

# PERC REPORTS

FOR FREE MARKET ENVIRONMENTALISM



**Will** Economic  
Growth  
Erode or Enhance  
**Tribal Culture?**





## PERC

The Property and Environment Research Center is a nonprofit institute dedicated to improving environmental quality through property rights and markets.

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“Will economic growth in the 21st century erode or augment tribal culture,” asks JUSTIN RICHLAND of the University of Chicago. As an anthropologist, Richland offers firsthand knowledge of the revival of the Hopi language and explores why this evolution matters for culture and the future of the tribe. His question also sets the stage for the themes explored throughout this special edition of *PERC Reports*.

North of the U.S. border, SHANE GOTTFRIEDSON, Chief of the Tk'emlups, writes a heartfelt article pronouncing that property ownership is a basic human right. His native home is “a tract of land... whose legal title is held by her Majesty. We don't own our land in the eyes of Canadian law and, consequently, we find ourselves with justice withheld and no real home.”

The Nisga'a Band in British Columbia was fed up with this arrangement. Consequently, they became the first of the First Nations to create the option for members to own tribal land privately. RICHARD WRIGHT showcases the experiment.

In “Māori Land Rights—Living on the Periphery,” TE MAIRE TAU describes how Crown policy toward indigenous lands changed in the 1960s to allow local councils to rezone. Māori lost the right to build, which meant their capital base disappeared. The social consequence was devastating but signs that tribal members will regain their full land rights in 2014 look promising.

Back in the United States, it is hard to believe that on the Pine Ridge Indian Reservation, per capita income is below \$8,000 and unemployment sits at 80 percent. Yet among this poverty stricken landscape is a region of rich resources including a vast prairie neighboring Badlands National Park. JULIET EILPERIN explores the potential for the Oglala Sioux to operate the first tribal national park—an extension of the Badlands—and turn a profit on a huge herd of bison. Whether this approach can provide economic benefits and become a beacon of cultural pride remains to be seen.

TERRY ANDERSON (featured below with First Nations leader Manny Jules) gets to the heart of this special issue of *PERC Reports* when he asks, “How can people treated as ‘wards’ of the state reclaim their dignity?” The answer requires sovereignty for individual Indians and for tribes. Achieving sovereignty means becoming self-sufficient.



Tell me what YOU think  
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*Laura E. Huggins*

Laura E. Huggins | Editor

Understanding the relationship between economic development, assimilation, and tribal culture is challenging. PERC began to explore some of the connections by hosting 30 experts in the field. The participant list spanned from academics at Berkeley to George Mason University, officials from the First Nations Tax Commission to the U.S. Federal Reserve Bank, and tribal leaders from the Kamloops in Canada to the Māori in New Zealand. Their perspectives are woven throughout this special issue, which was made possible by generous support from the M. J. Murdock Charitable Trust.





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# RESTORING INDIAN DIGNITY

DIGNITY, n. 1: the state or quality of being worthy of respect. 2: a sense of pride in oneself.

Viewing Karl Bodmer's paintings of Native Americans from his journey up the Missouri River from 1831 to 1834 or L. A. Huffman's photographs taken of chiefs such as Sitting Bull after the battle of the Little Big Horn, one cannot help but feel a sense of dignity. These were people who were worthy of respect and who had a sense of pride.

Between then and now, however, that sense of pride has often disappeared. I recall vividly when a young Indian taking my introductory economics class walked into my office. He could barely look me in the eye as he asked for help understanding the material. Of course, many young college students are shy when walking into their professor's office, but this student was not just shy. He lacked a sense of pride that I hope I played a small role in restoring when he passed Econ 101.

Reading most accounts of the effect of the recent federal government shutdown on reservations, one gets a sense of why dignity may be lacking among people who have every reason to hold their heads high. A *New York Times* headline captures the theme: "Pulling Aid Away, Shutdown Deepens Indians' Distress." The story decries the lack of federal police, firefighting, and health care services, all of which Indians have come to depend on.

The federal government has a responsibility to live up to its commitments to Indians, but treating Indians as "wards" of the state, to use Justice John Marshall's word (*Cherokee v. Georgia*, 1831), is what undermines the dignity of the continent's first inhabitants.

The same *New York Times* article begins with a story of a Crow mother of three who did not receive the lease payment for grazing on her land because the Bureau of Indian Affairs (BIA), acting as the trustee-middleman between the lessee and the Indian lessor, did not transfer the payment to the mother.

