Tribal Leakage: How the Trust Land Curse Impedes Tribal Economic Self-Sustainability (Part 1)

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Introduction

Gallup, New Mexico, is a border town just outside the Navajo Nation reservation with an estimated 22,000 residents; however, that number nearly triples on the first of the month. Social Security checks are distributed to the elders and veterans on the first of the month, and most tribal members have neither access to a local bank nor sufficient consumer spending options on the reservation. Thus, most Navajos must drive an hour or more to buy necessities such as groceries, lumber, auto-parts, and school clothes in border towns such as Gallup. Significant competition for retail dollars from the Navajo Nation is spread among several surrounding non-Indian communities.

More than 70% of Navajo dollars are spent off-reservation\(^1\) and nearly 80% of tribal consumers purchased their groceries off reservation.\(^2\) This economic leakage occurs despite the long off-reservation drive—often more than 100 miles—to a grocery store. These startling statistics show the magnitude of this leakage and explain why the Wal-Mart in Gallup is one of the largest in the world. Such leakage is not unique to the Navajo Nation.

The former Chairman of the Crow Nation in Montana suggested that if “anyone doubts that money flows into Billings [from the Crow Nation], go to Wal-Mart today after members receive their per-capita check from the tribe. ‘We don’t call it Wal-Mart, we call it Crow-Mart.’”\(^3\) According to the Billings Gazette, that quarter per-capita payment from the tribe’s coal mining royalties was $310.\(^4\) Of the Crow Nation’s nearly 12,000 tribal members, approximately 8,000 live on the reservation and were highly likely to spend their per-capita checks in Billings\(^5\).
The Crow Nation and the six other federally recognized tribes in Montana conducted a study that found tribal and BIA salaries pump more than $200 million into the state economy, and “since every dollar turns at least five times in a local economy, the total annual contribution may reach $1 billion.” When private-sector wages as well as goods and services purchased by tribal and BIA entities are considered, the contribution to the State of Montana “could reach $3 billion to $5 billion a year.” Research on the Zuni Pueblo found 84% of personal income was spent off-reservation. When a million dollars is invested in most communities, it generates approximately ten million dollars of cash flow. But in Indian communities, one million dollars generates just one million dollars of cash flow.

We have seen firsthand how this economic leakage operates in Crownpoint, New Mexico, on the eastern edge of the Navajo Nation. Crownpoint has over 2,000 residents who live and work in the area but leave the reservation to spend their paycheck. Other than one overpriced grocery store, a non-Indian-owned Mexican restaurant next door, and two gas station convenience stores, Crownpoint has no other stores, shops, or restaurants.

Tim and Kathy Murphy have lived in Crownpoint most of their lives, and the hour-long drive to Gallup has been a normal bi-weekly trip for as long as they can remember. They shop off-reservation to get affordable produce and meats because the local grocery store is too expensive. Although demand exists for multiple grocery stores and competition would reduce prices, the Murphys routinely decide not to shop at the non-Indian-owned grocery store in Crownpoint except in emergencies, and their experience mirrors most Crownpoint families. Thus, their earnings, and the earnings of the entire community, routinely leave the reservation and never cycle back—a classic case of economic leakage.

Why is economic leakage so pervasive in reservation communities and yet the towns bordering those communities consistently see a net monetary inflow from tribal members? We contend a primary cause for insufficient on-reservation consumer options is a cumbersome and onerous U.S. government policy holding tribal land in trust. An artifact of a long-since-discredited congressional policy called Allotment, federally-imposed restrictions on trust land make it almost impossible for on-reservation entrepreneurs to secure startup financing, as they cannot borrow against their home equity. As a result, there are fewer entrepreneurial ventures on reservations and thus fewer options for on-reservation consumers to spend their money locally. The inevitable consequence of insufficient consumer spending options on-reservation is leakage.
Our article proceeds as follows. After discussing the interplay between economic leakage and trust land, we explore the historical origins of trust land as part of an overarching history of federal Indian policy. Next, we return to the interplay of economic leakage and trust land, focusing on both micro- and macroeconomic perspectives. Based on the legal and economic underpinnings of trust land and its concomitant consequences, we argue that title to trust land can and should be returned to tribes and individuals in fee under a new tribal status that confers permanent jurisdiction, complete with full taxation powers, to the tribe. Our core premise is ending the current trust land system will eliminate a primary cause of economic leakage while ensuring the newly transferred land always will be subject to tribal jurisdiction. We close with some final thoughts as well as suggestions for further research.

