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From Economic Development to Nation Building: Observations on Eight Articles about Tribes, Sovereignty and Economic Development

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Kathryn E. Fort

Staff Attorney, MSU Indigenous Law and Policy Center

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The issue of tribal economic development is a complicated topic, particularly for those not versed in federal Indian law or tribal law. Luckily, a number of talented scholars have written articles and essays on the issue, providing a broad overview of many of the issues surrounding tribal economic development. This collection addresses a wide range of topics from general economic development to labor and tax law. Each article was selected to provide a broad overview of the area, provoke thoughts on issue and provide additional resources for those interested in learning more about the area. This collection will be useful for tribal leaders, practitioners and potential investors.

The articles provides myriad of perspectives on several common themes. First, while some tribes have been successful in the area of economic development, many still have high unemployment, limited infrastructure and a host of social problems. Several of the authors point out that many of these issues are linked to a lack of tribal economic success. Secondly, each tribe is unique, and no one economic model will fit every tribe. In order for a tribe to be economically successful, the development choices must make sense for the tribe, and be made *by* the tribe. As Kristen A. Carpenter and Ray Halbritter point out "[s]weeping generalizations tend to obscure specific cultural and historical contexts, and also impose external value judgments on tribal communities."[1] Finally, tribal businesses are the source for tribal government revenue. Because of this, tribal business revenues *are* the government's revenues, and therefore tribal businesses are intrinsically linked to the tribe and tribal government. Understanding this relationship means that "economic development" is far more than employment or profits. It is, as

[1] Kristen A. Carpenter & Ray Halbritter, *Beyond the Ethnic Umbrella and the Buffalo: Some Thoughts on American Indian Tribes and Gaming*, 5 GAMING L. REV. 311, 321 (2001).

Profs. Cornell and Kalt describe it, "nation building."[2] However, the final theme, federal roadblocks, is one reason tribal businesses provide a majority of tribal government revenue. Federal government policies and court decisions have worked together to create roadblocks for tribes, preventing them from taking full advantage of their sovereignty. For example, because the federal government prevents tribes from taxing to the full extent of other sovereigns, or issue bonds for revenue like other sovereigns, tribal governments are forced to look to businesses to provide revenue for their survival. As Prof. Gavin Clarkson writes, "if the competitive landscape is stacked against the tribes . . . those impediments [federal policy] are highly suspect if they continue to exist with little or no legitimate purpose, given that they suppress tribal economic development and curtail tribal access to capital."[3]

In an article about testing federal Indian law on state bar exams, Gabriel Galanda pointed out four areas of law all practitioners must be familiar with, regardless of whether they plan to practice in Indian law. Three of them, Indian self-governance, tribal jurisdiction, and sovereign immunity,[4] are equally important for those looking to be work with tribes on economic development. The articles included in this collection emphasize these areas as well, since without this base of knowledge, a practitioner or investor would certainly be lost. However, this collection provides more than just an instruction manual on the how-tos of investing in Indian communities. Particularly Prof. Matthew Fletcher's article, "In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax

[2] Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, JOINT OCCASIONAL PAPERS ON NATIVE AFFAIRS, No. 2005-02 (2005), http://www.jopna.net/pubs/jopna_2005-02_Approaches.pdf (last visited October 11, 2007).
[3] Gavin Clarkson, *Tribal Bonds: Statutory Shackles and Regulatory Restraints on Tribal Economic Development*, 85 N.C. REV. 1009, 1030 (2007).
[4] Gabriel Galanda, *Bar None! The Social Impact of Testing Federal Indian Law on State Bar Exams*, 53 FED. LAWYER 30, 31-2 (Mar.-Apr. 2006)(Galanda includes the Indian Child Welfare Act as his fourth area, which, while important, is not applicable to this discussion).

Revenue,"[5] and Carpenter and Halbritter's article bring up questions about economic development beyond the how-to, providing insights both for those new to this area, and those involved with tribes on a day-to-day basis, either as tribal leaders or outside advisors. By the end of the collection, the reader will have moved beyond a narrow understanding of tribal economic development and have a grasp of the larger issues implicated by the phrase "economic development," including self-governance, self-sufficiency and sovereignty.