In the summer 2006 issue of *PERC Reports*, Crow tribal member Bill Yellowtail quoted his neighbor, Michael Running Wolf of the Northern Cheyenne, who cautioned Indians to beware of the victimhood myth: "[W]e walk the border between protecting our values, and acting the part of victim.... It's a belief that bases our identity upon the wrongs we have endured, rather than our accomplishments and integrity."

Sherman Alexie, an award-winning author and member of the Spokane-Coeur d'Alene Tribe, interviewed recently for *The Atlantic*, says his success as a writer began when he escaped "the reservation of his mind." He goes beyond the reservation metaphor to encourage Indians to literally escape the reservation. He notes that "the reservation system was created by the



U.S. Military. It was an act of war. Why do we make them sacred now, even though most reservations are really third-world, horrible banana republics?" To Alexie, being trapped in "the reservation of his mind" is analogous to being trapped on the reservation as a ward of the federal government.

It's apocalyptic, when I think about it. The human journey has always been about movement. And a century ago, when we moved onto the reservation, my tribe stopped moving. . . . So, "I'm in the reservation of my mind" addresses this lack of innovation, the Native imagination being shackled and curtailed, as well as the failure to celebrate the innovations that have happened.

Prior to the reservation era, innovation was an integral part of Indian life. Trade among tribes allowed Indians in the upper Missouri to have sea shells in exchange for pipestone and coastal tribes to have buffalo horns in exchange for whale bone. With European contact, trade beads quickly replaced more fragile porcupine quills for decorating clothing, and pedestrian Indians quickly innovated as they became equestrian Indians. These were the dignified people depicted by Bodmer and Huffman.

Fast forward to the present. How can people treated as "wards" reclaim their dignity?

Ultimately, this path requires sovereignty for individual Indians and for tribes. Of course, nearly all Indians say they want sovereignty, and every politician and bureaucrat in Washington pays lip service to giving it to them.

Achieving sovereignty, however, means becoming self-sufficient. Darrin Old Coyote, chairman of the Crow Tribal Council, recently said in a radio interview that he saw the government shutdown as a "wake up call" from which "the goal is to become self-sufficient."

Some tribes such as the Crow would have no trouble doing that if they were not under the thumb of the BIA's trusteeship. PERC research fellow Shawn Regan and I pointed out in the *Wall Street Journal* in October that tribal energy resources nationwide are potentially worth \$1.5 trillion. The Crow Reservation alone sits atop nine billion tons of coal, and the tribe receives half of its annual budget from coal leases. Old Coyote sees this as an opportunity to gain "more sovereignty by the ton." Yet, like the Crow mother of three, the tribe could not get its coal-lease revenues because the middleman-trustee—the BIA—was shutdown.

Ron Crossguns of the Blackfeet tribe's oil and gas department recently told a documentary filmmaker that deciding if, when, and how to develop energy resources is "our right. We say yes or no. I don't think the outside world should come out here and dictate to us what we should do with our properties."

That is the path to restoring Indian dignity.

In "On Target" PERC's President Terry L. Anderson confronts issues surrounding free market environmentalism. He can be reached at [perc@perc.org](mailto:perc@perc.org).



## Tribal Culture and Economic Growth

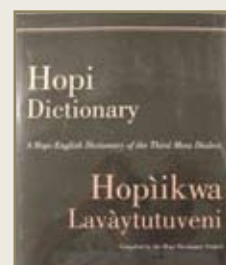
*Will economic growth in the 21st century erode or augment tribal culture?*

BY JUSTIN RICHLAND

Early contact with non-Indians caused American Indian cultures to flourish in some ways and to atrophy in others. Non-Indians supplied steel chisels and paint to Northwestern tribes for totem pole art, the loom and colored threads to Southwestern tribes for weaving, and the horse to Great Plains tribes for buffalo hunting. Non-Indians also brought new diseases, warfare, and brutal subjugation that disrupted tribal life. After the conquests of the 18th and 19th centuries, flourishing and atrophying continued in the 20th century when many tribes acquired the English language, governments, schools, western medicine, Bibles, rock and roll, rodeos, jails, cut-rate stores, tractors, big-screen televisions, and desk jobs. At the same time, many tribes also lost their original language, prayers, dances, ceremonies, herbal medicines, religious beliefs, arts, clans, and methods of farming and hunting. By both force and allure, American culture crowded out many forms of traditional culture.

