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By Adam Crepelle

Poverty and its related maladies are a scourge upon Indian Country. Many people believe this poverty stems from Indigenous cultures' inability to adapt to Western economic models. This notion arises from the belief that North America's Indigenous inhabitants were noncommercial prior to European arrival, but this is false. Commerce with distant and diverse peoples occurred so frequently that trade languages emerged in pre-contact North America. Wiping out tribal economies was a colonial tactic. Although federal policy now seeks to encourage tribal economic development, tribes remain trapped in a byzantine legal regime that subverts tribal economies.

RESERVATION POVERTY

More than one in four Indians live in poverty, the highest rate of any racial group in the United States. The poverty rate is even higher for Indians who reside within Indian Country. Indian Country's poverty rate is high because there are few economic opportunities; indeed, most reservations lack any semblance of a formal, private sector. Hence, the average reservation unemployment rate has been 50 percent for decades. Due to the lack of opportunities on reservations, the median income for Indians is approximately two-thirds the median income of non-Hispanic whites.

Poverty causes severe social problems in Indian Country. Without jobs, many reservation residents struggle to find housing. Indian Country homes experience overcrowding at a rate of 15.9 percent, compared to 2.2 percent of all other U.S. households. Houses in Indian Country are also significantly more likely to be substandard than houses outside of Indian Country. For example, a 2016 House of Representatives report found approximately 48 percent of Indian Country households lack access to safe water. Overcrowded houses without access to safe water are prime places for COVID-19 to spread; thus, COVID-19 ravaged Indian Country. And despite treaty-guaranteed health care, Indian Health Services spent $2,834 per person in 2016—less than one-third of the amount per person as the much-maligned Veterans Health Administration.

Reservation poverty is particularly troubling given the United States has trust and treaty obligations to foster tribal economic development. Nonetheless, the United States miserably fails to allocate even basic levels of funding to tribal governments. Another confounding issue is many of the country's most impoverished tribes have significant natural resource endowments. While some tribes choose not to develop their resources, other tribes would like to capitalize on them. However, the federal government stands in the way by severely restricting tribal economic sovereignty.

POVERTY AS A COLONIAL TOOL

Trapping tribes in poverty has been a federal policy objective since the United States' founding. In fact, the United States' preferred tactic in most wars against tribes was starvation rather than armed conflict. For example, General George Washington ordered Major General John Sullivan to destroy the Iroquois food supply "and prevent their planting more" during the Revolutionary War. The United States would go on to nearly exterminate bison in the name of subduing the Plains Indians. In its campaign against the Navajo, the United States slaughtered the Navajo sheep herds, razed their crops, and poisoned their water. Destruction of Indian food supplies was meant to break the Indian spirit as

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warriors are less brave when their families cannot eat.

After starving tribes and forcing them onto reservations, the United States severely restricted Indians' economic liberty. Controlling tribal economies was a means of controlling Indians. When the United States wanted tribes to relinquish more land, it withheld tribes' treaty-guaranteed rations to coerce concessions. Similarly, Congress authorized the Secretary of the Interior to withhold treaty-guaranteed rations and money in order to compel Indian parents to surrender their children to boarding schools designed to stamp out tribal culture. Federal policies succeeded in immiserating Indians as a 1928 report stated, "An overwhelming majority of the Indians are poor, even extremely poor. . . ."

Congress sought to improve tribal economies by strengthening tribal governments with the Indian Reorganization Act of 1934. However, Congress quickly shifted from empowering tribal governments to terminating them. As part of its effort to assimilate Indians and boost their economic welfare, it relocated Indians from their reservations to major urban areas during the 1950s. Relocation often exacerbated Indian economic woes, resulting in many returning to their reservations.

Federal Indian policy remained largely paternalistic until 1975 when Congress officially adopted a policy of tribal self-determination. Congress has enacted multiple laws intended to improve life in Indian Country, and the self-determination policy has been a massive success. Undoubtedly, tribal economic welfare has improved since the 1970s. But, as noted above, Indian socioeconomic statistics remain far behind that of most Americans. The lag is explained by restrictions on tribal sovereignty.

RESTRAINTS ON TRIBAL SOVEREIGNTY CONTINUE TO HINDER TRIBAL ECONOMIES

Self-determination has not meant full sovereignty for tribes. Tribes still lack the legal and practical ability to perform many conventional government functions, such as making an arrest or collecting taxes. Tribes continue to fight for their right to execute these essential government functions because tribes remain "domestic dependent nations." In 1831, the U.S. Supreme Court explained this nomenclature means tribes "are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." Consequently, tribal sovereignty is severely limited. Limited tribal sovereignty leads to high transaction costs and uncertainty, both of which are bad for economies.

Trust land is a prime example. It is the most common type of land in Indian Country. Trust land is owned by the federal government while a tribe or individual Indians possess rights to use the land. Because the federal government holds the underlying title to it, trust land is not freely alienable. This means individual Indians cannot use the land their home sits on without first obtaining federal approval. In fact, an action as simple as executing a mortgage can require the Secretary of the Interior's approval. While Congress slightly improved the situation with the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, fewer than 100 of the 574 federally recognized tribes have implemented the act. The HEARTH Act has improved the ability of these tribes to access capital; nevertheless, it does not make the land alienable. Hence, Indians must get leasehold mortgages, which result in higher interest rates than conventional mortgages, so Indian borrowers are subject to higher costs of capital.

Trust land's bureaucratic fetters extend beyond accessing capital, as the federal government is ensnared in virtually every activity. For example, engaging in oil production on state land takes approximately four permitting steps, and production can usually begin within three months. In Indian Country, the same exact oil operation requires 49 permitting steps and can take over three years. The steps also cost more in Indian Country, such as over $10,000 for a drilling permit in Indian Country, compared to approximately $100 in Montana. Accordingly, a 2012 Office of the Inspector General report noted "the oil and gas industry generally considers Indian leases to be their lowest priority, preferring to lease private, state, and federal lands first." Consequently, oil and other industries operate outside of Indian Country whenever possible, thereby depriving tribes of economic opportunities.

Not only does tribes' limited sovereignty complicate land use, but it also complicates tribal jurisdiction over non-Indians. The Supreme Court has opined, "[T]ribes do not, as a general matter, possess authority over non-Indians who come within their borders." Instead, tribes only have civil jurisdiction over non-Indians in two circumstances. Tribes can assert civil jurisdiction over non-Indians who enter a consensual relationship with the tribe or its citizens. Tribes can also assert civil jurisdiction over non-Indians engaged in conduct that imperils the tribe's economic or political welfare. Both exceptions have been construed incredibly inconsistently. Uncertainty over the scope of jurisdiction leads to litigation, which costs time and money. Businesses avoid this jurisdictional premium by operating outside of Indian Country. Without businesses, there are few economic opportunities, and this leads to poverty and its related ills.

CONCLUSION

Poverty is not an Indigenous trait. Rather, tribal economies enabled their citizens to thrive for thousands of years. Tribal economies can thrive again. The federal government simply needs to start treating tribes like the sovereigns they are and always have been.

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