From a general perspective, Lorie M. Graham in her article, "An Interdisciplinary Approach to American Indian Economic Development"[6] and Stephen Cornell and Joseph P. Kalt's article "Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't,"[7] cover similar ground. Graham, a law professor at Suffolk University Law School, develops the theme of individual solutions for individual tribes. As she writes, "tribes do not speak in a monolithic voice, nor do they operate under identical value systems. Yet, as is true for all developing sovereigns, tribes face the fundamental question of how to organize their economy in a manner that is consistent with the values and beliefs of the people they serve."[8] She goes on to discuss ways tribes may choose to develop their economic resources, which she divides into "land, labor and capital."[9] Most importantly, perhaps, Graham emphasizes the role of culture in economic development, specifically pointing out that a "crucial aspect of the development dialogue is whether a particular plan or project will enhance or jeopardize a

[5] 80 N.D. L.REV. 759 (2004).
[6] 80 N.D. L.REV. 597 (2004).
[7] Cornell & Kalt, *supra* note 2.
[8] Graham, *supra* note 6, at 616.
[9] *Id.* at 622.

tribe's cultural integrity or traditions."[10] In this, she agrees with Cornell and Kalt, who state that "organizational and strategic fit with indigenous culture is a significant determinant of development success on reservations."[11]

Finally, Graham goes on to discuss the role of the law in a tribe's economic development, specifically "some of the more commonly encountered legal issues both for tribes attempting to develop their economies, as well as those seeing to do business with tribes and their members."[12] As discussed earlier, this is the area where Graham expands on the areas of knowledge necessary for those doing business in Indian country. They include tribal governance structures, tribal sovereign immunity and jurisdiction, types of land ownership, taxation issues, and regulation.[13] Specifically she discusses the adoption of model laws into tribal codes, both the benefits (low costs, uniformity) and the drawbacks (not meeting the tribe's values, leading to a disregard of the law).[14] This discussion points out that uniform laws are not a panacea, and that simply implementing them to provide comfort to outside investors may not be in the best interest of the tribe. In an essay not included in this collection, Professor Wenona T. Singel of Michigan State University College of Law expands on these thoughts and concerns about model laws in Indian country, discussing the exportation of U.S. laws on an international level, drawing parallels and distinctions between that exportation and the importation of laws into tribal codes.[15]

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[10] *Id.* at 627.
[11] Cornell & Kalt, *supra* note 2, at 7.
[12] Graham, *supra* note 6, at 629
[13] *Id.*, 630-41.
[14] *Id.*at 641.
[15] Wenona T. Singel, *Cultural Sovereignty and Transplanted Law: Tensions in Indigenous Self-Rule*, 15 KAN. J.L. & PUB. POL'Y. 357 (Winter 2006)(Singel also points out issues with importing laws, or "transplanted" law, in regards to commercial codes, specifically writing "in the case of a secured transactions code modeled after Article 9of the UCC, the code challenges the development of cultural

Graham's article builds on parts of Stephen Cornell and Joseph Kalt's articles. Their article "Two Approaches," aggressively tries to answer the "why" of tribal economic development.[16] Their primary goal is to develop a model for tribal governments based on tribes that have been economically successful. Both Professors Cornell and Kalt are associated with the Native Nations Institute located at the University of Arizona. The Institute provides research and support in the area of nation building, and Cornell and Kalt have been writing in the area of tribal economic development as an aspect of nation building for over fifteen years. "Two Approaches" is highly methodical and accessible. In it, Cornell and Kalt identify the specific issues they believe lead to failure and success of tribal economic development.[17] They emphasize nation building through tribal sovereignty, integrating tribal culture and values, and long term strategic development. They also emphasize "good governance," and want tribes to separate tribal government and politics from tribal businesses.[18] They view separation of powers, such as a separate and independent tribal court, as essential to economic success. They base these theories on research of economically successful tribes done by the Harvard Project on American Indian Economic Development and the Native Nations Institute.[19]

Cornell and Kalt's article develops the themes identified earlier, particularly regarding the importance that any economic development plan or investment be tailored to each individual tribe.[20] In addition, while Cornell and Kalt are primarily focused on the structure of tribal government, they briefly point out the constraints "non-Indigenous"

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sovereignty to the extent that it displaces or modifies tribal norms and values that relate to the ownership of property and the relationship between debtors and creditors." *Id.*at 362).

