is the ultimate determinant of individuals' willingness to engage in entrepreneurial activity. Institutions impede entrepreneurship, the market process, and economic development on Native American reservations through three overarching channels: (1) the federal land trust, (2) a dual federal–tribal bureaucracy, and (3) legal and political uncertainty. Those channels generally raise barriers to mutually beneficial exchange, entrepreneurship, and innovation. In particular, they generally increase transaction costs, rent seeking, and bureaucratic delay, which impede many Native Americans from engaging in private enterprise.

Chapter 3 analyzes the underexplored interactions between institutions, culture, and entrepreneurship by synthesizing the literature on culture and entrepreneurship with the literature on institutional “stickiness.” This chapter combines theoretical insights from economic sociology, market process economics and institutional economics as a basis to evaluate entrepreneurship and economic development on Native American reservations. Culture, as a web of social meanings, shapes what opportunities entrepreneurs are alert to, influences how they perceive transaction costs and determines whether institutions achieve their intended ends. Historical and contemporary case studies are used to build analytical narratives to corroborate the theoretical approach. The federal government has imposed many formal institutions on reservations, which have disrupted traditional governance and property rights structures. If formal institutions do not comport with the underlying culture, those institutions do not facilitate positive entrepreneurship and economic growth. Despite the barriers, entrepreneurs across several reservations have leveraged their cultural and social ties to create robust informal economies. In some cases, imposed institutions have fostered rent-seeking and have given rise to a culture of rent-seeking.

CHAPTER ONE - LIBERTY VERSUS BUREAUCRACY ON NATIVE AMERICAN LANDS

1.1 Introduction

Native Americans suffer from disproportionately high rates of poverty and low rates of entrepreneurship. Native Americans own private businesses at a much lower rate per capita compared to other Americans, and the businesses they own produce less income on average than those of all other racial groups (Miller, 2001). As of 2010, 28.4 percent of American Indians and Alaska Natives were in poverty, compared to 15.3 percent for the United States. Many of the most impoverished Native Americans live on federally recognized reservations (US Census Bureau, 2011). The poverty on Native American lands may be blamed largely on formal governance structures, including inefficient property rights regimes and excessive bureaucratic governance (Akee & Jorgensen, 2014; Anderson & Parker, 2008, 2009; Cornell & Kalt, 2000; McChesney, 1990; Regan & Anderson 2014; Russ & Stratmann, 2014).

One of the most unique aspects of Native American governance is that a dual bureaucracy of federal and tribal officials has broad discretion in the day-to-day lives of many Native Americans. This paper examines the effects of those unique institutions on Native American liberty, governance, and economic well-being. Native Americans, more than other demographic groups, have had their personal liberties curtailed by the formal institutions that govern them. This paper examines how institutional structures on most reservations limit personal liberty and thus impede economic wellbeing.

Much of the discussion in this paper is general. Institutions and governance vary between reservations, but there are similarities across most tribes that limit the overall economic freedoms of Native Americans. In section 2, I analyze the emergence of the complex relationship between the federal government, tribal governments, and individual Native Americans. In section 3, I illustrate how bureaucratic institutions that govern Native American reservations tend to limit economic freedoms and raise the costs of private enterprise. I conclude with implications that Native Americans will continue to suffer from systematic poverty as long as the bureaucratic institutions continue to restrict economic liberties and raise the costs of private enterprise.

1.2 The Emergence of the Administrative State on Native American Lands

One of the most important ways that the federal government and tribal governments interact is through the federal trust system. The modern federal trust responsibility is interpreted as a fiduciary obligation to protect tribal lands and resources, as well as an obligation to enforce federal laws on Indian lands (Bureau of Indian Affairs, n.d.). To understand the federal trust system and other institutions that govern economic life on reservations, it is imperative to understand how those institutions emerged over time. This section details how the federal trust system and the bureaucratic governance structure were formed, and then it examines how the modern system of Native American governance functions in the widest sense.

The two most important congressional acts that shaped modern institutions on Native American lands were the Dawes Act and the Indian Reorganization Act. In 1887, Congress passed the Dawes Act, also known as the General Allotment Act, which allowed the federal government to allot parcels of reservation land to individual Native Americans. Land that federal officials deemed as “surplus” was sold to white Americans for settlement (Anderson & Parker, 2009; Thompson, 1997). The Dawes Act stipulated that the federal government would hold allotted land in trust for twenty-five years, meaning that the United States would be legal title holder until individual Native Americans proved that they were “competent” to manage their own land. After the twenty-five-year period, Native allottees would then be given a fee patent, which granted full legal ownership of the land (McChesney, 1990). This act was formative for modern federal-Indian relations because it began the federal obligation of holding land in trust for Native Americans.

The Dawes Act was meant to both assimilate Native Americans into white American culture and to transfer desirable lands to white settlers (Akee, Jorgensen, & Sunde, 2015; McChesney, 1990). Due to the Dawes Act, large amounts of Indian-controlled land were lost, dropping from approximately 138 million acres in 1887 to about 48 million acres in the early twentieth century. Those lands were lost mainly through coerced land sales, voluntary land sales, foreclosures, and delinquent tax payments (Newton, 2005; Miller, 2006). Allotment through the Dawes Act did little to improve the economic conditions for Native Americans, and there is evidence that it may have made them worse off in the short term. For example, child mortality increased significantly in families who received allotted lands from 1887 to 1934 (Hacker & Haines, 2005). Some scholars have condemned “privatization” through allotment as a detrimental policy, but allotment was not a true privatization scheme. The complex structure of property trusteeship meant that the definition of property rights was incomplete. Because the federal government retained considerable rights over the land, the social gains that would have been possible through privatization were largely dissipated (McChesney, 1990).

In 1928, the Institute for Government Research commissioned a study, later called the Meriam Report, that criticized the Bureau of Indian Affairs’ performance during the allotment era. A few years after the report came out, John Collier became the Commissioner of Indian Affairs. Collier was ardently antiallotment and drafted new legislation based on the findings of the Meriam Report. Collier then persuaded Congress to pass his bill, which became the Indian Reorganization Act of 1934 (McChesney, 1990).

The Indian Reorganization Act has become the foundation of the modern system of tribal governance. First, the act allowed Native Americans who held full legal title to their land to retain the title. Second, the act ended allotment and allowed the federal government to hold land in trust indefinitely. Even today, many Native Americans are subject to trust constraints over alienation, leasing, and encumbrance if their land was still in trust when the Indian Reorganization Act was passed. Third, the act restored some tribal properties that were within the original reservations (Mika, 1995; McChesney, 1990; Anderson & Lueck, 1992).

During the late nineteenth and early twentieth centuries, allotment and the federal trust system did not enhance the social welfare of Native Americans because it destroyed the informal land rights that Native Americans had for generations. The federal government's attempt to impose alternative institutions with different values, morals, and rules caused Native Americans to suffer economically for generations (Anderson & Parker, 2009; McChesney, 1990; Roback, 1992; Carlson, 1981; Williamson, 2011).

From the 1940s to the 1960s, Congress abolished some Indian reservations and removed governmental power from many tribes (Walch, 1983). Beginning in the 1960s, the Civil Rights Movement persuaded many federal officials to reverse previous policies, allowing tribes to have more "self-determination" over their own governance. Congress passed the Indian Civil Rights Act of 1968 and the Indian Self-Determination and Education Assistance Act of 1975, but despite those laws, the Bureau of Indian Affairs (BIA) has become highly involved in the management of resources through the federal trust (Allen, 1989).

Under the modern trust system, four types of land ownership have emerged: tribal trust lands, allotted trust lands, restricted fee lands, and fee lands.

- On tribal trust lands, the federal government holds the title to any parcel of land, and the land is allocated and managed by both the tribal government and federal bureaucrats. Individuals may only use a parcel of this land if both federal and tribal officials allow them to. Only the federal government can sell tribal trust lands. Tribal trust lands comprise about 45 million acres (Miller, 2006).

- Allotted trust lands are held in trust by the federal government for individual Native Americans and their heirs. Allotted trust lands comprise about 10 million acres (Miller, 2006).
- On Native American lands classified as restricted status or restricted fee, an individual Native American holds the title to a parcel of land, but the Secretary of the Interior must approve any alienating or encumbering of that land (BIA, n.d.).
- Fee lands are owned outright by individual Native Americans and are not held in trust.

Today, the BIA and tribal governments have a complex relationship, and their interactions are often ill-defined and convoluted. Nominally, the BIA and tribal governments have a government-to-government relationship, where the BIA has a duty to consult with the tribes. In addition to the consultation responsibility, the BIA oversees the trust obligations to "protect tribal property and resources" (BIA, 2000). The relationship is complex because the BIA is not meant to interfere with tribes' internal affairs under the doctrine of self-determination, yet the BIA also must fulfil the trust responsibility, which means that it must consistently interfere in the control, management, allocation, and divestment of tribal lands and other resources.

Within the BIA, the Office of Trust Services mainly deals with land-related trust issues, since the federal government holds the title to most Indian lands. Some of the office's main responsibilities regard "acquisition, disposal, rights-of-way, leasing and sales, and [assistance] in the management, development, and protection of trust land and natural resource assets.” Other responsibilities include real estate services and the management of natural resources, such as mineral, forests, irrigation, and electricity (Office of Trust Services, n.d.).

The BIA implements its policies through an organizational structure that is typical of federal bureaucracies. The Director of the Bureau of Indian Affairs oversees four offices: Indian Services, Trust Services, Justice Services, and the Regional Offices. Each of those offices is managed by a Deputy Bureau Director. The Office of Indian Services oversees federal welfare payments and provides advisory services to tribal leaders. The Office of Trust Services oversees the federal government’s trust responsibility. The Office of Justice Services manages the BIA’s law enforcement program. Each of the twelve regional offices has its own Regional Director, who reports directly to the BIA Deputy Director-Field Operations. Those regional offices help execute the federal government’s policies and responsibilities, except for education, law enforcement, and high-level administration. Within the BIA’s various offices, specific divisions focus on economic development, workforce planning and control, and management of natural resources, among other responsibilities (BIA, 2015).

The organizational structure of tribal governments is similar to that of states or counties. Nearly all tribes have formed their own governments, which legislate civil and criminal laws, impose taxes, determine tribal citizenship, regulate certain activities, and exclude persons from tribal lands. Under the Indian Reorganization Act of 1934, the federal government allowed tribes to adopt constitutions or other governing documents. Most tribes have governments modeled on the federal system of dividing powers between a legislative, executive, and judicial branch. The legislators and chief executive are elected in most tribes, but there is a relatively large amount of diversity in tribal constitutions. For example, some tribes, like the Navajo Nation, have an unwritten constitution. Other tribes are theocracies or operate under corporate governance structures. For tribes with written constitutions, some have adopted an indirectly elected chief executive in a parliamentary-type system, while others have adopted a directly elected chief executive in a presidential-type system (Akee, Jorgensen, & Sunde, 2015). Congress granted tribes more authority to create and administer their own programs and services through the Indian Self-Determination and Education Assistance Act of 1975 and the Tribal Self-Governance Act of 1994. Before those acts were passed, the BIA administered most of those programs and services (BIA, n.d).

States also have authority over Native American lands in some instances. For example, Public Law 280, implemented in the 1950s and 1960s, forced some reservations to turn over their judicial systems to their respective state governments. Some tribes, however, retained their own judicial systems (Anderson & Parker, 2008). In addition, the Indian Gaming Regulatory Act of 1988 requires that state governments and tribal governments negotiate a compact for certain types of gambling and gaming. States can block certain casinos and other gaming on Native American lands if the state government refuses to agree to a compact, as was seen in California for many years. In general, however, the ability of state governments to regulate and tax Native Americans is relatively limited (Akee, Spilde, & Taylor, 2015; Regan & Anderson, 2014; Roback, 1992; Akee, Jorgensen, & Sunde, 2015).

1.3 Effects of the Administrative State on Native American Lands

The unique institutions that govern Native American lands tend to impose high costs on economic enterprises, limit entrepreneurship, and restrict individual liberty on a fundamental level. These institutions also facilitate negative forms of political entrepreneurship, erode the rule of law, and hamper markets from working efficiently.

1.3.1 Restricted Economic Liberty and Discrimination

Although the intricate arrangement of tribal, state, and federal governance is meant to secure property rights and the rule of law, Native American lands often lack robust private property rights and a systematic application of the rule of law (Anderson & Parker, 2009). Through the land trust system, the BIA and local tribal governments have wide discretion because of the complex system of property rights and bureaucratic management of the land.

The land trust system significantly raises the transaction costs for using property. For example, either tribal or allotted lands held in trust by the BIA are subject to BIA regulations, which increases the time and monetary costs of engaging in economic enterprises. In many cases, the BIA must grant permission to change land use, to make capital improvements, or to lease lands. The trust system means that individuals or tribes cannot sell those lands or use them for loan collateral (Anderson & Parker, 2009). Land-use decisions for tribal trust lands are even more complex than for individual trust lands because tribal trust land faces both BIA trust constraints and additional tribal controls that restrict leasing or other uses. For example, both BIA agents and tribal agents must approve any development or divestment of tribal trust land, including the construction of houses or business (Anderson & Lueck, 1992).