In the 21st century, rapid cultural change will presumably continue, especially through economic development on Indian reservations. Will economic growth in the 21st century erode or augment tribal culture? Will tribal culture retard or promote economic development? These are the questions Dominic Parker, Robert Cooter, and I ask in a forthcoming research project about American Indian reservations. The preliminary findings of this project were recently presented at PERC's workshop in Bozeman, Montana, on economic development and tribal culture.





Emory Sekaquaptewa

## THEORY OF TRIBAL CULTURE

Culture is often described as social rather than individual, local rather than universal, learned rather than instinctive, historical rather than biological, evolved rather than planned, distributed rather than centralized, and cultivated rather than coarse. Scholars distinguish between cultural expressions and their foundations. Expressions include activities such as singing, dancing, dressing, and artistry—the usual media representations of Indians. The foundations include marrying, child-rearing, socializing, worshipping, governing, and working.

In American Indian communities, culture often distinguishes insiders from outsiders. People vigorously debate what is really “Hopi” or what is “Indian” and what is “white.” Besides affecting pride and human relationships, the debate can affect subsidies, grants, school curricula, and jobs.

Culture is an indispensable concept like “society,” but it is also vague and contested. Loose criteria control the word in speech and the concept in thought. Any scholarly attempt to find culture’s “essence” or “true meaning” is inevitably too narrow. Rather than trying to define culture, we are exploring causes connecting tribal culture and economic development.

Many tribes describe themselves as “nations,” and their governments mobilize the symbols of nationhood. By focusing on one particular form of cultural distinctiveness—that of tribal

language—our research attempts to address the following questions: Does national distinctiveness promote wealth, or does wealth promote national distinctiveness? Is assimilation the price that Indian nations must pay for wealth, or is distinctiveness one of the rewards for obtaining wealth?

## THE HOPI DICTIONARY

In the summer of 1998, I was sitting in the Tucson, Arizona, office of Emory Sekaquaptewa getting lessons on Hopi grammar and syntax. At the time, and up until his death in 2008, Sekaquaptewa served as research professor in the Bureau of Applied Research in Anthropology at the University of Arizona, and Chief Justice of the Hopi Appellate Court—the highest court of the Hopi Nation. Although I had first met Emory in 1995 while doing legal research, I had long known that his real passion lay in Hopi language and culture. Indeed, despite having no formal training as a linguist (Emory was the first Native American JD to graduate from the University of Arizona), he turned many of our conversations to lectures on the significance of language to the vitality of contemporary Hopi jurisprudence and culture more generally.

Time and again Emory told me of his efforts to document the Hopi language, and how starting with note cards and his own intuition, he would write down words and phrases that he thought would better capture important concepts in Hopi



-aa-



paaki

-e-



pehu

-i-



sihu

kw



kwaahu

## Uto-Aztecan

Numic   **Hopi**   Takic   Aztecan   *Tübatulabal*   Taracahitic   Tepiman



that did not have adequate translation in English. This effort evolved into the Hopi Dictionary Project. Emory brought in linguists and librarians and other Hopi language speakers to collaborate on his vision. The project culminated in the 1998 publication of the *Hopi Dictionary/Hopiikwa Lavàytutveni: A Hopi Dictionary of the Third Mesa Dialect*, a 30,000 word volume that today stands as the most comprehensive dictionary not only of the Hopi language, but of any of the languages of the Uto-Aztecan family, one of the largest indigenous language groups in North and Central America.

Thus it was surprising that on the eve of the official release of the dictionary Emory was not excited about the achievement of what, on other occasions, he and others had considered his life work (indeed, he was often described as the Noah Webster of the Hopi Nation). Only later would I discover that there were objections to the publication of the dictionary by certain members of the Hopi Tribe, including Leigh Kuwanwisiwma, director of the Hopi Cultural Preservation Office, the arm of the tribal government charged with policing the misrepresentation of Hopi cultural property, including intellectual property. Among the concerns raised by Kuwanwisiwma was that the publication of the dictionary would end up making the Hopi language and the cultural meanings that it conveys accessible to non-Hopis, which would expose ceremonial secrecy and ritual significance to those who were not authorized to know.