[16] Cornell & Kalt, *supra* note 2, at 2.

[17] *Id.* at 21.

[18] *Id.*

[19] *Id.* at 3.

[20] *Id.* at 12 ("The nation-building approach begins with sovereignty or self-rule: *practical decision-making power in the hands of Indian nations.*"(emphasis in original)).

governments put on tribes. Specifically their concern is when "most of the important decision-making power rests not with the indigenous nation but with the federal government or some other outsider."[21] Though they are not pointing out specific instances of roadblocks by the federal government, discussed in other articles in this collection, it is clear they also are concerned with the role of the federal government in tribal economic development.

In the third article, "Can a Sovereign Protect Investors from Itself? Tribal Institutions to Spur Reservation Investment,"[22] Professors David Haddock and Robert Miller hardly touch on the role the federal government plays in attempts to start tribal economic development. Their article is less accessible than Cornell and Kalt's, focusing more on history and property theory. While they do point out that media coverage and court cases regarding tribes and outside investors highlight the negative areas in tribal-investor relations, their article does not do much to alleviate this perception.[23] Haddock and Miller make some insightful points about tribal governments and tribal sovereign immunity, but the article should be read in conjunction with Professor Fletcher or Professor Gavin Clarkson's articles for a full picture. Haddock and Miller seem to emphasize problems with tribal governments rather than presenting a balanced picture of the role of all parties. For example, under the subheading "Insecure Tribal Council Policy,"[24] which implies some difficulties between a tribal counsel and outside investors, Haddock and Miller go on to tell the story of the Rosebud Sioux Tribe and a Nebraska pork producer. The first two paragraphs of the story recount the Bureau of Indian Affairs

[21] *Id.*, 9.
[22] 8 J. SMALL & EMERGING BUS. L. 173 (2004).
[23] *Id.*at 191.
[24] *Id*, at 202.

mistakes regarding the requirement of an Environmental Impact Review. The BIA was a party to the case dispute, and only after at least two years of court cases and millions of dollars spent, did the tribal council, after a tribal referendum, decide to end the business relationship with the pork producer.[25] In addition, as a sovereign, it was well within the tribal council's authority to end an unprofitable venture. One can hardly imagine a city (an entity without sovereign status) in the same position ignoring the vote of its citizens to end a difficult venture.

In addition, the following stories in the same section all include the federal government as a major player in the failed business dealings.[26] While in their conclusion, Haddock and Miller make the point that "utilization of the residual Indian resources remains severely encumbered by government policy designed for tribes posing a military threat to the United States and consisting of primitive people unready to cope with the modern world,"[27] the quote itself is troublesome, assuming the ultimate goal is utilization of all resources.

However, Haddock and Miller do make important points about tribes, economic development and considerations for investors that are not made in the other articles. For example, in their discussion of waivers of tribal sovereignty, they point out that recognition of tribal sovereignty has been hard won by tribes recently, making waivers of it all the more powerful and difficult for tribes. As they write, "[t]ribes are thus understandably sensitive about being asked to waive these newly *enforced* powers for every little purchase of ten computers"[28] (emphasis added). While outside investors

[25] *Id.*, 202-3.
[26] *Id.*, 203-5.
[27] *Id.* at 221.
[28] *Id.* at 195.

may point out that other sovereigns (the states and federal government) routinely waive their immunity in business dealings, these are less problematic, given that the states and federal government do not also routinely need to go to court or Congress to defend the very existence of their sovereignty.