In addition, a peculiar phenomenon called “fractionation” has emerged on allotted trust lands, and it affects roughly a quarter of Indian land. Under the Dawes Act, the federal government allotted parcels of land and held it in trust for allottees and their descendants. Fractionation occurs when hundreds or thousands of these descendants co-own a parcel of allotted land, but they do not own any distinct area of that land; they own a percentage share of that land. This significantly raises the transaction costs of using a piece of allotted trust land because the owners must agree on any course of action. The American Indian Agricultural Resource Management Act of 1993, the Indian Land Consolidation Act of 2000, and the American Indian Probate Reform Act of 2004 were all meant to reduce the high transaction costs of leasing allotted trust land that suffers from fractionation. Prior to those laws, unanimous consent of the co-owners was required to lease allotted trust land. Despite those laws, bureaucratic oversight of allotted trust land maintains relatively high transaction costs (Anderson & Lueck ,1992; Russ & Stratmann, 2014).

Because a large portion of Native American land is held in the trust system, the liberty of individual Native Americans is inherently limited. On some reservations, such as those in the Southwest, very little land was allotted, meaning that tribal trust land makes up the majority of those reservations. Other reservations in the Northern Plains, Rocky Mountains, and Pacific Northwest were allotted to a much higher degree. Those allotted lands are still held in trust by the federal government, but they are much less subject to tribal bureaucracies (Carlson, 1981). When federal and tribal agencies have the power to decide who has access to land and how that land will be used, those bureaucracies inherently suppress individual freedom. In recent years, some scholars and Native American leaders have called for more market opportunities on Indian lands. Arguments for more laissez faire policies have been met with polarized opinions.

Not only is individual freedom limited under federal and tribal bureaucracies, but it also becomes subject to the political whims of those in power. Native American reservations rely, to a large degree, on centralized economic planning because of the peculiar nature of their property rights. When a society is dependent on central planning and bureaucratic allocation, the small minority in power will often impose their preferences on others (Hayek, 2007). The small minority may include the bureaucrats who make the centralized decisions, or it may be another concentrated interest group that has persuaded the bureaucrats in power.

Bureaucratic allocation of resources necessarily indulges one person's preferences over others. Economic planning by government officials, no matter the scope, is inherently discriminatory because it "involves deliberate discrimination between particular needs of different people, and allowing one man to do what another must be prevented from doing. It must lay down by a legal rule of how well off particular people shall be and what different people are to be allowed to have and do" (Hayek, 2007).

Buchanan (1991, p. 219) argues that "favoritism, discriminatory treatment (both positive and negative), and arbitrary classifications" will emerge from socio-political systems that force people into dependency relationships with bureaucrats. An arbitrary class distinction can arise when a dependency relationship is introduced. Markets minimize bureaucratic discretion, but formal and informal institutions must allow for dispersed private ownership of property and enforcement of contracts to allow markets. Without private ownership and the enforcement of contracts, bureaucrats make allocation decisions based on their own preferences, not on the most preferred outcomes of the individuals under their jurisdiction.

The Navajo Nation is one of the most bureaucratic and most restrictive reservations. The Navajo experience shows how entanglement between bureaucratic governance and private interests can restrict individuals from enjoying basic economic freedoms that other Americans enjoy nearly every day, such as owning real estate or starting a business. For the Navajo Nation, the degree of development and which lands will be developed have always been bureaucratic decisions on the part of federal and tribal agents. Bureaucratic decisions determine the degree of desired development, where development will occur, and who will benefit from such development. Political corruption has been an issue with the Navajo Nation in the past, mostly in the form of rent seeking (Anderson & Lueck, 1992). In the Navajo Nation, federal and tribal officials have focused mainly on mineral resource development, but this development may only provide a short-term respite from perpetual poverty. Energy resources can negatively affect economic growth indirectly when politics and institutions do not channel those resources in economically productive ways (Campbell & Snyder, 2012).

1.3.2 Social Waste and Negative Political Entrepreneurship

Within heavily bureaucratic institutions such as Native American reservations, markets cannot fully emerge. Buchanan (1991) argues that a market system is beneficial specifically because an "economy that is organized on market principles effectively minimizes the number of economic decisions that must be made politically" (p. 216). In a market system, it is not necessary for politicians or bureaucrats to allocate the available supply among potential demanders.

Political allocation and management of resources increases bureaucratic discretion and creates social waste. Discretion can be problematic for several reasons. Bureaucratic allocation is necessarily subject to the discretionary direction of a bureaucratic agency that does not exist under market organization. This discretion leads to dependency on a bureaucracy. As public choice theory suggests, bureaucrats will allocate resources to exercise their discretion to maximize their utility.

The federal land trust presents a large barrier to a real estate market on reservations, and without a market for land, federal and tribal bureaucrats cannot engage in economic calculation to allocate land to its mostly highly valued uses (Mises, 1990). The current system of bureaucratic allocation imposes artificially high transaction costs on people who would like to use trust land for economic development or other entrepreneurial activities.

Wide discretion allows bureaucrats to become political entrepreneurs. DiLorenzo (1988) argues that "the essence of political entrepreneurship is to destroy wealth through negative-sum rent-seeking behavior" (p. 66). All bureaucrats are subject to interest-group pressures, but bureaucrats who become political entrepreneurs try to increase the demand for their services, which usually comes in the form of wealth transfers. Wagner (1966) argues that bureaucracies have strong incentives to promote and stimulate a perceived need for their activities, meaning that every bureaucracy has an inclination to become a vigorous lobbyist. Bennett and DiLorenzo (1985) argue that political entrepreneurs often benefit themselves through tax-funded politics. Government officials can stimulate the demand for their services by giving taxpayer money to special interests. Special interest groups then aid the government officials by lobbying, campaigning, registering voters, and conducting other forms of partisan politics.

With such large amounts of bureaucratic discretion, many people have learned that they can benefit through a perverse type of entrepreneurship in the form of rent seeking. Political rent seeking is not economically productive, but redistributive. In many cases, political entrepreneurs and rent seekers have found ways to persuade bureaucrats for grants rather than increasing the stock of goods and services. Federal and tribal discretion over resource allocation and monetary handouts has created and perpetuated Native American dependency on government handouts rather than economically productive activity (Swimmer, 1989).

When Native American communities are more closely linked with off-reservation economies, they experience higher qualities of life and engage in more entrepreneurship. When tribes are isolated or cut off from outside communities, they have limited ability to spend their income or otherwise engage in mutually beneficial exchange. For tribes that are more integrated with off-reservation economies, Native Americans experience higher individual incomes, employment, and quality of life, as well as lower rates of alcoholism (Swimmer, 1989). In many cases, tribal governments directly own or manage many businesses on reservations, which sets up a system for political entrepreneurship rather than economic entrepreneurship. Economic entrepreneurship is less likely to take place in the presence of bureaucratic control or incomplete private property rights.

1.3.3 Erosion of the Rule of Law and Hampering the Entrepreneurial Market Process

Under the rule of law, a government limits its authority to fixed rules that limit politicians and bureaucrats from taking ad hoc action. The rule of law implies that legal rules are generalized and apply equally to everyone. Under arbitrary government, however, government officials have the power to use their discretion as they wish to achieve particular ends (Hayek, 2007).

Native American reservations fall largely under arbitrary government control because there is little stability or predictability in the way that federal and tribal bureaucrats fulfill their objectives when it comes to land trust issues or other public policies. Economic development on reservations has been limited largely due to legal and political uncertainty and complexity. There are at least three ways in which this uncertainty and complexity harms economic outcomes First, the federal trusteeship of Indian lands and other legislation make it difficult for individual trust land owners or tribes to decide whether to develop resources. Second, tribes have a difficult time attracting outside investors because of the uncertainty associated with tribal legal institutions. Third, federal and tribal agencies have demonstrated repeatedly that they do not manage resources to maximize the welfare of Native Americans (Regan & Anderson, 2014).

Potential entrepreneurs or developers must navigate a labyrinth of federal and bureaucratic laws and regulations rooted in the dual bureaucracy. For example, non-Native Americans may be subject to tribal or federal taxes when engaging in economic transactions with a tribe or its members on a reservation. Those overlapping jurisdictions and various taxation schemes raise the transaction costs and opportunity costs of conducting economic enterprises on tribal land or with tribal agencies.

Uncertainty is especially prevalent on reservation lands because of the common law sovereign immunity doctrine. This doctrine makes tribes immune from suit unless Congress explicitly gives authorization. Thus, if a tribe-owned business violates the terms of a contract, non-Indians may have a difficult and costly time arbitrating the contract violation. Non-Indians can contract directly with a federally chartered tribal corporation or agency, which may allow some legal protection. The complexity and uncertainty of contract enforcement and long-term property rights security means that engaging in commercial transactions on Native American land can be unappealing and costly (Gover & Stetson, 1988).

The dual bureaucracy of federal and tribal control presents a large cost for potential entrepreneurs. Because costs of market entry are high, many reservations have a strong informal economy that provides an important source of income for many Native Americans. For example, the Navajo Nation has a robust informal economy that operates through familial ties or near tourist destinations that are not regulated by either bureaucracy. Some common informal enterprises include selling homemade food or handmade crafts near tourist areas. The bureaucratic constraints that impose high costs on potential entrepreneurs have forced entrepreneurial action into the informal sector (Rosser, 2005).

Even though many Native Americans are attempting to engage in entrepreneurial profit opportunities, the federal and tribal bureaucracies can intervene in the formal and informal sectors, which distorts the way they people engage in mutually beneficial exchange. One of the main concerns of bureaucratic interference into market processes on Native American lands is that government actions may spur unintended and undesired market adjustments. Those unintended consequences may create outcomes that are worse than those that would have emerged in a free market (Kirzner, 1985).

Not all regulations or market interventions will necessarily harm people participating in the market. However, policy decisions made by either federal or tribal officials will distort the way the people would have otherwise engaged in mutually beneficial exchange on the market. Government officials make policy decisions without the entrepreneurial profit incentive. Entrepreneurs are important for human well-being because they discover previously unknown goods and services that enhance human welfare. When government regulation or other interventions impede the entrepreneurial discovery process, they also impose deadweight welfare losses upon the economy. Thus, on Native American lands that are subject to a wide array of regulations and interventions from the dual bureaucracy, Native Americans face an especially hampered market economy where entrepreneurial discovery is severely limited.

1.4 Conclusion

Due to the current system of property rights and bureaucratic governance on reservations and other trust lands, Native Americans face high costs when trying to engage in private enterprise. For example, federal and tribal officials have wide discretion in deciding who gets access to tribal land and how that land will be used, among other powers of regulation, such as licensing. The unique institutions of the federal land trust and overlapping bureaucracies restrict economic freedom, erode the rule of law, facilitate discrimination, and hamper market efficiency.

With constraints on private property ownership, Native Americans have a more difficult time engaging in mutually beneficial exchange, compared to other Americans. The institutions that govern Native American lands hamper entrepreneurial action, thus limiting the discovery of new goods and services that could improve the wellbeing of Native Americans. Native Americans will continue to suffer from systematic poverty while bureaucratic institutions and the federal land trust continue to impede private enterprise.

Better-defined and better-enforced private property rights, as well as reductions in bureaucratic red tape, may provide more opportunities for mutually beneficial exchange, entrepreneurship, and innovation. The current governance and land management structures, however, make it difficult to engage in almost any commercial operation. Only a fundamental shift in the property rights and governance regimes will allow Native Americans to have the same economic liberties that other Americans have

CHAPTER TWO - INSTITUTIONS AND ECONOMIC DEVELOPMENT ON NATIVE AMERICAN LANDS

2.1 Introduction

Native American lands are often rich in natural and cultural resources. Paradoxically, these lands are often the poorest parts of the United States. Native Americans own private businesses at a much lower rate per capita compared to other Americans, and the businesses they own produce less income on average than the businesses owned by all other racial groups (Miller, 2001). As of 2010, 28.4 percent of American Indians and Alaska Natives were below the official poverty line, compared to 15.3 percent for the nation as a whole. Roughly 22 percent of Native Americans live on federally recognized reservations or other specially designated areas (U.S. Bureau of the Census, 2011).

Previous economic scholarship has demonstrated an institutional basis for Native American poverty. Poverty is blamed largely on formal governance structures, especially inefficient property-rights regimes and excessive bureaucratic governance (McChesney, 1990; Cornell & Kalt, 1995a; Anderson & Parker, 2008, 2009; Akee & Jorgensen, 2014; Regan & Anderson, 2014; Russ & Stratmann, 2014). Although previous scholarship has emphasized the role of formal institutions, market-process theory as it relates to Native American economies has been neglected in this literature.

This paper attempts to fill the gap by bringing market-process theory and entrepreneurship into the broader discussion of the institutional effects on Native American economic development. Institutions, as the formal and informal rules by which people interact, are critical to economic development anywhere in the world. Institutions are fundamental to economic development because certain institutions tend to facilitate mutually beneficial exchange, entrepreneurship, and innovation. Other institutions, however, may impede economic relations between people, or they may direct people to act in socially wasteful manners (Baumol, 1990; North, 1990; Murphy, Shleifer, & Vishny, 1991, 1993; Acemoglu, Johnson, & Robinson, 2001, 2002, 2005; Acemoglu & Johnson, 2005; Boettke, Coyne, & Leeson, 2008; Sobel, 2008; Acemoglu & Robinson, 2012).

The entrepreneurial market process is inextricably linked with the institutions that shape the private and public spheres. Within the market-process framework, people in the market react to their constantly changing circumstances. In this state of flux, they can become entrepreneurs and innovators by using their unique, subjective, and tacit knowledge to find new ways of fulfilling human desires (Hayek, 1945, 1978, 1988; Mises, 1949, [1936] 1981; Kirzner, 1973). Institutions can sometimes create barriers or raise costs to participating in the market process. Economic growth and development are the direct result of the competitive entrepreneurial market process, and the quality of institutions that govern social action is the ultimate determinant of individuals' willingness to engage in entrepreneurial activity.