While Emory was giving me personal lessons in Hopi, I had little appreciation that I was unwittingly enacting the very kind of engagement with the language that was, in the view of some, the reason the dictionary should never be published. It is instructive of Emory's views on these issues that, in those early days, he never let on that this was at stake in our meetings. Instead, he would say the unfinished business of the Hopi Dictionary Project was not seeing it appear in print, but rather of getting it distributed to the Hopi families who he believed needed to learn how to write the language. Only by expanding Hopi literacy could the larger problems of Hopi cultural loss be reversed. For Emory, the objective was to get Hopi people to realize that their language and culture could be the stuff of a standardized, national culture, a literate language by which they could accomplish all aspects of contemporary Hopi life—both informal and formal. The ultimate goal for Emory was not only of Hopi cultural preservation but of vitality, and it was through a dictionary that the tribe could provide the basis for Hopi literacy, taught to all Hopi children in schools and used to conduct official Hopi nation business.

In the years that would follow, right up until his death, Emory played an instrumental role in developing a variety of materials and programming designed to foster Hopi literacy and language learning. These projects included teaching a course to Hopi educators living on the reservation, supervising the drafting of novel



m -öö-



maana

pöösi



Hopi literacy materials and lesson plans, even participating in the launching of a Hopi tribal radio station that would broadcast Hopi language programming to all of northern Arizona.

It was the efforts launched by the Hopi Dictionary Project that would eventually gain nearly universal support of the Hopi tribal membership, which is now a mainstay of the contemporary tribe and a key element in their sense of cultural pride and vitality. This is evident by the fact that where the dictionary was largely funded by contributions from non-Hopi donors, the language and literacy programming based on it are supported by tribal funds. This includes major and on-going support for the Hopi Lavayi Project—the Hopi language and literacy program which, perhaps ironically, is under the direction of Kuwanwisiwma. If Emory were alive today he would allow himself a knowing and grateful smile at this positive turn of events and the role that his efforts played in preserving and promoting Hopi language and culture.

## ECONOMIC GROWTH, WEALTH, AND LANGUAGE REVIVAL

To further understand the connection between language and culture, our research considers the value of an Indian language to individuals who speak it. Language is a means of expression and an instrument of communication. Expression is intrinsically valuable and enjoyable. As the case of the Hopi dictionary demonstrates, people will pay in money, time, and effort to express themselves in

ways that they enjoy. Consequently, as Indians get richer, they may spend more money, time, and effort cultivating Indian languages.

Using data on the self-reported use of tribal languages at home, we examine the relationship between tribal language use and income growth on reservations from 1980 to 2010. The use of tribal languages plummeted during the 1980s, casting doubt on their future viability. Tribal language use then stabilized between 1990 and 2010 as incomes on many reservations expanded due to growth in income from a number of different economic ventures, including casinos. We explore this positive association in detail to uncover causal relationships between tribal language use and income.

Although our research is still a work in progress, preliminary results suggest that recent income gains on reservations—emanating from increases in economic growth opportunities and adjacent county wealth—have enabled tribal language retention and revitalization. Although we cannot precisely identify all of the mechanisms through which income from casinos has enhanced language investments, our theory hypothesizes that pure income effects and increased demand for cultural tourism have played roles.

This analysis complements other research finding positive effects of economic growth on incomes and health outcomes. Although many observers assume the benefits of such developments necessarily came at the expense of tribal culture, our preliminary results suggest the opposite: The emergence of new forms of economic growth appears to be a catalyst for an increased attention to cultural reinvigoration of a variety of types, including a return to and renewed commitment to native language learning.



JUSTIN B. RICHLAND is an associate professor of Anthropology at the University of Chicago. Richland is the author of several works on the contemporary legal systems and practices of Native American Nations, including *Arguing with Tradition: The Language of Law in Hopi Tribal Court* and *Introduction to Tribal Legal Studies*. He earned his PhD in anthropology from the University of California, Los Angeles and a JD from the University of California, Berkeley.

# The Nisga'a Experiment

BY RICHARD WRIGHT



Owning land is a Canadian right—unless you live on a reserve. Now, a First Nation in British Columbia is rewriting the rules. Will property rights for Aboriginals bring prosperity or assimilation?