Tribal sovereignty, taxation and economic development are topics of Professor Matthew Fletcher's article, "In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue."[29] Fletcher, a professor at Michigan State University College of Law, traces the history of taxation and federal Indian law, following the 1906 case, *Buster v. Wright*,[30] which "seems to confirm that Indian Tribes have the inherent authority to tax the business activities of non-members."[31] He ends that portion of the article with a comparative discussion of federal, state and tribal taxation, pointing out that "[t]ribal governments have extreme difficulty in raising revenue; they have virtually no tax base,"[32] and the "lack of a stable tax base is a product of federal Indian law."[33] Because of this state of affairs, Fletcher's article demonstrates the clear link between a lack of government revenue and tribal economic development. When a tribal government looks to economic development for the tribe, it is not simply to provide employment or make money for tribal members. Rather, with no tax base and no way to raise revenue for government services, tribal governments look to tribal economic development to provide the revenue for these basic services. While other articles examine what the role of tribal governments in economic development should be, this article gives the why they are so closely involved in the first place. Arguably, if tribal

[29] Fletcher, *supra* note 5.
[30] 135 F. 947 (8th Cir. 1905), *appeal dismissed*, 203 U.S. 599 (1906).
[31] Fletcher, *supra* note 5, at 762.
[32] *Id.* at 771.
[33] *Id.* at 773.

governments were able to raise revenue through taxes like other sovereigns, their direct role in economic development would be reduced.[34]

Fletcher goes on to demonstrate why tribal businesses fail in an attempt to find economic success. Structural financing problems, an inability to "market the exemption" when it comes to taxes, anti-Indian bias and political limitations of tribal governments are all discussed in detail.[35] He makes a particularly interesting and unique point in his discussion of the political limitations of tribal governments. Fletcher points out that when a tribe becomes financially successful, tribal members tend to question its leaders and "demand accountability."[36] This reaction is ironically criticized by mainstream business media as "paranoia" on the part of tribal members.[37] Of course the same accountability for large, non-Indian firms by their shareholders or the federal government may have prevented the large scale implosion of companies such as Enron or WorldCom. The removal of federal government oversight and shareholder passivity in the face of such large financial gains was a significant contributor to these failures. Yet when tribal members attempt the same accountability to prevent failure, they are roundly criticized as the paranoid concerns of a foreign culture.[38]

Fletcher concludes with "suggestions for law reform," presenting a set of reforms designed to allow tribes to collect the necessary revenues to provide services to their citizens members of other sovereigns expect. He suggests a "Hicks fix"[39] which would allow for tribal jurisdiction over non-members, or treating tribal businesses as non-profit

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[34] *But see* Clarkson, *supra* note 3, 1036-7 (listing projects financed by state and local governments including golf courses, hotels, gaming, parks and convention centers).
[35] Fletcher, *supra* note 5, 785-799.
[36] *Id.* at 796.
[37] *Id.* (citing the WALL. ST. J.)
[38] *Id.*, 796-7.
[39] *Id.* at 801(referring to the case *Nevada v. Hicks*, 533 U.S. 353 (2001)).

arms of the tribal government.[40] As Fletcher emphasizes, "Indian tribes are not businesses."[41] Since tribal businesses raise revenue for tribal *governments*, those businesses should be treated as arms of the tribal government. Taxing the revenue of the businesses is the same as taxing the revenue of the *government.*

Fletcher's article, however, is not designed to provide legal tax guidance for the practitioner. For that, this collection includes Mark Cowan's article, "Tax Issues in Indian Country: A Guide for Practitioners."[42] Of all the articles included in this collection, Cowan's provides specific advice for those working in Indian country faced with tax issues. Cowan discusses IRS revenue rulings,[43] debunks the myth that individual Indians are not subject to federal income tax (aside from a few narrow exceptions),[44] and reveals the fact that revenue sharing between a tribe and state is not, technically, a tax.[45] This relatively short article provides a jumping off point for a practitioner interested in or faced with a tax question in Indian country. And while the article is more descriptive than analytical, Cowan does point out that "the Mashantucket Pequot tribe in Connecticut raises most of its governmental revenue from its large and profitable Foxwoods Resort and Casino."[46] His point emphasizes the fact that while the Tribe does have a tax code, very little of its *governmental* revenue comes from that source.[47]