This paper explicitly adds market-process theory to the existing literature related to institutions and entrepreneurship on Native American reservations. This addition is important because it gives greater insight into the intimate connections between institutions, entrepreneurship, and economic growth. Institutional contexts lead entrepreneurs to direct their attention in either wealth-creating or wealth-destroying ways. When institutions guide individuals to be alert to arbitrage opportunities that are privately and socially beneficial, they can engage in productive entrepreneurship, which subsequently determines how economic growth and development will unfold in a dynamic world (Holcombe, 1998; Boettke & Coyne, 2003, 2009). Without an explicit acknowledgment of market-process theory, the institutional explanation for Native American economic development lacks the holistic view it deserves.

Institutions impede entrepreneurship, the market process, and economic development on Native American reservations through three overarching channels: (1) the federal land trust, (2) a dual federal–tribal bureaucracy, and (3) legal and political uncertainty. Those channels generally raise barriers to mutually beneficial exchange, entrepreneurship, and innovation. In particular, they generally increase transaction costs, rent seeking, and bureaucratic delay, which impede many Native Americans from engaging in private enterprise. This paper uses comparative institutional analysis and case studies to illustrate how the federal land trust, the dual bureaucracy, and institutional uncertainty create barriers and high transaction costs to private enterprise and other forms of entrepreneurship on Native American lands. It pulls examples from a number of different reservations and acknowledges the institutional differences across reservations.

It takes a very broad view of the formal institutions that are common to most federally recognized tribes, even though reservations across the United States have great diversity regarding institutions and levels of wealth. The federal land trust, dual federal–tribal bureaucracies, and legal/political uncertainty are common to many tribes regardless of other differences in institutional structures that are unique to each tribe.

First, the federal trust system allows the federal government to hold the title for parcels of land owned by a tribal government or for individual Native Americans. Due to this system, private-property rights are often ill-defined and convoluted. When private-property ownership is not well defined and enforced, Native Americans face higher costs of engaging in the entrepreneurial market process.

Second, due to the long history of federal–Native relations, a dual bureaucracy of federal and tribal officials now has broad discretion to oversee and regulate economic enterprises. Federal officials in many agencies and tribal officials have the power to oversee how land is used, which types of businesses are allowed, who will receive money, how business will be regulated, and so on. Relatively large amounts of bureaucratic red tape increase the costs of engaging in market enterprises, entrepreneurship, and innovation on Native American lands.

Third, legal and political uncertainty and complexity caused by formal institutions have been two of the greatest barriers to economic development. Uncertainty regarding taxation schemes, judicial jurisdiction, incorporation codes, and access to the capital market creates potential barriers to potential Native entrepreneurs as well as to off-reservation entrepreneurs who wish to enter reservation markets.

Understanding the history of Native American policy is critical to understanding how institutions have affected entrepreneurship and economic growth; however, this paper cannot adequately explain the nuances that are necessary for a full historical perspective. I have attempted to include the historical context that is necessary to understand a few key institutions as they affect entrepreneurship and economic growth in Indian Country.

In the first section, I present a theoretical framework for how institutions impact entrepreneurship and the market process, which subsequently affects economic development. In the second section, I discuss specifically how the three channels described earlier hamper the market process and impede economic development on Native American lands. I conclude with the implications of this research.

2.2 Institutions Impact Entrepreneurship and the Market Process

Institutions influence what activities people may engage in and whether those activities will be wealth creating or wealth destroying. Institutions are the formal and informal rules that determine economic, political, and social outcomes. Economic development occurs only in contexts where institutions have the characteristics necessary to facilitate such development (North, 1990; Acemoglu, Johnson, & Robinson, 2001, 2002, 2005; Acemoglu & Johnson, 2005; Acemoglu & Robinson, 2012).

Some institutional arrangements guide entrepreneurs toward productive market activity, while other institutions guide entrepreneurs to unproductive activities such as rent seeking. Institutions that help entrepreneurs focus on productive market activities are more likely to experience higher rates of economic growth (Baumol, 1990; Murphy, Shleifer, & Vishny, 1991, 1993). With institutions that decrease the profitability of unproductive entrepreneurship, entrepreneurs are more likely to be productive by creating new wealth and enhancing society's overall well-being (Sobel, 2008). For formal institutions to be successful, they must comport with the informal institutions; otherwise, it is likely that the formal institutions will be useless at best or harmful at worst (North, 1990, 2005; Boettke, Coyne, & Leeson, 2008).

The importance of institutions is made more explicit with an understanding of the market process. The market process is a spontaneous order of mutually beneficial exchange that is embedded within an institutional environment (Hayek, 1978, 1988; Kirzner, 1985, 2002). One of the major prerequisites for a well-functioning market is the institution of private-property rights. Markets cannot work effectively if property rights are not clearly defined and protected, which requires some basic standard of the rule of law (Mises, 1927). If an economic system is based in private-property ownership, the rationally self-interested owners function as speculators who work toward the highest return on their capital as possible (Mises, [1936] 1981). Property-rights regimes and formal governance structures are constituent parts to a larger, more comprehensive approach to Native American economic development.

A key component of the market process is the entrepreneur, who is alert to profit opportunities. As entrepreneurs look for and exploit opportunities to fulfill human wants more efficiently, they allow people to cope reasonably well with changing conditions through a process of discovery and coordination (Mises, 1949; Kirzner, 1973).

Entrepreneurs exist in political or market settings, so institutions shape the type of entrepreneurship that will emerge and whether it will be productive or redistributive (Baumol, 1990; Boettke & Coyne, 2003; Sobel, 2008).

One of the most important functions of markets is to coordinate a diverse set of plans. This coordination takes places because markets and market prices disseminate subjective and dispersed knowledge so that market errors and allocative inefficiencies tend to be resolved (Hayek, 1945; Cordato, 1992; Wagner, 2010). Formal institutions that allow for large amounts of government intervention in markets can cause discoordination and spur negative unintended consequences (Kirzner, 1985). Therefore, markets cannot coordinate people's actions as efficiently when government interventions distort them. Unintended consequences from government policies may then prompt calls for more government interventions. These next interventions may lead to further problems. As governments become increasingly involved in resource allocation, those interventions further distort market signals that emerge from market exchange and cause a misallocation of resources, which are diverted from their more highly valued uses (Ikeda, 1997).

The role of institutions and the entrepreneurial market process are inextricably linked. Entrepreneurs can find and exploit profit opportunities under a wide range of institutions. People can also engage in mutually beneficial exchange under many types of institutions. However, some institutions are better than others at facilitating mutually beneficial exchange and directing entrepreneurial attention in socially productive rather than socially destructive ways. Institutional frameworks that facilitate the rule of law and secure property rights enhance economic development, while also expanding people's ability to lead the sort of lives that they value (Boettke & Subrick, 2003). Economic development is therefore rooted in institutions that allow the market process and entrepreneurs to satisfy human desires more fully.

Institutions are fundamental for entrepreneurial action because only certain institutional environments incentivize entrepreneurs to discover new resources, substitutes for existing resources, or trading partners to obtain resources. In addition, only certain institutional contexts incentivize entrepreneurs to discover new technological approaches to problems. Therefore, a society's economic development or economic stagnation is rooted in individuals' ability (1) to bet on ideas and (2) to find ways to finance those bets. The quality of institutions that govern social action is the ultimate determinant of individuals' willingness to engage in entrepreneurial activity (Boettke & Coyne, 2009). An environment that facilitates entrepreneurial activity is a by-product of institutions, not a cause (Boettke & Coyne, 2003). Thus, economic growth and development are the direct result of the competitive entrepreneurial market process (Holcombe, 1998).

Therefore, institutions that facilitate productive entrepreneurship are those that clearly define property rights, secure property rights, provide the rule of law, encourage positive-sum activities, and discourage zero-sum or negative-sum activities. Institutions that obstruct the entrepreneurial market process are those that convolute property rights, distort market prices, create credible commitment problems, and allow political actors to arbitrarily interfere in economic affairs. The following section highlights three departures from the institutions that facilitate productive entrepreneurship in the market process.

2.3 Institutions That Inhibit Economic Development on Native American Lands

2.3.1 Federal Trust System and Property Rights

One of the most important ways that the federal government and tribal governments interact is through the federal trust system. The modern federal trust responsibility is a fiduciary obligation to protect tribal lands and resources as well as an obligation to enforce federal laws on Indian lands (U.S. Bureau of Indian Affairs, n.d.). The trust is meant to protect Indian trust resources, enhance tribal self-government, and raise standards of living through social and economic programs. All federal agencies have the responsibility to honor the trust (Allen, 1989). The federal government holds approximately 56.2 million acres (about 88,000 square miles) in trust for Native Americans (U.S. Bureau of the Census, 2011). Despite the federal trust, many reservations remain pockets of poverty within the world's wealthiest country.

The market process relies on the institution of private property to function, but on Native American reservations private-property rights are often complex and convoluted due to the federal land trust. This complexity raises the costs of participating in the market process and engaging in entrepreneurial activity on reservations. The federal land trust also inflates the power of tribal and federal bureaucracies to intervene in the market process, which increases the transaction costs of entrepreneurial activity. The current institutional structures of property rights and bureaucratic governance have deprived

Native Americans of the fundamental prerequisites for a market society, thus limiting their economic development.

The modern federal trust emerged through two centuries of federal policies.[1] Although the history is nuanced, this paper focuses on the two major policies that have shaped the federal trust system: the Dawes Act of 1887 and the Indian Reorganization Act of 1934 (also known as the Wheeler-Howard Act or the "Indian New Deal").

In 1887, Congress passed the Dawes Act, also known as the General Allotment Act, to limit tribal sovereignty and to force assimilation. The Dawes Act allowed the federal government to allot parcels of reservation land to individual Native Americans. Federal officials expected Native Americans to adopt Euro-American agricultural practices on their allotted land.[2] Land that federal officials deemed as "surplus" was sold to white Americans for settlement (McChesney, 1990; Thompson, 1997; Anderson & Parker, 2009; Lehman, 2010; Akee, Jorgensen, & Sunde, 2015).

Allotment through the Dawes Act did little to improve the immediate welfare of Native Americans (Hacker & Haines, 2005). The process of allotment often left Native Americans with the least-productive lands (Anderson & Lueck, 1992; Miller, 2001; Newton, 2005). In addition, allotment and the federal trust system destroyed the informal land rights that Native Americans had had for generations. The federal government's attempt to impose alternative institutions with different values, morals, and rules caused

[1] Before colonization, many Native Americans lived under systems of private property and mutually beneficial exchange. Historically, many American Indian tribes recognized various forms of permanent or semipermanent private rights in land (Miller 2001).

[2] The Dawes Act stipulated that the federal government would hold allotted land in trust for twenty-five years. The federal government would retain the legal title until individual Native Americans proved that they were "competent" to manage their own land (McChesney 1990).

Native Americans to suffer economically for generations (Carlson, 1981; McChesney, 1990; Roback, 1992; Anderson & Parker, 2009).

In 1934, Congress passed the Indian Reorganization Act (IRA), which ended allotment. The combination of the Dawes Act and the IRA became the foundation for the modern trust system. The IRA changed the previous decades of federal Native American policy in at least three significant ways. First, it allowed Native Americans who held full legal title to their land to retain the title. Second, it ended allotment and allowed the federal government to hold land in trust indefinitely. Because the federal government could hold land in trust indefinitely, there are still repercussions over private-property rights today. For example, Native Americans are subject to trust constraints over alienation, leasing, and encumbrance if their land was still in trust when Congress passed the IRA. Third, the act restored some tribal properties that were within the original reservations (McChesney, 1990; Anderson & Lueck, 1992; Mika ,1995). It is important to note that not all reservations were allotted, and some reservations, especially in Oklahoma, were treated by special legislation.

The federal government's various policies have caused four distinct categories of property rights to emerge on Native American lands: (1) tribal trust lands, (2) allotted trust lands, (3) restricted fee lands, and (4) fee-simple lands. On tribal trust lands, the federal government holds the legal title, but tribal governments manage, allocate, and regulate the land. Tribal governments may allow individuals or corporations to use tribal trust land, subject to the oversight of federal and tribal officials. Tribes cannot sell any tribal trust lands without explicit federal permission. Tribal trust lands comprise about 45 million acres (Miller, 2001).

Second, allotted trust lands are owned by individuals, but the federal government holds the title of the land in trust for these individual Native Americans and their heirs. Allotted trust lands comprise about 10 million acres (Miller, 2001). On allotted trust lands, a phenomenon called "fractionation" has emerged, affecting approximately one-quarter of Native American land. When the federal government ended allotment under the IRA, it held the land in trust for the original allottees *and their descendants*. After several generations, hundreds or thousands of people may co-own the same parcel of land. Fractionation is especially complex because these co-owners own a percentage share of that land, not any distinct area.