Bonnie Stanley, a member of the Nisga'a First Nation in northern British Columbia, is a certified hairdresser. She also runs a catering business, a convenience store and a successful takeout food service from the front porch of that store. Stanley boasts that her halibut fish and chips are known literally around the world, thanks to the trickle of tourists who make their way to her shop. She calls her burgeoning food empire “U” Seafood, “U” Eat It.

Last year, Stanley decided to add to her empire by building a sit-down restaurant. By early November, the foundation was in, the roof was up, the walls were framed, but the cash had run out. Where to go for the \$25,000 Stanley thinks she'll need to finish the job?



Bonnie Stanley (left), a member of the Nisga'a First Nation in northern British Columbia, stands inside her services store “U” Seafood, “U” Eat It.



Most Canadians assume that ownership of land is a right enjoyed by any individual citizen who can scrape together a down payment and rustle up a mortgage. But not so for First Nations people living on reserves or designated territories.

Faced with a similar situation, many Canadian entrepreneurs would raise the cash by upping the mortgage on their homes. But while Stanley owns her house, she doesn't own the land it stands on. Under the Indian Act, no Canadian First Nations person living on a reserve or designated territory does. No property, no mortgage. No mortgage, no restaurant. No restaurant, no additional income.

Help may be just around the corner. Late last year, the Nisga'a government passed the last piece of legislation to give property rights to individual Nisga'a citizens, completing a process begun more than a century ago. No other First Nation in Canada has ever enabled its people to own land privately.

The Nisga'a believe it's a small step toward a future of greater prosperity and self-sufficiency for people like Bonnie Stanley. But critics argue that by privatizing land, the Nisga'a have started down the slippery slope to assimilation, setting a dangerous precedent for all First Nations.

That's what Pamela Palmater fears. A Mi'kmaq lawyer from Eel River Bar First Nation in New Brunswick, Palmater has recently been heard speaking for the Idle No More movement. Palmater is a respected figure in the Canadian First Nations community. She spent 10 years working in the federal government's Indian Affairs and Justice departments, and last year ran for the post of national chief of the Assembly of First

Nations, coming second to Shawn Atleo. In addition to her recent leadership role in Idle No More, Palmater has, throughout her several careers, been an outspoken defender of the collective ownership and stewardship of First Nations land. "Some people might call the Nisga'a plan pioneering, but this is not a solution to any of the issues First Nations are facing," she charges. Palmater says private ownership of land could lead to the eventual disintegration of Aboriginal culture in Canada. "It's the kind of deal First Nations don't want or need."

That private property ownership should be controversial may come as something of a surprise to readers. Most Canadians assume that ownership of land is a right enjoyed by any individual citizen who can scrape together a down payment and rustle up a mortgage. But not so for First Nations people living on reserves or designated territories. Before contact with Europeans, First Nations land was collectively, not individually, owned. In 1876, the Indian Act preserved the collective part but not the ownership one. Natives could collectively use and, to an extent, manage certain lands reserved for them, but legal ownership of those lands actually resided with the Crown.

This arrangement was originally struck with the best of intentions, says Joseph Quesnel, an Alberta-based policy analyst at the Frontier Centre for Public Policy who specializes in First Nations



issues (his background is Métis). In the beginning, he says, “Natives were losing tribal lands to squatters, and the wisdom of the government of the day was to prevent white scoundrels from taking Native lands by making a pre-emptive strike.” Thus Native-occupied territories were declared to be Crown lands “reserved” for the use of Native people under certain defined conditions. These conditions included strict rules to prevent Native lands from falling into non-Native hands.

It’s fair to say, nearly two centuries later, that this arrangement has in fact preserved vast tracts of Canada for Native use, Quesnel says. But there has also been a downside: “First Nations people can’t use their land in the way everyone else can in the mainstream economy.” Most importantly, reserve law affects their ability to mortgage their homes. The land beneath their houses belongs to the Crown, and the Indian Act prevents the alienation of the land to non-Natives. Without the land, banks and other lenders see no

significant collateral to secure mortgage loans, so with very few exceptions, First Nations people can’t borrow to put a child through college, pay for a home improvement or, like Bonnie Stanley, finance a business. This has had a crippling effect on the ability of First Nations people to get ahead, according to Quesnel.