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[40] *Id.* at 802.
[41] *Id.* at 805.
[42] 106 J. TAX'N 296 (2007).
[43] *Id.* at 298.
[44] *Id.* at 400 (narrow exemptions include income from trust land, income from fishing rights, and certain settlement payments).
[45] *Id.* at 301.
[46] *Id.* at 305.
[47] *Id.*

Professor Gavin Clarkson, in his article "Tribal Bonds: Statutory Shackles and Regulatory Restraints on Tribal Economic Development,"[48] takes a close look at tribal bonds, developing both the theme of tribal businesses providing government revenues and inexplicable federal roadblocks to tribal economic development. Clarkson also attempts to find a revenue stream for tribes as sovereigns, since they are prevented, as demonstrated by Fletcher, from receiving that money through a tax base. Clarkson and Fletcher's writings are distinct from Haddock and Miller's article in their attempts to move beyond blaming "ineffectual" tribal governments for failed economic development as they explore how federal policies create barriers so large it appears tribal governments and businesses are thriving in spite of them.

Clarkson traces the history of the Tribal Tax Status Act and its 1987 amendments, demonstrating how the original goal of the law (treating "tribes and states equally in the Tax Code")[49] was thwarted by Congress and one particular congressman.[50] Tribes are not treated the same as states in the tax code, and in the area of bonds, tribes are severely hampered by the law. In fact, Clarkson points out that when tribes do attempt to take advantage of the law, they are 30 times more likely to be challenged by the IRA when issuing tax-exempt bonds directly, and 100 percent of all "tribal conduit issuances" have been challenged by the IRS.[51]

Clarkson also gives a brief history of federal Indian law and public financing law before delving into the mix of the two. When the Tribal Tax Status Act was passed, it included a requirement that tribes can issue tax-exempt bonds only if "substantially all of

[48] Clarkson, *supra* note 3.
[49] *Id.* at 1015.
[50] *Id.* at 1038 (Congressman Sam Gibbons (D-Fla)).
[51] *Id.* at 1018

the proceeds are to be used in the exercise of any essential government function."[52] The phrase "essential government function" was not defined in the law and has become a major impediment to tribal bond issuances. The IRS has taken a very narrow view of the phrase, refusing to allow tribes to issue bonds for projects states, cities and municipalities are allowed to finance without question.[53]

After elucidating traditional economic arguments for why tribes should be allowed to issue bonds like states, including that it would ultimately save the federal government money,[54] Clarkson's article takes an interesting turn. In a change of pace, he discusses the "Memmi typology" to argue the potential racism of congressional action and IRS decisions.[55] After defining the typology, he goes on to apply it to Representative Gibbons, the leading opponent to the Tax Status Act, and to the IRS decisions. His analysis is illuminating, demonstrating the racism, or anti-Indian bias Prof. Fletcher discusses, behind the actions of Rep. Gibbons and the IRS.[56] In demonstrating the barriers to tribal tax-exempt bonds as largely unfair, uneconomical and biased, Clarkson proposes a change to the Tribal Tax Act which would allow tribes to compete fairly in issuing tribal bonds.[57] This way, tribes could finally raise some revenues for government operations currently barred by federal policies and court decisions.