Third, some Native American lands are classified as having a restricted status, also known as restricted fee. Restricted-fee lands are owned by tribes or by individuals. Tribes or individual Native American hold the title to a parcel of land, but the secretary of the interior must approve any alienating or encumbering of that land.[3]

Fourth, fee-simple lands, also known as fee-patent lands, are owned outright by individual Native Americans and are not held in trust. Land in fee can be used as collateral for a loan, whereas trust land usually cannot be used for collateral. Landowners can sell their fee land without U.S. Bureau of Indian Affairs (BIA) approval. Fee land corresponds to the normal conception of private-property rights for most Americans. The

[3] Some attempts to reform this regime have been attempted, but none has succeeded. See the American Indian Empowerment Act of 2011.

amount of fee-simple land on each reservation can vary and depends on each reservation's unique history of allotment. Of all land under the BIA, approximately 75 percent are in tribal trust, 20 percent are in individual trust, and 5 percent are fee simple (Anderson & Parker, 2011). Between 1 and 2 percent of land on the Navajo Reservation (the nation's largest reservation) is fee-simple land, which is scattered throughout the reservation (Listokin, 2001). The Yakima Indian Reservation in Washington is 20 percent fee-simple land because of allotment.[4]

The federal trust system is a key institution that affects the way that private-property rights are defined and enforced. Many reservations have defined and enforced property-rights regimes, but only a small fraction is individualized private property. The complexity of property rights on Native American lands poses institutional barriers and transaction costs to entrepreneurial action. The sovereign status of the tribes is still evolving, leading to uncertainty over the nature of their control over land and other natural resources. Private enterprise and economic development are being stifled in the absence of simple private-property rights (Anderson, Benson, & Flanagan, 2006). The institution of the federal trust and its accompanying bureaucratic costs and complexity have contributed to the rampant poverty on Indian lands in spite of the abundance of natural resources and federal welfare payments.

Each reservation across the United States has a unique composition of the four categories of land ownership mentioned earlier. For example, some reservations consist mostly of tribal trust land, whereas other are largely allotted trust land. Some reservations

[4] *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation* (502 U.S. 251 [1992]).

contain very little trust land, and others have roughly equal parts of each type of land ownership. Despite the heterogeneity across Indian Country, tribal trust lands, allotted trust lands, and restricted-fee lands, wherever they may exist, raise the transaction costs of using property and engaging in entrepreneurial activity because of additional government involvement.

Trust lands raise the transaction costs of using private property and engaging in entrepreneurial activity in at least specific two ways. First, the nonalienation aspect of the land trust means that off-reservation lending institutions cannot use land as collateral on loans, which is one of the most common means of collateral in the United States. Because the United States holds the legal title to Indian trust land, Native Americans on trust lands must gain the federal government's permission to use their allotments as collateral to mortgage, lease, or develop the land (Miller, 2001). Thus, the additional transaction costs pose barriers to potential entrepreneurial activity.

Recently, however, various tribes have been successful at circumventing the collateral problem, leading to on-reserve lending by off-reserve lending institutions. For example, some tribal governments have begun using leasehold mortgages and long-term lease income as collateral on loans.[5] At a macrolevel scale, there are still problems with the current situation of collateral, but on a more microlevel some tribes are having considerable success at addressing those problems that have been a barrier for decades. The federal government has also implemented several initiatives to increase mortgage

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[5] See Oglala Sioux Tribal Leasehold Mortgage Code, Oglala Sioux Tribe Ordinance 93-16, Amended by Ordinance 95-01, Law and Order Code, chap. 46 (last amended 1996; new ordinances received 2002); Mortgages on Trust Lands, Lac du Flambeau Band of Lake Superior Chippewa, Indians Tribal Code, chap. 84 (1997); Listokin et al. 2017.

lending on trust lands, such as the Section 184 Indian Home Loan Guarantee Program, the Section 502 Direct Loan Program, and the Native American Veteran Direct Loan Program. The Indian Home Loan Guarantee Program is the most used program to support tribal trust mortgage lending (Listokin et al., 2017). More than twenty-six thousand loans have been guaranteed under this program since it began in 1995. However, the U.S. Department of Housing and Urban Development's Office of Inspector General (2015) found that there has not been adequate oversight of the Section 184 program, which has increased overall risk to the program.

Second, the land trust inhibits a robust real-estate market from emerging, which implies that there is no efficient mechanism for allocating land use. Without the private ownership of land, it is impossible for a true market economy to emerge, and, thus, economic development is necessarily hindered as long as such an institution remains. Because of the combination of the federal land trust and a bureaucratic allocation mechanism, a true housing market cannot emerge, and other related industries are limited, such as the construction industry. In this case, the first-best solution would be to create a true market for reservation land, but as long as the nonalienation rule exists, the allocation of land resources will continue to be inefficient (Rosser, 2005). On allotted trust land, fractionation has become a significant barrier to entrepreneurial activity. Because land is co-owned by many people, fractionation raises the transaction costs of using allotted trust land, especially leasing the land for any kind of economic development. Prior to the 1990s, leasing allotted trust land that was fractionated required the co-owners' unanimous consent. Unanimous consent, even for relatively small groups, has high transactions costs because of the tragedy of the anticommons (Heller, 1998). Congress passed the American Indian Agricultural Resource Management Act of 1993, the Indian Land Consolidation Act of 2000, and the American Indian Probate Reform Act of 2004 to reduce the high transaction costs of leasing allotted trust land that suffers from fractionation. Despite those marginal improvements, bureaucratic oversight of allotted trust land maintains relatively high transaction costs (Russ & Stratmann, 2014).

Some contemporary comparative literature challenges the assumption that well-defined and well-protected private-property rights are a prerequisite for economic growth in Native communities. The economists Fernando Aragon and Anke Kessler (2018) find that stronger forms of private-property rights related to lawful possession, designated land, and permits have no significant impact on household income or employment outcomes for Indigenous Canadians. However, Aragon (2015) has also found that modern Canadian treaties that clarify ownership of land and natural resources have increased real income and real wages. Krishna Pendakur and Ravi Pendakur (2018) find that some legislative reforms regarding property rights and financial authority led to income gains for Indigenous Canadians, but not all reforms led to income gains. These Canadian studies do not directly apply to the U.S. context, but they do highlight the complexity surrounding the property rights on Native American lands and their relationship to market processes. Property-rights reforms are not a panacea for economic growth on Native American lands. The institutional details involved in property-rights reforms are crucial, and other factors may diminish the benefits from property-rights reforms, such as legal-political uncertainty, rent seeking, and excessive bureaucratic discretion.

2.3.2 Dual Bureaucracy

In the modern day, federal and tribal officials have broad authority and discretion regarding trust lands and other public policies. The pervasiveness of bureaucratic influence throughout the economic sphere raises the costs of engaging in entrepreneurial activity and private enterprise. Reducing bureaucratic barriers and lowering the transactions costs would improve economic outcomes for individual Native Americans and tribes as a whole, regardless of cultural attitudes toward private property. This section provides evidence of how the dual bureaucracy affects the market process.

The relationship between the BIA and tribal governments has become increasingly complex. The various property-rights regimes and the various responsibilities of the BIA and tribes have emerged from the drastic changes in Native American policy. The combination of all these factors has made the interactions between the federal government and tribal governments complex and ill-defined in many ways. The BIA has a duty to consult with the tribes in a government-to-government relationship, but it also has a legal responsibility for fulfilling the trust obligations to "protect tribal property and resources" (BIA, 2000). The doctrine of self-determination inherently comes into conflict with the BIA's trust responsibility, meaning that federal and tribal officials may be at odds in some circumstances when individual decision makers in both entities attempt to manage resources that are under their dual jurisdiction.[6]

The IRA allowed tribes to adopt constitutions or other governing documents. Most tribes have governments modeled on the federal system of dividing powers between legislative, executive, and judicial branches. The legislators and chief executive are elected in most tribes, but there is a relatively large amount of diversity in tribal constitutions. Some tribes, such as the Navajo Nation, have an unwritten constitution. Other tribes are theocracies or operate under corporate governance structures. For tribes with written constitutions, some have adopted an indirectly elected chief executive in a parliamentary-type system, while others have adopted a directly elected chief executive in a presidential-type system. These constitutions stipulate how tribal governments will legislate civil and criminal laws, impose taxes, determine tribal citizenship, regulate certain activities, and exclude persons from tribal lands (Cornell & Kalt, 1995a; Akee, Jorgensen, & Sunde, 2015).[7]

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[6] Within the BIA's various offices, specific divisions focus on economic development, workforce planning and control, and management of natural resources, among other responsibilities (U.S. BIA 2015). The Office of Trust Services of the U.S. Department of the Interior deals mainly with land-related trust issues. In addition, it helps manage, develop, and protect natural resources (U.S. Department of the Interior, Office of Trust Services n.d.). Several other federal agencies make policies regarding Native Americans, including the Department of Education, the Department of Housing and Urban Development, the Department of Health and Human Services, and so on. The White House Council on Native American Affairs is meant to improve coordination among the various executive departments, agencies, and offices that have responsibilities over Native Americans (Executive Order No. 13647, 3 C.F.R. [2013]).

[7] Before the 1970s, the BIA administered most of the programs and services for Native American tribes, but through the Indian Self-Determination and Education Assistance Act of 1975 and the Tribal Self-Governance Act of 1994, Congress granted tribes more authority to create and administer their own programs and services (U.S. BIA n.d.). Since self-determination began in the 1970s, various tribes have taken over many functions from the BIA.

The governance institutions for Native Americans become slightly more complex when factoring in the influence of state governments. In general, state governments' ability to legislate, regulate, and tax Native American lands is relatively limited, but there are a few exceptions, such as some judicial jurisdictions and gambling in certain circumstances, among others (Roback, 1992; Anderson & Parker, 2008; Regan & Anderson, 2014; Akee, Jorgensen, & Sunde, 2015; Akee, Spilde, & Taylor, 2015).

Under the modern federal trust system and a historically high degree of self-determinism, many reservations still lack economic growth. Conflicting goals between tribal officials and federal officials as well as conflicting goals within tribes have slowed the resolution of economic problems (Mika, 1995). Due to Congress's constitutional obligation to Native Americans, the federal government has assumed an active role in managing or regulating many aspects of life on a reservation. Thus, the emergent institutions have had many unintended consequences that have stifled economic development for Native Americans across the country.

Some tribes have struggled with governance issues, but others have successfully formed corporate entities, such as casinos, gas stations, and oil companies, to successfully promote economic development. For example, the Indian Gaming Regulatory Act of 1988 has allowed some tribes to use gaming operations to transform reservations economies. Casinos have become a large source of revenue and a source of employment (Akee, Spilde, & Taylor, 2014, 2015). From 1990 to 2000, areas with gaming decreased their poverty rates slightly more than nongaming areas (Taylor & Kalt, 2005). Despite some successes through the gambling industry, the federal land trust and the dual bureaucracy still pose barriers to individual entrepreneurship.

Tribes function as both firms and states in an entangled sense because many of them run business ventures, but they also have the coercive powers of government to tax, legislate, and regulate. Tribes have highly entangled political economies because politics and economic enterprises are intertwined and inseparable in these contexts (Wagner, 2016). Leonard Carlson (1981) found that prior to the Dawes Act, tribal governance functioned relatively well, but the evolution of formal property rights and governance structures over the twentieth century has obscured how people in the private and public spheres engage in economic enterprises. The entangled nature of economic enterprises on Native American lands among federal, tribal, and other private actors makes the analysis of economic development on Native American lands difficult.

Although many tribes have depended on federal agencies for decades, other tribes in recent years have been reforming and improving their institutions. Many tribes are being recognized for improving and streamlining the bureaucratic barriers imposed on individuals and tribal governance. Since 1998, dozens of tribal government programs have received awards for excellence from Harvard University's "Honoring Nations" program (Harvard Project, 2015a). A substantial body of evidence suggests that tribes these days are running first-class programs in policing, child welfare, court systems, resource management, education, economic development, and other fields. In some cases, some tribes are outperforming mainstream equivalents in the efficiency of their public policies (Bean, 1978; Confederated Salish and Kootenai Tribes, 2004; Berry, 2009; Tomblin, 2009; Harvard Project, 2015b, 2016).

Because the costs of market entry are relatively high on trust lands, the informal economy has become an important source of income on many reservations, especially the Navajo Nation. Much of the informal economy on the Navajo Nation is sustained through familial ties. In parts of the nation near towns or tourist destinations, Navajo people have created an informal economy to sustain themselves because this reservation, like others, suffers from bureaucratic constraints that impose high costs on potential entrepreneurs (Rosser, 2005).

Ryan Yonk, Sierra Hoffer, and Devin Stein (2017) analyze the disincentives to business development on the Navajo reservation and find three primary factors that drive the low levels of business ownership and entrepreneurship. First, potential business owners face a highly bureaucratic, complicated business license application process, which increases the cost of participating in the formal economy. Second, the Indian land trust system limits the Navajo people's ability to own and use land as a resource for economic development. Third, access to capital and lending opportunities is severely limited, thus hampering the Navajo people's ability to engage in the market process. Although this research focuses solely on the Navajo, the most important and widely applicable point to Native Americans at large is the institutional barriers to market participation.

Transaction costs, rent seeking, and bureaucratic delay are an outgrowth of the unique formal institutions common to most Native American reservations. In the presence of high transactions costs, potential entrepreneurs may not engage in opportunities to find and implement plans that increase human welfare. With rampant rent seeking, entrepreneurs may be diverted from socially beneficial, positive-sum actions to socially wasteful, negative-sum actions. The rent seeking inherent to highly bureaucratic systems has led to the allocation of resources through the political process. Especially in the presence of federal–tribal policies and programs for state-led economic development, the rent-seeking process of bureaucratic allocation perpetuates perverse incentives. In addition to the rent-seeking dilemma, the government planners in charge of economic development lack the relevant knowledge to create long-term, sustainable economic progress (Mathers, 2012).

Bureaucratic delay may also deter potential entrepreneurs because of the transaction costs associated with wasted time. For instance, many reservations are poor precisely because bureaucratic red tape and other transaction costs associated with land tenure lead to underutilization of reservation resources, thus perpetuating a cycle of poverty (Russ & Stratmann, 2014; Anderson, Benson, & Flanagan, 2006). Despite some improvements on internal governance of reservations, many Native Americans remain trapped in poverty because of pervasive nature of bureaucratic administration. If future policy approaches neglect the role of private-property rights, the market process, and economic calculation, economic development will continue to be stunted.