For Scotty Stanley, Bonnie Stanley’s nephew, the restrictions on ownership are just wrong. “Other people have private property rights,” he says. “Everybody right across the country. I don’t see why we shouldn’t have the same rights.” The 25-year-old Nisga’a man lives in Gingolx (population 341), one of four villages that comprise the Nisga’a Nation. “It’s the Indian Act. It’s kept us on a short leash,” he says. “Always somebody else managing our business.” Stanley sees no good reason why land ownership should be denied him or any other Nisga’a citizen.

The Nisga’a today number about 6,000 people. Of these, 4,000 live outside Nisga’a territory, most of



For Scotty Stanley (left), Bonnie Stanley’s nephew, the restrictions on ownership are just wrong. “Other people have private property rights,” he says. “Everybody right across the country. I don’t see why we shouldn’t have the same rights.”



The Nass flows 380 kilometers from the Coast Mountains southwest to Portland Inlet, which connects to the Pacific Ocean at the southernmost tip of the Alaska Panhandle.



them in Terrace, Prince Rupert or Prince George, B.C., or in Vancouver, 1,400 kilometers to the south. The rest live in traditional Nisga'a territory, just over 2,000 square kilometers along the lower end of the Nass River. The Nass flows 380 kilometers from the Coast Mountains southwest to Portland Inlet, which connects to the Pacific Ocean at the southernmost tip of the Alaska Panhandle. Four Nisga'a villages are strung along its banks: Gingolx, Laxgalts'ap, Gitwinksihlkw and Gitlaxt'aamiks, also the seat of the tribal government, or Nisga'a Lisims, which holds dominion over the whole territory.

The villages are connected by a curvaceous highway that follows the river through a spectacularly scenic valley flanked by permanently snow-capped mountains. To drive this highway, as I did last fall, makes it easy to see why owning the land it traverses would be a vital preoccupation of the Nisga'a people.

The valley represents potential wealth. The beauty of the landscape attracts tourists with money to spend. The wooded mountains surrounding the valley are a source of lumber. The forests also provide pine mushrooms, harvested

and sold as *matsutake* to Japanese gastronomes who pay \$250 a serving in restaurants in Japan. The streams cascading down the slopes are a potential source of marketable hydroelectric power. The river and the ocean afford salmon, halibut, crab, sea lion (a Nisga'a delicacy) and oolichan, tiny fish about the size of smelts, which have for centuries been rendered for their nutritious oil and traded to other First Nations up and down the coast.

Despite these rich resources, the Nisga'a Nation is far from wealthy. Tourism, fishing and mushroom picking are low-paid, seasonal occupations. The big resource-extraction industries require more capital and expertise than the Nisga'a possess, even collectively. When outside companies do the work under licence, the high-paying professional jobs tend to go to non-Native employees, while Nisga'a get the short-term laborers' work. The unemployment rate in the valley runs around 60 percent, which explains why two-thirds of the Nisga'a population lives outside the territory.

Scotty Stanley considers himself lucky to be able to support himself without moving away.



Having the right to use land for credit is one motivation behind the Nisga'a Nation's long march to private property ownership.

Leaving school after Grade 11, he went to work at rough jobs, including a stint in the oil patch. Now he's grateful to be working from Gingolx as a bushier, cutting a path through the Nass Valley's forests for the new Northwest Transmission Line. He's making a pretty good living for now, but knows the project can't last forever.

Even with cash in his pocket, there's not much for Scotty Stanley to spend it on in the valley. The only real amenities are the community centers; the Laxgalts'ap one is well equipped with basketball courts and fitness, yoga and aerobics rooms. There is, as yet, no sit-down restaurant to speak of. His aunt Bonnie's would be the first. There's no hardware store, no grocery store, no bookstore, theatre or bowling alley.

Nisga'a consumers from the Nass have become accustomed to driving almost 100 kilometers to Terrace (population 11,000) for most goods and services, says Esther Adams, owner of NassCo Business Services and Quick Copy Centre in Gitlaxt'aamiks. NassCo stays afloat by selling a range of business-to-business and business-to-consumer office services and supplies, but just barely. It's hard to compete with Terrace retailers, with their smaller

shipping costs and their economies of scale. "Small businesses do not thrive here," Adams says.

Nisga'a Lisims President Mitch Stevens aims to change that, and thinks private property ownership could be an answer. Stevens presided over the passage of the last bit of legislation enabling land ownership for Nisga'a citizens. He echoes Scotty Stanley when he declares that the right to own property should be a no-brainer. And yet it has been a long, arduous struggle to get it. "It's ironic," Stevens says. "We're the first Canadians, but we've had to negotiate our way back into full membership in the country, instead of being wards of the state."