**Economic Leaking and the Trust Land Curse**

Robert Miller lists three reasons why economic leakage in tribal communities like Pine Ridge, Rosebud Sioux, and Crownpoint lead to economic disaster for Indian reservations. First, the lack of community development

[...]
leads to more poverty and overall lower Indian family incomes. Second, having so few employers and jobs available in Indian Country leads to high unemployment rates. And, third, the absences of thriving economies, characterized by a sufficient number of privately and publically owned businesses in Indian Country, adds to the impoverishment of Indians and their families.\(^{12}\)

Although Miller does not stress the trust land issue, we focus on trust land as a primary impediment for entrepreneurs who want to start up small businesses or pursue entrepreneurial endeavors on the Navajo reservation. Because Navajo land is held in trust, the U.S. government owns the land; tribes and individual Indians are mere beneficiaries. Even for community development, the U.S. government must approve the selling and leasing of Navajo land. Noted tribal entrepreneur Lance Morgan says,

Trust status hurts individual American Indians. It prevents us from using our land as collateral, which has effectively killed Native-owned agriculture. This system left us with almost no choice but to lease out our land, primarily to non-Indians. That's why we are land rich, but still dirt poor.\(^{13}\)

Miller echoes this sentiment when he mentions
[T]ribes and Indian owners cannot sell, lease, develop, or mortgage [trust land] for loans without the express approval of the federal government. Needless to say, having the United States looking over the shoulders of tribal governments and requiring federal approvals of most economic decisions, and the time it takes to gain these bureaucratic approvals, adds enormous costs and inefficiencies to tribal and Indian economic endeavors. The inefficient and non-business-oriented federal bureaucracy creates serious obstacles for tribal governments and Indians in using trust assets for economic purposes, and for non-Indian companies who want to work in Indian Country.14

The policy of restricting tribal land as trust land means potential entrepreneurs do not have access to a prime source of capital for business startup. Without entrepreneurship, a tribal economy cannot be self-sustaining, yet tribal members still must meet their basic consumption needs. In an interview with the Farmington Daily Times, Navajo Nation president Ben Shelly pointed out the need to reverse economic leakage. President Shelly said “every weekend we come to town, into Farmington, especially the first of the month …same with Gallup, same with Page, same with Flagstaff”15 and spend money earned on the reservation. Miller similarly stresses

The money Indians spend does not circulate on their reservations between various public and private business opportunities and jobs. Clearly, if there are no businesses on reservations where residents can buy necessary and luxury goods, they will make those purchases off reservation. The lack, then, of small businesses on reservations leads to many negative economic impacts.16

The legal origins of trust land come, in part, from Cherokee Nation v. Georgia,17 the first Supreme Court opinion involving an American Indian tribe.18 Chief Justice Marshall wrote that “the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else.”19 One of those “peculiar and cardinal distinctions” was the notion that Indian tribes were

[d]omestic dependent nations…in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian….They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being…completely under the sovereignty and dominion of the United States20
That guardian-ward relationship relied on the federal government as protector of Indian lands, both from avaricious settlers and land speculators as well as other Indians. This sense of paternalism from the ‘Great White Father’ led to the disastrous policy of tribal trust land. To fully understand that policy’s origin, we must go farther back into history.

Note: Part 2 will appear in next month’s issue.

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Endnotes

3 Shay, Becky, Crow leader outlines plan for fuel plant, Billings Gazette, December 06, 2007
4 Id.
5 Id.
7 Id.
8 Miller, p. 136.
10 Food Sovereignty Report, supra note Error! Bookmark not defined. at 16
11 Telephone interview with Tim Murphy, May 5, 2014.
14 Miller, p. 40
16 Miller, p. 114.
18 An earlier Supreme Court case, Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1823), dealt with the issue of who could acquire title to land from Indian tribes, but no tribe was a party to the case.
19 Cherokee Nation, 30 U.S. (5 Pet.) at 16.
20 Id. at 17