Many tribal officials have learned to gain federal funds through a perverse type of entrepreneurship that is redistributive, not productive. “Economic development” has come to mean gaining more federal grants rather than producing and increasing the stock of goods and services. The federal funding perpetuates a dependent relationship that is difficult to break. Ross Swimmer (1989) finds that reservations more closely connected to outside communities have higher economic performance, whereas Native Americans on isolated reservations have relatively few places to spend their other income and few people to exchange with. Tribes that are more integrated with off-reservation economies have higher individual income, employment, and quality of life as well as lower alcoholism. Entrepreneurship is less likely to take place in the presence of bureaucratic control and a lack of private-property rights.

Federal and tribal officials could make their management more beneficial in a limited number of ways. First, officials could remove many of the constraints on use to reservation lands. Second, the federal government's trust relationship must be limited so that tribes and individuals can actively manage trust resources. Third, technical assistance for economic development should not come from the BIA bureaucracy but should instead come from the private sector as entrepreneurs see fit (Swimmer, 1989). These suggestions would effect only marginal improvements, however, and reservations will continue to suffer from limited development as long as private-property rights are bureaucratically managed.

In the past few decades, the pattern of change across various reservations is increasingly complex. Some tribes have created vibrant economies due to gaming (Akee, Spilde, & Taylor, 2014, 2015). Other tribes have improved their members' material well-being without gaming, such as through natural-resource development, despite the absence of substantial private-property rights. Today, many reservations have exhibited significant divergence, with some tribes stagnating economically, but others moving ahead.[8] Making generalized statements about all of Indian Country can be problematic, but scholars need to look at the commonalities and differences between property-rights regimes and institutions to understand how entrepreneurship is affected on those lands.

Some of the striking examples of vigorous economic development in Indian Country include the Winnebago Tribe, Cochiti Pueblo, and Chickasaw (Cornell & Kalt, 1995a; Harvard Project, 2003, 2006). Each of those tribal governments have discovered ways to overcome the problems associated with convoluted property-rights regimes and institutions that raise transaction costs on entrepreneurial activity. Their solutions include community-development funds and home-loan programs that help individuals overcome institutional barriers to economic development.

Some government entities appear to be facilitating productive entrepreneurship. For example, the Federal Reserve Bank of Minneapolis runs the Center for Indian Country Development (CICD). One of the CICD's programs encourages tribal governments to establish laws that use tribal customs where they exist and merge those customs with the Uniform Commercial Code (UCC). This is especially helpful for business transactions because it helps reduce uncertainty in capital markets by making the legal relationships between lenders and borrowers more well defined and standardized. The UCC establishes a relatively consistent legal environment for commercial transactions between parties in different states. By comporting with the UCC, Native

[8] Although some tribes have experienced financial success, the Indian-related spending in the federal budget has remained relatively constant or increased only slightly in recent years. Looking at total federal spending across all agencies, the federal government has increased spending from $18.1 billion in fiscal year 2012 to $19.7 billion in fiscal year 2016 (U.S. Department of the Interior 2016, 2017).

American reservations can reduce the transaction costs of commerce (Uniform Law Commission and Center for Indian Country Development, 2017).

2.3.3 Legal and Political Uncertainty

One of the greatest barriers to economic development on reservations is erected by legal and political uncertainty and complexity, which are caused by the unique formal institutions that govern Native American land. Potential entrepreneurs may be uncertain about how government actions will affect their decisions. The imposition of new taxes or the confiscation of private property are specific kinds of uncertainty that affect an individual’s economic decisions (Higgs, 1997).

Federal laws apply to reservations, except when those laws violate a tribe’s specific treaty right. Tribes make their own laws and taxation schemes as well as engage in commercial ventures. Due to the common-law sovereign-immunity doctrine, tribes are immune from suit unless Congress gives authorization. Potential entrepreneurs may be hesitant to engage in economic enterprises directly with tribes because they may not be able to bring a suit if a contract is breached.

One of the most important ways that entrepreneurs and businesspeople face uncertainty on reservations is through the various taxation schemes. The complexity and uncertainty regarding taxation may disincentivize potential entrepreneurs. For example, individual Native Americans pay all federal taxes, with limited exceptions for income directly derived from trust property. Tribal governments are generally immune from federal taxes (26 U.S.C. §7871 [2010]; Rev. Rul. 67-284 1967-2 C.B. 55 [July 1967]). However, tribes must pay gambling-related excise and occupational taxes under 25

U.S.C. §§2701–2721 (*Chickasaw Nation v. U.S.* 534 U.S. 84 [2001]). Under 25 U.S.C. 465 (2011), state and local taxation does not apply to trust land. However, in *Carcieri v. Salazar* (555 U.S. 379 [2009]), the Supreme Court ruled that state and local taxation can apply on lands that were taken into trust if a tribe was not federally recognized until after 1934.

Lessees of tribal land are taxed by the tribe on most reservations. Many tribes tax retail sales by non-Indians, and many of them tax retail sales by Native merchants as well. In general, any non-Indian may be subject to taxes when engaging in economic transactions with a tribe or its members on a reservation. State taxation is decided by legal incidence of tax, not economic incidence. For example, in 1976 the Supreme Court ruled that states may collect taxes on sales made by Native Americans on reservation land to non-Native American or members of the particular nation (*Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463 [1976]). Other tax laws are even more complex. For example, the Eleventh Circuit Court struck down rental taxes on non-Indian lessees of permanent improvements of tribal trust land (*Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324 [2015]). In the same ruling, however, the court upheld the State of Florida's ability to tax utility services delivered to tribe. That same year the BIA promulgated a new regulation that did not allow states or counties to tax permanent improvements, leaseholds, and activities on leased tribal land (25 CFR §162.017). Potential entrepreneurs must navigate a labyrinth of federal, state, and tribal regulations and case law to know which kinds of taxes apply to which people on which land before they begin any economic venture. On the margin, these high transaction costs are likely to discourage potential entrepreneurs from engaging in economic ventures on Native lands.

Because of each tribe's unique legal structure, choosing a business structure has significant consequences for a tribal government and tribal businesses. Potential business owners must confront several considerations. If businesses are tied directly to the tribal council, then political considerations are likely to factor into long-term business decisions. Different types of business structures affect the tax status of a business entity and how sovereign immunity applies. The type of business structure may also affect the certainty and predictability in the legal framework chosen to organize an economic venture (Atkinson & Nilles, 2008).

With these overlapping jurisdictions and various taxation schemes, economic transactions on tribal land or with tribal agencies can become complicated and costly. Non-Indians can secure some protection by contracting directly with a federally chartered tribal corporation or agency, but the complexity and uncertainty of engaging in commercial transaction on Native American land can be large disincentives (Kalt et al., 2008).

In the past, one barrier to Native American economic development was a lack of tribal business incorporation codes (Erlich, 1980). Tribes have generally regulated businesses regarding marketplace activity, taxation, and licensing, and many are now addressing the business-incorporation process. Today, potential business owners can choose to incorporate within the tribal government, become a tribally chartered corporation, receive a federal charter through section 17 of the IRA, become a state-law corporation, or become a limited-liability company (Atkinson & Nilles, 2008). A number of tribes have established codes governing business incorporation, secured transaction codes, and other procedures, using tribal law to facilitate business creation on tribal lands, with significant results. For example, the Mille Lacs Band of Ojibwe and the Citizen Potawatomi Nation have created policies to lower the costs and increase the certainty surrounding business creation on tribal lands (Harvard Project, 2000; Citizen Potawatomi Nation, Public Information Office, 2016; Citizen Potawatomi Nation, 2017).

Incorporation codes reduce costs and increase certainty because they define the rules of the game, which would promote the investment of nonreservation capital. Without incorporation codes, entrepreneurs on reservations have limited business opportunities because of the legal limitations on the formation of limited partnerships, corporations, cooperatives, and nonprofits (Erlich, 1980). Thus, Native entrepreneurs face high costs when engaging in the market because they have limited options for collateral and because outsiders perceive tribal laws negatively as complex, uninviting, and unpredictable. The implementation of incorporation codes has been a marginal improvement for many reservations, but it does not necessarily solve the inherent issues with the convoluted nature of property rights and governance structures within the federal trust system.

Some tribes are attracting outside investment and entrepreneurs because they have created robust institutions that outsiders trust. For example, the Hualapai Nation has created an Enterprise Board to fulfill the role of technical adviser and operational manager for development matters on the reservation (Caliguire & Grant, 1993). In addition, the Viejas Band of Kumeyaay Indians became the majority owner of Borrego Springs Bank in 1996, which has served the tribal government, Native-owned businesses, and non-Native individuals. The bank has enhanced the tribe members' economic self-sufficiency and opened up more access to capital markets for potential entrepreneurs and homeowners (Harvard Project, 2002). Future policies and court cases may help bring more certainty and predictability for many more reservations.

2.4 Conclusion

Native Americans live under fundamentally different institutions than other Americans. The federal land trust shapes Native American economic life through bureaucratic control of land and other resources. The complex property-rights regime of the federal land trust stifles mutually beneficial exchange, hampers the market process, and allows government officials to intervene heavily into economic affairs. In addition, the dual bureaucracy of federal and tribal officials increases transaction costs in general because of the broad authority and discretion that these officials have to make public policy. Under those unique institutions, the federal government has created an environment of uncertainty and high costs that pose significant barriers to entrepreneurial action, thus limiting economic development at large.

Some of the literature criticizes the positive focus on capitalism and its related economic outcomes and effects. Some scholars (e.g., Pasternak, 2015; Schmidt, 2018) have argued that the positive focus on capitalism is problematic and antithetical to Indigenous views about land, property, and markets. These scholars bring up valid concerns regarding changes in formal governance institutions as they relate to Indigenous peoples' issues in Canada. These concerns highlight the fact that one-size-fits-all solutions are not likely to solve the complex issue that is economic development. These concerns also illuminate that unintended consequences can result from changes to formal institutions. Any policy changes that are made to Native American governance institutions must consider the complexity of institutional change.

Although this paper contains no overt policy recommendations, a reader may be left thinking that the best thing for Indians would be to eliminate the added layers of federal and tribal bureaucracy and eliminate many of the restrictions on Indian property rights. However, many Native Americans may oppose such proposals because they may appear superficially similar to the rejected policies of "termination" and "relocation" that took place from the 1950s to the 1970s. If Native Americans perceive that such reforms are an attempt to destroy Indian culture or loot Indian resources, those reforms are likely to fail.

This analysis has several implications. First, even with more self-determination and better bureaucratic planning, economic development on Native American lands will be limited because of costly barriers to entrepreneurial action and market entry. The trust system limits private-property ownership, and bureaucratic planners do not have the ability to mimic the outcomes of the market process. The land trust impedes market participation and skews economic calculation, which will continue to slow economic develop for Native Americans. Second, reservations may be worse off than other economies in some regards because the dual bureaucracy adds an extra layer of intervention to distort the market process. The complex legal relationships between the federal government and the tribes create uncertainty, further raising the costs from the dual bureaucratic system. Third, and perhaps most important, poverty for Native Americans is unlikely to be resolved if the current institutions remain unchanged, regardless of government-sanctioned economic-development policies and other welfare policies. Understanding the economic implications of Native American institutions is crucial for those concerned with Native people’s well-being. Appreciating the insights from market-process theory may be the key to alleviating the omnipresent poverty that plagues many Native American lands.

CHAPTER THREE - CULTURE AND NATIVE AMERICAN ECONOMIC DEVELOPMENT

3.1 Introduction

Native Americans are, on average, the least wealthy racial group in the United States (Kalt et al., 2008, pp. 114-115). In the 2010 Census, the poverty rate for Native Americans living on reservations was 28.4 percent, and the poverty rate for all Native Americans, whether on or off reservations, was 22 percent. For comparison, the federal poverty rate for all Americans in 2010 was 15.3 percent. Although poverty rates have improved in recent years, the relatively high rates remain puzzling to policymakers and development economists.

Scholars have suggested that institutional barriers, including the federal trust system and direct federal involvement in day-to-day governance, raise transaction costs and hinder economic development on Native American reservations (McChesney, 1990; Cornell & Kalt, 1995a; Anderson, Benson, & Flanagan, 2006; Anderson & Parker, 2008, 2009; Kalt et al., 2008; Akee & Jorgensen, 2014; Regan & Anderson, 2014; Russ & Stratmann, 2014; Lofthouse, 2019). Those institutional barriers certainly play a role in the poverty puzzle, but scholars and policymakers have underemphasized the nuanced interactions between institutions, culture, and entrepreneurship.

When institutions, formal or informal, guide individuals to engage in productive entrepreneurship, economic growth can take place (Baumol, 1990; Holcombe, 1998;

Boettke & Coyne, 2003, 2009; Baumol & Strom, 2007; Strow & Strow, 2018; Lucas et al., 2018; Thanti & Kalu, 2018). However, entrepreneurship does not take place in a vacuum; culture shapes the way that economic development unfolds (Leeson, 2005, 2006; Williamson, 2009; Williamson & Mathers, 2011). How does an understanding of culture clarify our understanding of Native American economic outcomes?

To answer that question, this paper makes both a theoretical and an empirical contribution. First, the theoretical contribution synthesizes the literature on culture and entrepreneurship with the literature on institutional "stickiness." Second, the empirical contribution applies historical and contemporary case studies from Native American reservations to demonstrate the theoretical claims.