Stevens's colleague, Bert Mercer, is the economic development officer for the Nisga'a Lisims government. His duty is to help other Nisga'a entrepreneurs realize business ideas, of which, he says, there are many. Mercer rhymes them off: a bed and breakfast in Gitwinksihlkw, a carver who needs a larger studio to enable him to teach, a dressmaker who could hire and train seamstresses, and of course, would-be restaurateur Bonnie Stanley.

The craggily handsome 53-year-old has a fat file of economic development ideas of his own: a



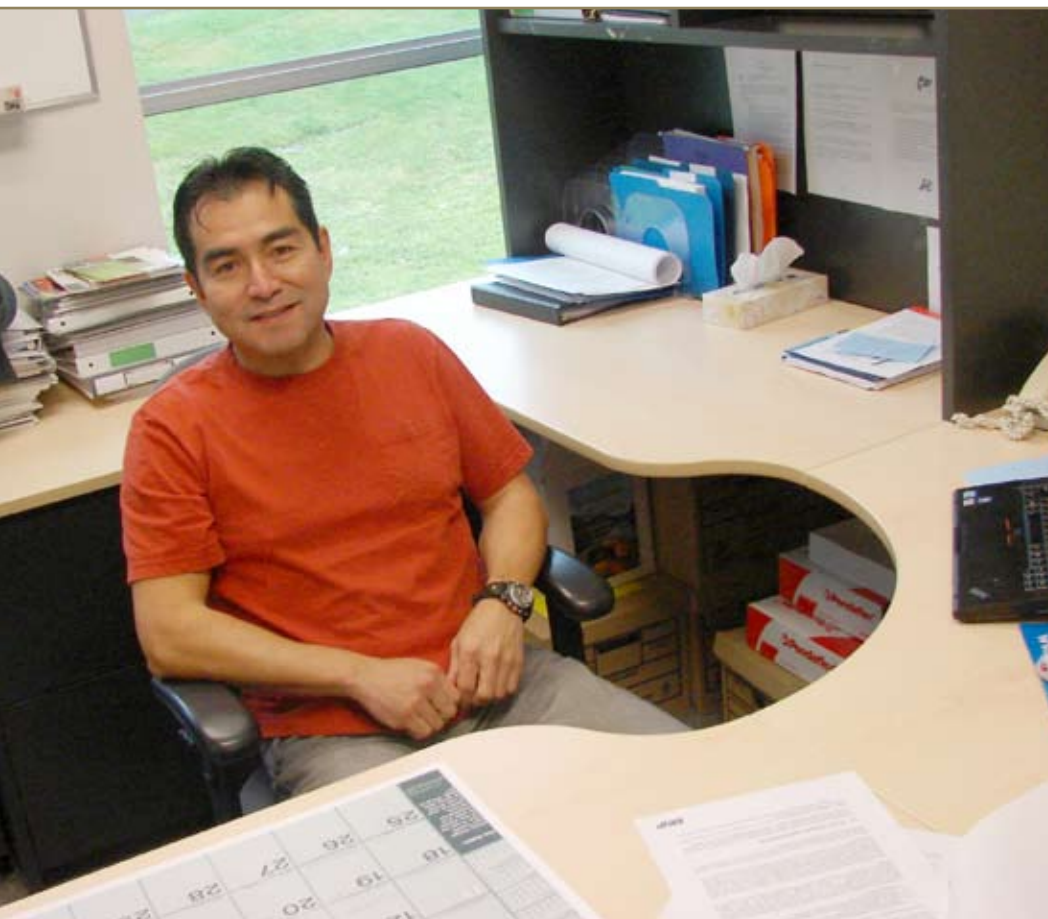
consulting company in First Nations governance, a contracting business, and a real-estate investment plan renovating fixer-uppers in Terrace. His favorite is a fishing charter company. “My dream is to buy a boat big enough to go out on the saltchuk,” says Mercer (helpfully explaining to a landlocked easterner that “saltchuk” is a West Coast name for the Pacific Ocean). “There’s a big market for fishing tours, and if you had a boat big enough, there’s a huge market,” he enthuses. “Guys will pay \$500 a day!”

