

Indian Nations: Land, governance, and economic development

Prof. Robert J. Miller (Eastern Shawnee)

Sandra Day O'Connor College of Law

Arizona State University

Phoenix, Arizona

<http://ssrn.com/author=354803>

Gen. George Washington 1783

- “the Settlemt. of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the other.” He suggested: “policy and oeconomy [sic] point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their country; which as we have already experienced is like driving the Wild Beasts of the Forest ...; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho’ they differ in shape. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expence [sic] and without that bloodshed”

Interstate (Indian) Commerce Clause

Art. I, Section 8:

“[T]he Congress shall have Power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes”

Congressional Representation

Article 1

“Representatives and direct Taxes shall be apportioned among the several States ... according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”

(Amended by the 14th Amendment)

AMENDMENT XIV

“Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” (1868)

- Elk v. Wilkins, 112 U.S. 94, 99 (1884)
Native Americans owed “allegiance to their several tribes, and were not part of the people of the US.”
- U.S. citizens 1924

Treaty Clause

Article VI:

“This Constitution, and the Laws of the United States ... and all Treaties made, or which shall be made ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Treaty & commerce policies: Trade and Intercourse Acts

1790 - “No sale of lands made by an Indian, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the *right of pre-emption* to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.”

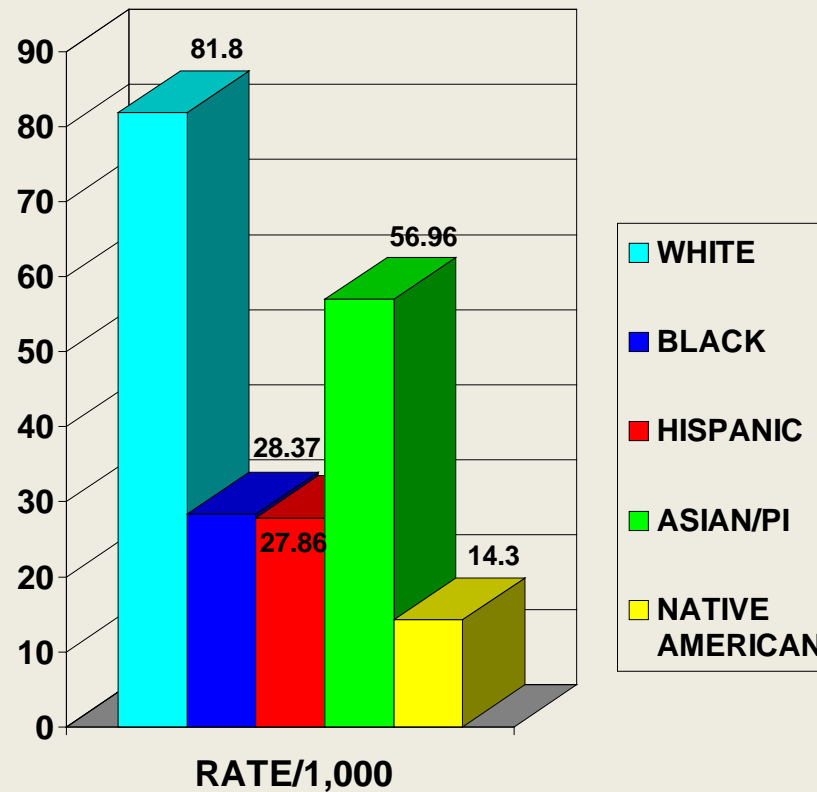
Traditional North American Indian property regimes & rights

- Successfully supported for centuries with agriculture, hunting & fishing
- Private & community property rights
- Trade networks & economic systems
- Public works
- Intellectual property rights
- Easily incorporated new technologies, *e.g.*, guns, horses & snow machines

BUSINESS OWNERSHIP PER CAPITA

BUSINESSES PER THOUSAND POPULATION

STATE OF OREGON



Source: 1992 Census of Business
© ONABEN 1997

Individual & Community Benefits

- Earned Income
- Containing “Leakage”
- Benefiting from the “Multiplier Effect”
- Employment and Training
- Community cohesion
- Family stability
- Long term perspective

1. Institutions matter

- Rule of Law
- Efficient bureaucracies
- Separation of politics from business management

2. *Culture matters*

3. *Sovereignty matters*

Potential

- Poverty is not an Indian cultural trait
- Improve education & health levels
- Tribal gov'ts – to assist & be clients – “Buy Indian Acts”
- Multiplier effect & stop “leakage”
- Building private & public economies to help sustain our communities

Relevant Materials

- Robert J. Miller, *Reservation “Capitalism:” Economic Development in Indian Country* (2012).
- *Creating Economies on Indian Reservations* (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=255650
1
- *Economic Development in Indian Country: Will Capitalism or Socialism Succeed?*, U. Ore. L. Rev. (2002), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=115423
1
- *American Indian Entrepreneurs: Unique Challenges, Unlimited Potential*, Az State L.J. (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=115370
8