"Culture" is a context or mental framework that individuals use to ascribe meaning to their purposeful action (Lavoie, 1991). Culture matters because it shapes what opportunities entrepreneurs are alert to and how entrepreneurs perceive the various costs and benefits of acting within different institutional arrangements (Chamlee-Wright, 1997; Lavoie & Chamlee-Wright, 2000; Storr, 2006). Any institutional arrangement will pose transaction costs to entrepreneurs, and culture determines how entrepreneurs perceive and react to transactions costs. When institutions do not dovetail with the cultural context of a society, entrepreneurs may find positive-sum opportunities too costly and, instead, engage in negative-sum behavior (Boettke, Leeson, & Coyne, 2008). Thus, institutions that appear conducive to growth may not actually achieve their goals because a cultural mismatch leads entrepreneurs away from wealth-creating behavior.

The stagnant economic development on many reservations can be largely explained by discrepancies between culture and exogenously imposed institutions. Prior to colonization, Native Americans had endogenously developed complex institutions of governance and property rights. The U.S. Constitution, however, gave the federal government broad discretion over the formal governance of reservations. Beginning in the late nineteenth century, the federal government imposed several institutions on reservations, such as a new land tenure structures and bureaucratic governance, which disrupted the institutions that native societies had developed (Anderson & Parker, 2009; McChesney, 1990; Stremlau, 2005). In many cases, those imposed institutions have hindered development by raising transactions costs to entrepreneurial action. The ways in which people perceive and respond to transaction costs are culturally contingent. Thus, even when similar institutions were imposed on various reservations, outcomes have differed because entrepreneurs perceived opportunities and transaction costs in different ways.

Additionally, the federal government imposed boilerplate constitutions on many reservations in the 1930s. In cases where the imposed constitutions aligned with tribal culture, economic outcomes appear to be better. When culture and constitutions were incongruent, economic performance has stagnated (Cornell & Kalt, 1995a, 1995b; Record, 1999).

Culture has also shaped instances where Native American entrepreneurs are alert to negative-sum or positive-sum opportunities. Through the twentieth century, federal and tribal institutions created government-granted aid projects and tribally owned businesses, which has presented many opportunities for entrepreneurs to engage in rent-seeking (Anderson & Parker, 2006, p. 177-190; Kalt et al., 2008, p. 113). However, many Native Americans are leveraging traditional cultural and social ties to increase economic development. For example, on the Navajo Nation and the Pine Ridge Reservation, many individuals have formed wealth-creating enterprises in the informal economy (Pickering, 2000; Dine Policy Institute, 2018).

This paper proceeds as follows. Section 2 theoretically connects economic development to culture, entrepreneurship, and formal institutions. Section 3 analyzes how formal and informal institutions have interacted with culture to shape economic outcomes on Native American reservations. Section 4 concludes with the implications of the research.

3.2 Theoretical Connections Between Culture and Economic Development

Economic development, for reservations or any society, arises from entrepreneurs who bring about innovation, creativity, and coordination. In the real world, knowledge is dispersed, and individuals are largely ignorant of the dynamic changes in markets. Entrepreneurs are catalysts of spontaneous order and drive the market process toward equilibrium (Kirzner, 1973, 1979; Hayek, 1973, 1976, 1979, 1988).

Entrepreneurship cannot be separated from culture. Culture frames what entrepreneurs are alert to, which shapes the way they discover previously undiscovered opportunities (Lavoie, 1991, Storr & John, 2011). Some economists have modeled culture as an independent force and have attempted to measure it with various indices (Acs, Szerb, & Autio, 2013; Rarick & Han, 2015; Szerb, Komlósi, & Páger, 2016).

However, Lavoie's (1991) definition is a more encompassing concept: "Culture is the language in which past events are interpreted, future circumstances are anticipated, and plans of actions are formulated." Culture, as a context or a mental framework, is "distinct from and not reducible to informal institutions" (Choi & Storr, 2019, p. 103). Culture is the socially derived mental substrate that norms, practices, and constitutions are built on and interpreted through.

Entrepreneurs with different cultural backgrounds will be alert to different sorts of opportunities, and culture helps determine whether entrepreneurs are alert to positive-sum market opportunities or negative-sum rent-seeking opportunities (Storr & John, 2011). For example, many Bahamians hold mental models that lead them to believe that economic success can be found through pirate-like actions. The generalized cultural celebration of the country's pirate heritage has affected the ways in which Bahamians direct their attention and the types of entrepreneurial activities they pursue. Due to the influence of pirate culture, Bahamian businessmen tend to engage in negative-sum interactions, such as poor service, price gouging, and rent-seeking (Storr, 2000; Boettke & Storr, 2002).

If a culture has a generalized spirit of enterprise, economic development is more likely to arise because people have a mental framework that points them to discover wealth-creating opportunities (Lavoie & Chamlee-Wright, 2000). If culture directs people to focus on socially destructive entrepreneurship, like rent-seeking, entire societies can stagnate economically (Baumol, 1990; Choi & Storr, 2019).

Entrepreneurship takes place within institutions, and culture shapes how entrepreneurs perceive the costs and benefits of action within institutions. All institutions pose transaction costs to economic actors, but transaction costs are subjective (Vaughn, 1980). Culture is a large determinant in how entrepreneurs subjectively interpret transaction costs. For example, two entrepreneurs may operate under the same institutions, but if they have different cultures, they will likely interpret transactions costs differently, leading to different patterns of behavior. Depending on the setup of the formal institutions and the underlying culture, entrepreneurs in the market or political spheres may view the transaction costs of rent-seeking or rent-extraction lower than wealth creation (Choi & Storr, 2019). A culture of rent-seeking could potentially leave communities less resilient over time (Storr & Chamlee-Wright, 2011).

Institutions must be "sticky," or they will fail to fulfill their purpose, leading to economic stagnation and potentially decline. As Boettke, Leeson, and Coyne (2008) argue, institutional stickiness is "the ability or inability of new institutional arrangements to take hold where they are transplanted" (p. 332). It is important to note that institutional stickiness does not necessarily imply institutional "goodness," meaning that stickiness is a necessary but not a sufficient condition for economic growth.

As institutions become further from a society's underlying culture, they will be less sticky. The stickiest institutions are endogenous because they are a form of spontaneous order that arises from individual actions, not formal design. Endogenous institutions, such as social norms and informal practices, can be thought of as institutionalized culture. Endogenous institutions may be able to mitigate the problems of formal institutions if norms and practices directs people to look for wealth-creating opportunities. However, culture may exacerbate the problems of formal institutions if that culture legitimizes and encourages rent-seeking or other negative-sum entrepreneurial behavior.

Government officials may impose exogenous institutions, as they have done on many Native American reservations, and those officials may lack specific knowledge of culture and endogenous institutions. Without this in-depth knowledge, even indigenous authorities can impose institutions that do not align with underlying culture (Boettke, Leeson, & Coyne, 2008). Institutions that are imposed by foreign authorities are often the least sticky type because foreign institutional designers lack intimate knowledge of culture due to their physical and social distance. Thus, the structure of a society's formal institutions must match the underlying cultural meanings for those institutions to function effectively and facilitate social coordination. If formal institutions are out of sync with culture, they may not be perceived as a legitimate, fair, or respectable (North, 1990, 1994; Chamlee-Wright, 1997; Kalt et al., 2008, p. 125).

Culture is not permanent—it can change and develop over time as various social forces and institutions influence it, but it generally changes slowly and cannot be centrally planned (Roland, 2004; Choi & Storr, 2019). Efforts to impose new institutions are likely to fail unless they fit with underlying culture (Boettke, Leeson, & Coyne, 2008). Foreign-imposed institutions have met with failure in many cases because of an incongruence between newly imposed formal institutions and the underlying informal institutions and cultural contexts (Easterly, 2001, 2006; Coyne, 2013). Not all institutional impositions have failed, however, because the imposed institutions and culture happen to have been aligned (Coyne, 2007).

Endogenous institutions become especially important for long term, sustainable development because they arise from and are closely related to culture. Societies may sometimes fail to adopt the formal institutional structure of more economically successful ones because norms and culture create institutional path dependence (Grief, 1994). In theory, exogenously introduced institutions can "fix" locked-in, inferior institutional arrangements, but in the real world, planners must acknowledge their limitations in altering institutional paths (Boettke, Leeson, & Coyne, 2008). As Lavoie and Chamlee-Wright (2000) argue, "The intricate interrelationships among cultural values and economic institutions should remind us that any attempt to make wholesale changes to culture puts us in danger of losing the valued functions these institutions perform" (p. 79).

3.3 How Culture, Entrepreneurship, and Institutions Interact on Reservations

Native American reservations provide evidence of the complex relationship connecting culture, entrepreneurship, institutions, and economic outcomes. Many exogenously imposed institutions have not sufficiently "stuck" on reservation, which have raised transaction costs for entrepreneurs and skewed their incentives to focus on negative-sum rent-seeking rather than positive-sum market enterprises. Despite many cultural mismatches with formal institutions, many entrepreneurs have been able to use their cultural understandings and social ties to build up wealth-creating enterprises in the informal economy.

3.3.1 Early Federal Involvement in Reservation Institutions

After the United States became independent, the federal government made treaties with Native American tribes because the U.S. Constitution allows Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The legal status of native tribes was unclear until 1832, when the Supreme Court ruled in *Cherokee Nation v. Georgia* that Native American tribes were considered "domestic dependent nations" and that the relationship between the federal government and tribes was the same as a "ward to its guardian." This case was pivotal because it strengthened the federal government's ability to impose exogenous institutions on tribes.

The federal government's imposition of formal institutions evolved over the nineteenth century. Until 1871, the federal government made treaties with the various tribes, but the Indian Appropriation Act disallowed the federal government from making treaties with the tribes anymore (25 U.S.C. § 71). After that time, the courts have upheld that Congress can override promises made in previous treaties (*Lone Wolf v. Hitchcock,* 1903; *Cherokee Nation v. Southern Kansas Ry*., 1890). From the late nineteenth century onward, Congress and the federal agencies have emphasized the federal trust responsibility, which is a fiduciary obligation to protect tribal lands and resources, as well as an obligation to enforce federal laws on Indian lands (Bureau of Indian Affairs, n.d.). The federal trust system allows federal officials to intervene in tribal affairs and oversee the use of lands held in trust, which is the root of many of the exogenously imposed institutions on Native American lands.

One of the most crucial policies that has imposed formal institutions on Native American reservations was the Dawes Act of 1887, also known as the General Allotment Act. The act's main purpose was to allot parcels of reservation land to individual Native Americans, which was largely an attempt to assimilate Native Americans into mainstream agrarian culture. Allotment did not automatically grant full ownership, also known as fee-simple property rights, to allottees. Bureau of Indian Affairs (BIA) officials held the allotted land in trust until they deemed allottees as "competent," and once allottees were deemed as such, they were granted full fee-simple ownership (Anderson & Parker, 2009; Akee, Jorgensen, & Sunde, 2015; McChesney, 1990; Thompson, 1997; Lehman, 2010). "Surplus" land was often given to white settlers during the allotment period between 1887 and 1934, and land under Native American control decreased from approximately 138 million acres to about 48 million acres (Kalt et al., 2008, p. 96).

The process of allotment damaged and replaced the informal property rights regimes and disturbed traditional social-cultural relations. The federal government attempted to impose a new set of values, morals, and rules on Native Americans through a Protestant, agrarian lifestyle (Carlson, 1981; McChesney, 1990; Roback ,1992; Anderson & Parker, 2009). Before allotment, many Native societies were organized in kinship systems, which could be matrilineal, patrilineal, or bilateral. These kinship systems determined each person's social rights and obligations. Additionally, the property rights structures for Native societies were complex. Some resources were owned and managed communally in kinships, while other resources were owned and managed by individuals. Both men and women owned private property in most Native societies

(Stremlau, 2005). Property rights in Native American communities varied from tribe to tribe. For example, the Iroquois and Hopi recognized use rights to land but prohibited sales by individuals. The Cree had a property rights system where land was individually allocated and could be inherited, but sales were not permitted (Anderson, 1995).

Many federal policymakers did not understand the function of Native social institutions, and often grossly mischaracterized them. For example, Commissioner of Indian Affairs Ezra Hayt wrote, “The Indian [...] despises labor and looks upon it as an indignity. … [W]hen he is talked to about the necessity of toil as a means to earn his bread legitimately, he turns a deaf ear and imposes upon his squaw the burden and drudgery of work” (Commissioner of Indian Affairs, 1877). Commissioner Hayt also did not understand the functions of Native property rights institutions, writing, “The system of title in common has also been pernicious to them, in that it has prevented advancement and repressed that spirit of rivalry and the desire to accumulate property which is the source of success and advancement in all white communities” (House Committee on Indian Affairs, 1879). A later Commissioner of Indian Affairs, Hiram Price, was a principle advocate for allotment and said that a main goal of allotment was to “domesticate and civilize wild Indians” (Commissioner of Indian Affairs, 1881).

3.3.2 The Indian Reorganization Act of 1934 and Boilerplate Constitutions

The institutional and cultural changes started by the Dawes Act were further complicated by The Indian Reorganization Act (IRA) of 1934, also known as the Wheeler-Howard Act or the Indian New Deal. Though the IRA, the federal government forced tribes to adopt constitutions for internal governance. The imposed constitutions did not always align with each tribe's underlying culture and endogenously formed rules of governance.

When the IRA was passed in 1934, it was meant, at least nominally, to foster political independence and economic self-sufficiency on reservations. The IRA was a mixed bag because it gave tribes formal recognition after decades of stripping away the authority of tribes. The IRA mandated that tribes establish a constitution and create a tribal council, but the constitutions generally centralized legal power in small tribal councils that had few checks or balances. In practice, many tribes were forced to adopt foreign, boilerplate documents that did not comport with traditions of legitimizing and organizing governance. For example, many tribes had long-standing cultural institutions of decentralized, consensus-oriented, and deliberative methods of decision making that were not represented in these new constitutions (Record, 1999; Lemont, 2001).