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[52] 26 U.S.C. §7871(c)(1).
[53] Clarkson, *supra* note 3, 1054-5 (Clarkson lists a series of projects, including a hotel in Austen, TX; a convention center in Baltimore, MD; and various luxury hotels in various cities).
[54] *Id.* at 1064.
[55] *Id.* at 1066 (also noting Prof. Robert A. Williams used the typology in his work on the removal period in *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 ARIZ. L. REV. 237, 243-44 (1989).)
[56] *Id.*, 1067-1082.
[57] *Id.* at 1084

Professor Wenona Singel focuses on another narrow area of economic development in her article, "Labor Relations and Tribal Self-Governance."[58] In it, she relates the problematic reasoning behind the National Labor Relations Board (NLRB) decision San Manuel Indian Bingo & Casino.[59] However, her article also illustrates the broader theme of treating tribes as governments rather than businesses. Since her article was published, the San Manuel Band of Serrano Mission Indians petitioned for review of the decision with the D.C. Circuit, while the NLRB petitioned for enforcement.[60] The D.C. Circuit found for the NLRB and it is currently an open question as to whether the San Manuel Band will petition the Supreme Court for cert review.

Prof. Singel tracks the reasoning of the NLRB back through the cases it cites in its decision, specifically *Federal Power Commission v. Tuscarora Indian Nation*[61] and a Ninth Circuit opinion, *Donovan v. Coeur d'Alene Tribal Farm.*[62] She demonstrates that not only is the reasoning problematic, the decision is contrary to the "foundational tenets"[63] of federal Indian law, the canons of statutory construction,[64] and Congressional policy. As she points out, the NLRB treats federal Indian law as an optional "policy" it can choose to follow or not, and its explanation of what federal Indian "policy" is wrong.[65]

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[58] 80 N.D. L. REV. 691 (2004).
[59] 341 NLRB No. 138, 341 NLRB 1055 (2004)
[60] San Manuel Indian Bingo and Casino v. N.L.R.B., 475 F.3d 1306 (D.C. Cir., Feb. 2007) *reh'g en banc denied* June 8, 2007. (NLRB decisions are not self-enforcing and the Board must petition an appellate court for enforcement. ARCHIBOLD COX ET AL., LABOR LAW, 108 (13th ed. 2001)).
[61] 362 U.S. 116 (1960)
[62] 751 F.2d 1113 (9th Cir. 1985)
[63] Singel, *supra* note 58, at 701.
[64] *Id.* at 699 ("The Indian canon is an approach to the interpretation of treaties and statutes affecting Indian rights that gives special consideration for the retained rights and inherent sovereignty of tribes and for the trust relationship between tribes and the federal government.").
[65] *Id.* at 701.

After discussing the reasoning of the case, Singel also points out the issue of tribal sovereign immunity, one of the key areas for practitioners to be aware of, should have barred the case to begin with. By asserting NLRB jurisdiction over the Tribe, the NLRB again ignored the sovereignty of the Tribe and Supreme Court precedent.[66] As Singel writes, "the Board's assertion of jurisdiction under the NLRA created the potential that the tribe would be subject to suit and penalized with fines. Such actions, which would abrogate the tribe's sovereign immunity, require a clear expression in explicit legislation. Since the NLRA includes no such exception, the Board's assertion of jurisdiction should be barred."[67]

Singel also writes that Congress likely never intended the NLRA to apply to Indian tribes, writing that when the NLRA was enacted, "employment relations in Indian Country were not on its radar."[68] This is not to say, however, that Indian tribes were not on Congress's radar. Congress passed the NLRA in 1935,[69] only one year after the passage of the Wheeler-Howard Act, also known as the Indian Reorganization Act of 1934.[70] Singel writes that

> [w]hen Congress enacted the NLRA in 1935, it did so on the heels of the single most comprehensive piece of legislation ever passed on the subject of Indian tribes. It also acted in the wake of a Supreme Court decision that emphasized that laws of general application that were silent regarding Indians would be interpreted with reference to the prevailing policy of federal Indian law . . . the only reasonable conclusion that can be made based on the NLRA's failure to encompass tribes within its regulatory ambit is that Congress never intended the NLRA to apply.[71]

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[66] *Kiowa Tribe v. Mgf. Techs., Inc*. 523 U.S. 751 (1998)
[67] Singel *supra* note 58, at 719.
[68] *Id*, at 721.
[69] COX, *supra* note 60, at 91.
[70] Singel *supra* note 58, at 722.
[71] *Id.* at 724-5.