In some cases, the forced adoption of a constitution led to a breakdown of traditional authority. For example, on the San Carlos Apache Reservation in Arizona, most traditional leaders refused to participate in the formation of a new constitutions after the IRA was passed. Although there had been several distinct tribal bands of Apache living on the reservation before the IRA, federal policies consolidated the governance of these bands into a united tribe. BIA officials pressured the tribal leaders who were present to adopt a BIA-made boilerplate constitution, which gave major oversight responsibilities to the BIA, including tribal fund expenditures and the passage of tribal resolutions. The constitution remained problematic until 1998 when the San Carlos

Apache drafted a new constitution that more closely reflected Apache culture (Record, 1999).

Even though many tribes have amended their constitutions since the 1930s, the framework of the boilerplate constitutions is still largely intact. The BIA's boilerplate constitutional structure seems to have succeeded in promoting economic growth and entrepreneurship in some contexts, but that same structure has placed limitations on economic growth and entrepreneurship in other contexts (Cornell & Kalt, 1995a). Two illustrative examples are the White Mountain Apache of the Fort Apache Reservation in Arizona and the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota. The same constitutional structure was imposed on the White Mountain Apache and the Pine Ridge Oglala Sioux in the 1930s by the Indian Reorganization Act, but even with the same formal institutions, economic performance diverged over the twentieth century. For much of the twentieth century and into the twenty-first, the White Mountain Apache have had relatively successful economic outcomes when compared to other reservations. Tribal entrepreneurs have set up successful ventures in cattle ranching, lumber, trophy hunting, and skiing (HPAIED, 2000; Humphreys & Jester, 2002). On the other hand, the Pine Ridge Reservation has been one of the poorest native communities with some of the highest unemployment rates and crime rates (Petersen, 2013). Table 1 below shows the general disparity in unemployment rates between Pine Ridge and Fort Apache over the past few decades.

Table 1: Unemployment Rates on Pine Ridge Reservation and Fort Apache Reservation for Selected Years

Year	Pine Ridge	Fort Apache		Year	Pine Ridge	Fort Apache
1982	75	33		1997	73	61
1987	73	43		1999	85	62
1989	73	21		2001	88	50
1991	73	61		2003	87	51
1993	73	52		2005	89	51
1995	74	58		2013	63.6	61.7

Sources: U.S. Dept. of the Interior, Bureau of Indian Affairs, *American Indian Population and Labor Force Reports*, https://www.bia.gov/knowledge-base/american-indian-population-labor-force-reports

As Cornell and Kalt (1995b, p. 410) have found, when accounting for differences in resource and human capital endowments, the "Apache economy is far outperforming the economy of the Oglala Sioux." The disparate economic outcomes on those two reservations suggests that the White Mountain Apache has had a better match between their culture and constitution than the Pine Ridge Reservation. The relative success of the White Mountain Apache cannot be attributed to a better resource endowment; rather, the relative efficacy of the White Mountain Apache's government seems to be better matched to the cultural norms of feasibility and legitimacy. Ceteris paribus, a society's economic progress is likely related to the match between a formal constitution and the underlying culture. It is important to note that constitutional match is a necessary, but not a sufficient, condition for economic success.

The Sioux's culture of political organization has historically been highly decentralized, and sub-tribal bands called *tiyospaye*, meanings "a group of lodges," has been the foundational unit of society and governance (DeMallie, 1978). Each of these bands were parliamentary in the sense that the council was the most powerful political institution. The council would select a chief to preside over the council and act as an executive, but the largest share of decision-making power stayed with the council (Walker, 1982). Above the band level, the tribal level also had a council that was made up of leaders from the bands. The tribal council had four appointed chiefs, who served as elder advisors without political authority. The tribal council came together periodically, usually in the summer to facilitate cooperation among the bands. The Sioux never consolidated power in a central tribal-level government with a single chief (DeMallie, 1978).

The White Mountain Apache's basic political structure was band, and each band directly elected their chief, as opposed to the Sioux's parliamentary system. It would be assumed that a chief would serve for life, unless they were removed or became incapacitated. The chief of each band selected three to six sub-chiefs that would be drawn from the leadership of local groups that made up a band. The chief and his sub-chiefs made up a kind of council (Opler, 1941; Goodwin, 1942; Ogle, 1970; Basehart, 1971). The White Mountain Apache traditionally had an executive-centered governance structure, and a decisive chief was widely regarded as desirable and appropriate. The chief was not a dictator, however, and would consult with sub-chiefs and other leaders on policy decisions (Opler, 1941; Goodwin, 1942; Kaut, 1974).

Cornell and Kalt (1995b) argue that the economic success of the Fort Apache Reservation relative to the Pine Ridge Reservation is due in part to the congruence between the indigenous governance structure and the formal constitution that was imposed upon them. The White Mountain Apache have traditionally given legitimacy to a strong executive, and under the IRA constitution, the tribal chairman is the de facto CEO of important tribal enterprises and has direct control over many policy decisions. On the other hand, the Sioux's traditional governance structures and cultural values have been in tension with the Pine Ridge Reservation's constitution. The current constitution stipulates separate election for the tribal council and the tribal chair. The relatively powerful chief executive in the constitutional structure does not align with the parliamentary system of governance that the Sioux have traditionally had, which meant that the imposed constitution has not sufficiently "stuck." The Fort Apache Reservation amended its constitution 1958 and 1993, and the Pine Ridge Reservation amended its constitutions in 1969, 1985, 1997, and 2008, but the core institutions from the original IRA constitutions have remained largely unchanged.

3.3.3 Exogenously Imposed Property Rights Systems

In addition to the imposition of foreign constitutions, the IRA displaced traditional property rights and imposed a more complex, convoluted system of property rights. When Congress passed the IRA, some Native American lands had been transferred into fee simple ownership through the allotment process, but land that had not been fully deeded was held in trust for tribes or individual Native Americans in perpetuity. The federal land trust places strict constraints over alienation, leasing, and encumbrance over land held in trust (McChesney, 1990; Anderson & Lueck, 1992). Thus, the IRA is largely responsible for the complex nature of land tenure regimes and high transaction costs on Native American reservation. Each reservation was allotted to different degrees, and Congress passed special legislation for most Native American lands in Oklahoma.

The federal land trust, as a foreign-imposed exogenous institution, continues to be a legal barrier to economic development because it raises the transaction costs for using trust land as collateral (Kalt et at., 2008, p. 102). For example, property held in federal trust for individual tribal members may be mortgaged with the approval of the Secretary of the Interior, but to obtain the Secretary's consent, a bank must gain the approval of the BIA through a process that varies by region. Although the process is not standardized across the country, in general, banks must submit several mortgage loan documents to the relevant BIA area director, including the mortgage/deed of trust, promissory note, security agreement, appraisal, evidence of title, the borrower's loan application, credit report, and income verification (25 U.S.C. § 483a; "Guide to Mortgage Lending"). Native Americans who live on tribal trust lands face even higher transaction costs because federal law generally prohibits a lender from obtaining a mortgage on tribal trust land (25 U.S.C. § 415(a); 25 C.F.R. part 162). Some tribes have created ways to get around this legal barrier. For example, if a tribe "executes a lease as a lessor, an individual can offer as collateral a leasehold interest in either tribal or individual trust or restricted land, subject to approval of the BIA" ("Guide to Mortgage Lending," n.d.). The high transaction costs associated with using trust land as collateral for securing a loan means limits the amount of credit that is often necessary to engage in economic enterprises.

Because land ownership is mixed on reservation, various entities have jurisdiction, which often leads to uncertainty and conflict. The conflict and uncertainty over jurisdictions deter potential exchange opportunities that could lead to increased economic development. Since the costs of engaging in market exchange in higher in the presence of this legal uncertainty, potential entrepreneurs and business owners are more likely to direct their attention and use their resources in a less costly arena. One of the most important ways that entrepreneurs and businesspeople face uncertainty on reservations is through the various taxation schemes. The complexity and uncertainty regarding taxation may disincentivize potential entrepreneurs. Additionally, on reservations, it is often difficult to know who has the power to regulate and who has the power to press criminal charges. In addition to the mix of land tenures, the federal trust relationship further complicates the political-legal scene on reservations because private individuals and tribal leaders must gain permission from federal officials for many economic endeavors. In particular, on trust lands, federal officials are legal obligated to approve many uses and transfers of trust land. As a result, this legal complexity and uncertainty is uninviting for potential entrepreneurs who originate on or off the reservation (Kalt et al., 2008, p. 101).

Each reservation contains its own unique combination of various land ownership structures. Within a reservation's boundaries, land tenure can be under at least eight forms of ownership: tribal trust, individual trust, tribal fee simple, individual tribal member fee simple, non-Indian fee simple, federal, state, or county. The various forms of ownership mean that most reservations have a "checkerboard" pattern, where the pattern of ownership on varies greatly from plot to plot. The land tenure structure on some reservations is homogeneous, such as Arizona's Fort Apache Reservation, where over 99 percent of the reservation is trust land. On the other end of the spectrum, roughly 88 percent of Idaho's Nez Perce Reservation is owned by non-Indians as fee-simple land (Kalt et al., 2008, p. 98).

3.3.4 Institutional Barriers and Entrepreneurship in the Informal Economy

The IRA imposed new property rights systems and constitution governance structures on tribes, but beginning in the 1960s, Congress passed new laws, including the Indian Civil Rights Act of 1968 and Indian self-Determination to Education Assistance Act of 1975, allowing tribal governments to have a more self-determination in their formal governance structures. As Native societies pushed for more self-determination in the past several decades, many tribes have reformed their constitutions and formal institutions to more fully incorporate cultural and traditional consideration into formal governance institutions, reduce transaction costs, and enhance accountability and stability (Lemont, 2001; Kalt et al., 2008, p. 112).

Despite an increased amount self-determination over the past several decades, the formal institutions that are the core barriers to economic growth have not fundamentally changed. In particular, the persistence of the federal trust responsibility still allows federal officials to intervene in tribal policymaking, which complicates how effectively local institutions can channel and facilitate positive-sum entrepreneurship. The BIA is legally obligated to consult with the tribes in a government-to-government relationship, but the BIA also has a legal responsibility for fulfilling the trust obligations to protect tribal property and resources. Under this dual-jurisdiction institutional structure, the ends and means of both federal and tribal officials may conflict. This institutional structure inherently raises the transaction costs of engaging in entrepreneurship, which limits how well entrepreneurs can facilitate economic growth on reservations. Path dependence is especially important on reservations because suboptimal institutions related to convoluted property rights and highly bureaucratic governance are difficult and costly to change.

Historically, the federal government has engaged with tribes through the "direct service" model, meaning that programs are managed directly by BIA employees or other federal administrators. Under this system, the managers of this system have a strong incentive to please higher-level bureaucrats in Washington, D.C., which implies that the decision-makers are less accountable to the people who directly receive the services. Since the beginning of self-determination for Native tribes, they have increasingly been taking on more responsibilities that were once solely overseen by federal officials. By bringing in more responsibility to local officials who are tribal members, local officials can implement policies that better fit with local culture and norms. While public administration can go awry at the highest levels or the lowest levels, devolving much of the decision-making authority to tribal leaders has increased the likelihood of accountability and allows for more creative, flexible leadership (Kalt et al., 2008, p. 127).

Despite the remaining institutional barriers, many Native American societies have created community organizations to provide traditional forms of association and self-governance outside formal government. Many of these community organizations are nonprofits that operate outside the federal and tribal government; however, they are often dependent on governments for revenue. Black (2004) found that at least 1,538 nonprofits exist across “Indian Country.” Although over half nonprofits may be dependent on government grants and contracts, the primary focus is on cultural aspects, such as education, arts, humanities, with a focus on economic development (Black, 2004). As Mantila (1999) argues that Native American nonprofits are more likely than all nonprofits in the U.S. to be involved in economic and community development, which is likely caused by the socioeconomic discrepancies between Native Americans and the U.S. population as a whole. Compared to other nonprofits, Native American nonprofits are also more likely to be involved in arts, culture, and environment resources. Across the diverse array of nonprofits, most organizations incorporate traditional culture and values into their missions (Black, 2004).

In cases where formal institutions have increased transaction costs or where access is limited to broader market networks, the informal or “underground” economy has become a vital part of everyday life on reservations (Pickering, 2000; Kalt et al., 2008, p. 120). The informal economy is largely based off cultural ties and allows individuals to be creative, look for entrepreneurial opportunities, and exploit those opportunities. For example, on the Pine Ridge and Rosebud reservations, most entrepreneurial individuals engage in “microenterprises” such as traditional beadwork, star quilts, Native dancing outfits, food catering, car repair, hair cutting, and babysitting (Pickering, 2000). The Pine Ridge Reservation has had high levels of microenterprise engagement historically, and there are documented sales of native crafts for cash since the 1930s (Macgregor, 1946). In the late 1980s, approximately 83 percent of all households on Pine Ridge were involved with some form of microenterprise (Sherman, 1988). Microenterprises continue to be important, and because these microenterprises do not have formal business locations or advertising, social ties are the means by which those entrepreneurs function, particularly through word of mouth, by selling door-to-door, or at cultural events like powwows (Pickering, 2000).

Culture is important for the transmission of these microenterprises that allow for some economic development, especially for the Lakota people. One Native woman from the Pine Ridge Reservation said, “I learned when I was young watching my mom sew, bead, and quilt. I’ve been making things for sale for twenty years now” (Pickering, 2000, p. 52). Another Native woman from the Pine Ridge Reservation said, “I used to party a lot, it was really controlling my life, but I don’t have time for that now, and my beading helped me make that change and get to where I am today. [...] So I’m encouraging other, to help them realize that there are things to do every day, that there is no excuse for sitting around bored and drinking. With your hands, you could do anything you put your mind to. You shouldn’t just leave them sitting still. Now my niece is trying to bead since she said she was bored” (Pickering, 2000, p. 52). These types of microenterprises are a form of culturally derived economic activity that sustains people monetarily and also strengthens families ties and cultural traditions.

Like the Pine Ridge reservation, the costs of participation in the formal economy are relatively high on the Navajo Nation due to federal and tribal policies, which has made the informal economy an important source of income. Roughly 15 million acres of the Navajo Nation’s 18-million-acre reservation is held in trust by the federal government. In addition to all the bureaucratic complications with the federal trust responsibility, the Navajo Nation's government has experienced corruption, political upheavals, and constitutional uncertainty for several decades, which has also posed barriers to productive entrepreneurship (Wilkins, 2002). As of 2017, the Navajo Nation's unemployment rate was 42 percent, and 43 percent lived in poverty (Dine Policy Institute, 2017). The combination of institutional barriers, high unemployment, and high poverty have created a space for a robust informal economy that is rooted in cultural and social ties.

One of the most robust areas of the informal Navajo economy is at the 13 major flea markets that allow small, informal entrepreneurs to sell a variety of goods. One recent survey of 385 flea market vendors found that 62 percent were females, 89 percent said that they were employed full-time, and 70 percent said they do not consider their flea market activity as a full-time job. Vendors traveled, on average, 58 miles to each flea market site, and average vendor went to a flea market 2.9 times per month. The average earning per flea market visit was $180. Although the flea markets have provided a way for Navajo people to discover entrepreneurial opportunities, there are still transaction costs for flea market entrepreneurs. Many of the flea markets are in the open air, and over half the vendors said that their selling activity was hindered by weather-related issues, lack of running water, lack of paved roads, lack of electricity, and lack of shade (Dine Policy Institute, 2018).

The informal economy of the flea markets on the Navajo Nation are directly tied to cultural ideas, and much of the informal economy on the Navajo Nation is sustained through community and familial ties. When participants at the flea market were asked how they heard about the flea markets, 42 percent said that the “flea market has always been,” and 26 percent said that community members, friends, or relatives had told them about the flea markets. Several vendors in the survey emphasized the cultural importance of being self-sufficient, and they also stated that the informal economy was a way to help business expand within the Navajo community. One flea market food vendor said that the flea markets could help the Navajo people by “collecting money from an area and feeding it back into the community. So keeping that cycle within the community and building it up and hopefully bringing outside money in and hopefully blowing it up that way” (Dine Policy Institute, 2018).

One of the principle reasons that the informal economy has become so robust on many reservations, such as the Navajo Nation, is because bureaucratic constraints impose high costs on potential entrepreneurs (Rosser, 2005). For example, the Navajo Nation’s institutions create more red tape for formal business creation than the rest of the United States. The Navajo Nation requires bank account verification for business certification, as well as a summary of any past projects the potential business owner may have undertaken. Then the would-be business owner is required to submit a business plan, perform market analysis, describe the owner’s responsibilities, and provide an organizational flow chart to the Navajo Nation’s Division of Economic Development. The Business Regulatory Department reviews the materials and determines whether the applicant has met the requirements for a business certification. The Business Regulatory Department then visits the proposed business site for full certification. Business owners must submit a license recertification every year (Hoffer, 2017). Trust land increases the transaction costs for starting a business because trust lands are subject to BIA regulations. Regulators choose to whether to allow changes to land use, to make capital improvements, or to lease lands (Anderson & Parker, 2008).

3.3.5 Negative-Sum Entrepreneurship and Rent-Seeking

Formal and informal institutions certainly impact rent-seeking activities, but culture does as well. Institutions shape incentives, which may either encourage or discourage rent-seeking. As Choi and Storr (2019) argue, however, another important factor in rent-seeking is whether a community has a culture of rent-seeking—a situation where community members perceive that influencing political allocations though lobbying, bribery, or corruption is a potentially preferable source of private benefit compared to positive-sum exchanges. Entrepreneurs in any society possess culturally derived beliefs and perceptions that influence which are actions are legitimate and acceptable, which in turn shapes how rent-seeking occurs. A culture of rent-seeking occurs when entrepreneurs have a culture that "views particular forms of rent seeking as acceptable and effective strategies for attaining economic success. It is a perception shared by members of a society that having influence over political allocations is an important and potentially preferable strategy for pursuing private benefit than other avenues of pursuing economic gain" (Choi and Storr, 2019, p. 111).

Because culture and institutions are intimately interconnected, different institutions lead to different cultures of rent-seeking. The same formal and informal institutions will lead to different economic actions and outcomes if two groups have different cultures because people have different perceptions, meanings, and morals. Institutions can shape culture, meaning that an institutional environment that incentivizes rent-seeking can spark a culture of rent-seeking. As institutions change, a society's culture of rent-seeking is also likely to change, but the culture may take time to adjust, even if formal institutions change quickly (Choi & Storr, 2019).

Native American reservations provide clear examples to evaluate institutions that foster rent-seeking and how those institutions can give rise to a culture of rent-seeking. Under the formal institution of most tribes, politicians and bureaucrats oversee and distribute many reservation resources, such as employments, services, and money. Across most reservations, the largest employer is the tribal government, and most businesses are tribally owned. People who want scarce resource must approach politicians and bureaucrats to have access to those resources (Cornell & Kalt, 2006). Thus, people must engage in exchange, but it is not a typical market exchange; political exchange becomes a primary way to gain access to scare resources on reservations. Within this institutional setup, politicians and bureaucrats on reservations have strong incentives to maintain and use their control over resources, which often leads to political favoritism or even corruption (Cornell & Kalt, 2006).

To combat the persistent underdevelopment on reservations, Congress created the Economic Development Administration (EDA) in the 1960s to grant capital for physical investments associated with private projects. The EDA has been investing in projects for roughly 50 years, and some recent grants have been directed at waterborne landing crafts to transport harvested wood products and a reservation-based incubator space for Native

American artisans (EDA, 2015, 2019). Especially in the presence of state-led economic development, the rent-seeking process of bureaucratic allocation perpetuates perverse incentives. In particular, there is a robust negative relationship between the size and scope of tribal government and income growth, suggesting that institutions that facilitate rent-seeking are harming economic growth (Anderson & Parker, 2006, p. 177-190).

Kalt et al. (2008, p. 113) argue that the centralized approach to reservation economic development has not only failed, but it has also "warped the internal tribal machinery of economic development," which suggests that a culture of rent-seeking has developed across many reservations. They claim that tribal economic development planners are essentially grant seekers who success is measured by how much federal largess can be siphoned into their tribes. Kalt et al. also argue that the federal project approach encourages tribal leaders to focus on the priorities of federal policymakers, which creates a destabilizing cycle of institutional dependence on the federal government. In addition to the rent-seeking dilemma, the federal and tribal planners in charge of economic development lack the relevant knowledge to create long-term, sustainable economic progress (Mathers, 2012).

Decades of political control over reservation resources seems to have spawned a culture of rent-seeking in both tribal and federal bureaucracies. In 1989, a special Senate investigating committee, headed by Senator Dennis DeConcini, found fraud, corruption, and mismanagement in both the BIA and tribal governments. The committee also found substantial evidence that employees of the Small Business Administration had taken payoffs to waive rules for companies seeking federal certification as minority-controlled, which allowed them to receive no-bid contracts. Investigators discovered that federal contractors gave kickbacks, including cash and automobiles, to Indian officials who controlled construction projects on tribal lands. The investigation also found that the Chairman of the Navajo Nation, Peter MacDonald, had worked with a shell company to gain a share of a $7 million markup on a tribal real estate transaction (Senate Report 101-216). Chairman MacDonald was convicted in 1991 in tribal court for influencing the tribe to buy a ranch for an inflated price.

In theory, as BIA payments go to infrastructure, education, etc., they could contribute to economic growth on reservations, but more payments could also discourage entrepreneurs from engaging in productive activity and encourage them to rent-seek. Anderson and Parker (2006) find that government transfer payments and employment in tribal government are negatively correlated with per-capita income growth from 1989 to 1999. For the time period they examined, they found that a one-hundred dollar increase in payments from the BIA to tribal leaders caused a 1.3 percent decline in per-capita growth rates. Additionally, a one percentage point increase in the size of tribal government as measured by employment caused a decrease of 1.29 in per-capita income growth rates. These findings suggest that rent-seeking harms economic productivity and economic growth. These findings also suggest that a culture of rent-seeking has emerged on reservations across the country, which may be impeding economic development.

Many businesses on reservations are tribally owned and managed. This business structure blends government and markets, which creates a complex legal relationship that is not common elsewhere in the United States. Tribal governments can charter their own tribal government-owned corporations under tribal law or federal law. The policymakers who run the business are often the same people or directly connected to the people who regulate economic activity on reservations. Tribal governments run enterprises in a wide variety of fields, including tourism, gaming, energy, agriculture, forestry, manufacturing, and telecommunications (Atkinson & Nilles, 2008). Maintaining the separation between day-to-day business decisions and tribal politics is often difficult for tribal officials since enterprises are fundamentally owned and operated by elected officials and bureaucrats. Depending on the setup of a tribal enterprise, politics and day-to-day business operations become the same project, and the tribe as a whole assumes liability for the enterprise. The institutional arrangements that place politics and business close together set up the potential for rent-seeking and corruption, but they do not guarantee it. The institutions only define the nature and boundaries of the game, but the way the game is played depends on the players (Choi & Storr, 2019). In the case of many tribal enterprises, a culture of rent-seeking has emerged where political leaders, who are simultaneously business leaders, discover and exploit opportunities for negative-sum entrepreneurship.

One attempt at limiting illegal forms of rent-seeking has been the Guardians Project, which is a collaborative federal law enforcement initiative to find and prosecute public corruption, fraud, and embezzlement involving South Dakota's Native American communities. Since the project began in 2015, dozens of tribal officials and employees have been charged with crimes related to tribal enterprises. For example, five executives of the Sisseton Wahpeton Oyate Tribe pleaded guilty to embezzlement after stealing $81,542.50 from the tribe. Additionally, a former court administrator with the Crow

Creek Tribe was charged with embezzlement, and a former director of the Rosebud Sioux Tribe's ranch was ordered to serve 18 months of probation and pay about $10,000 in restitution after stealing from the ranch. Also, a former Crow Creek Sioux Tribe councilmember was indicted by a federal grand jury for embezzlement and theft from an Indian tribal organization, as well as aiding and abetting (Zionts, 2019; U.S. Attorney's Office, 2019). The Guardians Project serves as evidence that formal institutions have set up a game that potentially facilitates rent-seeking, but the emergent culture of rent-seeking has sparked those negative-sum entrepreneurial discoveries.

3.4 Conclusion and Implications

Every year, federal and tribal officials direct millions of dollars towards improving the persistent poverty on reservations, but this poverty is not likely to be solved unless economists and policymakers understand the interactions between the culture, entrepreneurs, and institutions. Without acknowledging cultural influences and social relations on economic outcomes, policies aiming improve the economic conditions on reservations are not likely to succeed.

This paper has at least three implications. First, institutions that are imposed, whether from a foreign entity or an indigenous one, are likely to fail if they do not align with the underlying cultural norms. In the case of Native Americans at large, formal governance structures imposed by the federal government have hampered economic development because they have distorted traditional governance and property rights structures. The history of federal-Indian policies has imposed a costly and convoluted private property rights regime and introduced legal unpredictability. When private property rights or legal predictability do not fit with cultural understandings or are ill-defined, economic development is less likely to be successful. To address these issues, federal and tribal policymakers can look for ways to reform institutions so that governance structures and property rights fit better with cultural understandings, and many reservations have already begun to reform their institutions in recent decades.

Second, informal institutions and informal economies are especially important on reservations. Although some tribes have reformed their formal institutions to align better with culture, it may be too costly to engage in reform in some circumstances. Informal institutions that endogenously arise from cultural understandings can mitigate the problem created by a mismatch between culture and formal institutions. Evidence from several reservations, such as the Pine Ridge Reservation and the Navajo Nation, show how people engage entrepreneurially in the informal economy, especially through community networks. Policymakers should ensure that their policies do not harm the socially beneficial aspects of the informal economy and also look for ways to remove legal barriers to participation in the formal economy. Future research could examine a wider array of reservations where culturally based informal economies have helped to overcome problems with formal institutions.

Third, development policies are likely to fail on Native American lands if formal institutions do not facilitate mutually beneficial exchange, encourage socially productive entrepreneurship, and discourage rent-seeking behavior. When formal institutions facilitate a culture of rent-seeking, long-term problems can arise because entrepreneurs are alert to and discovering opportunities that are not wealth-creating. Formal and informal institutions create a framework of incentives, and culture shapes the way that entrepreneurs understand and act on those incentives. Institutional change may not be enough to change negative-sum entrepreneurship and slow economic growth if a culture of rent-seeking also does not change. Policymakers should be aware that institutional change is a necessary, but not a sufficient, condition for solving development problems on reservations. If a culture of rent-seeking has been established, it will take time for that culture to change endogenously. Trying to change culture through public policies is not likely to work or work quickly. The idea of a culture of rent-seeking is an understudied area that is ripe for new qualitative research, especially on reservations.

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