Singel concludes by offering some suggestions for tribes in the wake of this decision, even more important now after the D.C. Circuit's enforcement of the NLRB's decision. She suggests right-to-work statutes,[72] and overarching tribal labor laws and policies. While these are options for tribes, as Singel writes, they are also not sufficient. Tribes are sovereigns, and assuming they are even subject to the NLRA ought to have the same rights as states, and are even more affected by the jurisdiction of the NLRA than states may be. As discussed above, the revenue from tribally owned businesses goes to provide the revenue for the tribe itself. In the case of a strike or other work slow down by tribal employees, even at a "commercial" enterprise such as a tribal casino, basic government services would not be available to tribal citizens. Again, tribal "economic development" is more than simply the creation of jobs and profits; it's necessary to keep the tribe running. In this way, those enterprises are the tribes' "taxes," and do not fall under the same rubric of non-tribal economic activities. Singel points out the contradiction in her discussion of right-to-work statutes, arguing that "the passage of a right-to-work ordinance[] is also insufficient because it permits tribes to be treated like states for the purposes of the power to enact right-to-work statues, but it denies tribes other privileges granted states under the law. Most obvious, of course, is the fact that states are exempt from the definition of 'employer' under the NLRA."[73]

Finally, Kristen Carpenter and Ray Halbritter, in their article "Beyond the Ethnic Umbrella and the Buffalo: Some Thoughts on American Indian Tribes and Gaming,"[74] wrap up the group of articles with observations and question assumptions about tribes and commercial success. Their article brings up thoughtful questions, such as what is

[72] *Id.* at 725. (Right-to-work statutes prevent unions from creating a "closed" shop).
[73] *Id*. at 728.
[74] Carpenter & Halbritter, *supra* note 1.

tribal economic development? What does that development mean for the tribe? How does it change, or not, the tribe's identity, and its relationship with majority culture? Does tribal economic development challenge the majority's stereotype of tribes as rural, poor, and unemployed—and is that why economically successful tribes are sometimes portrayed as less "Indian" within "lawsuits, scholarship and political battles"?[75]

Carpenter, now a professor at Denver University, and Halbritter, an official with the Oneida Indian Nation, point out that the Supreme Court case *Kiowa Tribe v. Manufacturing Technologies*[76] specifically and other cases in general "set up a seductive and false dichotomy between tribes acting traditionally and commercially, and suggest that the Supreme Court is less likely to protect tribal rights when the tribe is engaged in business versus so-called customary activities."[77] Carpenter and Halbritter use the Oneida Indian Nation as a case study in tribal economic development and its attendant concerns and benefits. They recount a familiar story in these articles, familiar and oft-cited because it so clearly demonstrates Fletcher's point regarding tribal business revenue and tribal services. The Oneida Indian Nation started a bingo hall following a fatal house fire. City firefighters failed to respond to the scene, nor would it send a coroner.[78] The Nation started its bingo hall to raise money for its own fire department, and other basic government services.[79]

Carpenter and Halbritter argue that "to the extent that providing governmental services requires a government to have revenues, gaming has been the source of the

[75] *Id.* at 314.
[76] 523 U.S. 751 (1998).
[77] Carpenter *supra* note 1, at 315.
[78] *Id.*, 321-2.
[79] *Id.* at 322.

Nation's ability to fulfill the needs of its members."[80] However, the authors go on to examine ways the Nation seeks to incorporate its economic success with tribal norms and traditions, and its experiences working with neighboring communities.[81]

By this point, however, it should be clear that economic development is not a sufficient phrase for what tribes need to do with the businesses they create. And tribal businesses are expected to do far more than non-tribal businesses. The pressures that are inherent in these expectations of not only success, but success on a far broader scale, perhaps the very survival of the tribe. Cornell and Kalt use the phrase "nation building," to describe what tribes are actually looking to do with economic development. This is a necessarily broader and more accurate term. Tribal economic development is the attempt by tribes to become self-sufficient, self-governing and self-determining. It is far more than simply creating profitable businesses.

[80] *Id.* at 323.
[81] *Id.*, 324-5