But to get money, you often have to spend money. An ocean-going fishing boat would set Mercer back about \$40,000. Even with a secure government job and a house almost fully paid for, Mercer couldn’t get a mortgage. He tried. His banker in Terrace turned him down.

Esther Adams had a similar experience in 1995 when she started NassCo from her home basement. “When I was hitting the pavement trying to get the business started, applying for business start-up funds at funding agencies and banks, I was quite surprised that I could not use the house as collateral,” she says.

Having the right to use land for credit is one motivation behind the Nisga’a Nation’s long march to private property ownership, says Mitch Stevens. The other is a burning desire for first-class citizenship and full participation in society at large. Instead of simply asking government for more money to improve their conditions, Stevens’s Nisga’a constituents demanded more freedom to do it themselves. “Mr. Citizen asked us to push for the opportunity to make choices for ourselves and, yes, the opportunity to make mistakes, just like everyone else,” Stevens says. “Our position is that Canada has to stop babysitting First Nations.”

This has been the Nisga’a position for a very long time. In 1890, just after the Indian Act was passed into law, the Nisga’a created a land committee to press for title to their traditional territory. It wasn’t until 1998 that they succeeded in hammering out a treaty with the province and the federal government. In the Final Agreement, as it was eerily called, the Nisga’a gave up all but eight percent of their original land claim. In exchange,



Bert Mercer (left) is the economic development officer for the Nisga’a Lisims government.



Last October, the final enabling legislation was passed. The Nisga'a Land Title Office was open to applications from citizens wishing fee simple ownership of the land they live on.

they are no longer covered by the Indian Act and enjoy untrammelled dominion over the remaining 2,019 square kilometers of land.

Control over their land, coupled with freedom from the restrictive conditions of the Indian Act, would eventually result in the opportunity to own their residential properties in “fee simple,” the legal term for the kind of arrangement most Canadian property owners have. Nisga'a citizens who obtained fee simple title to their residential property would have full use of it. They would be able to mortgage their property as security for a loan, or to transfer, bequeath, lease or sell their property to anybody, Nisga'a or not.

For Pamela Palmater, this is anathema. Palmater feels passionately that the Nisga'a initiative is dangerously misguided. For her, collective land management is one of the essential characteristics of First Nations culture in North America. Collective ownership of land, even the diluted kind of “ownership” proffered by the Indian Act, is preferable to private ownership, she says, and the two are mutually exclusive. “Either the community is going to protect its collective land holding as a collective, or it will break everything up. There's not a lot of in-between. Once you start parcelling out First Nations land, people will sell it for as much as they can, and everyone will go their own way. Then there goes the reserve; there goes the territory.”

Palmater points to the Dawes Act in the United States. Adopted by Congress in 1887, the act authorized the U.S. federal government to survey Indian tribal lands and divide them into allotments for private ownership by individual Indians. Notoriously, the act resulted in a checkerboarding of Aboriginal lands—the interspersing of Native and non-Native property owners—effectively diluting historical tribal power and control. First Nations governments collapsed. “It devastated tribal landholdings,” says Palmater. “American First Nations lost the majority of their land.”

Former Native territories were in such disarray by 1934 that then president Franklin Roosevelt killed the act and tried, unsuccessfully, to repair the damage. “Even when the government tried to reverse the Dawes Act to undo what they had done, once land goes to third parties, you'll never ever get it back,” Palmater warns. “First Nations in the U.S. are the first to tell First Nations in Canada not to go down the privatization road.” The explicit objective of the Dawes Act was to assimilate Aboriginals into American society, and individual ownership of land was seen as an essential step in that direction. That's where Palmater fears the Nisga'a are headed. And not just the Nisga'a.

In 2011, the government of Prime Minister Stephen Harper called for a study “to examine the concept of a First Nations Property Ownership

Act.” The Nisga’a concept was the inspiration for the government initiative, though the goals of the two governments may not be the same. Says Palmater, “Harper’s goal is to integrate Indians into Canadian society. He doesn’t use the word ‘assimilate,’ but it’s the same thing. He wants this for the benefit of Canadians. The focus is not on First Nations wealth, prosperity, communal rights, recognition of treaty rights, any of that.”

Harper’s initiative was hotly debated on the national stage. Meanwhile, the Nisga’a moved quietly ahead with their own plans. Last October, the final enabling legislation was passed. The Nisga’a Land Title Office was open to applications from citizens wishing fee simple ownership of the land they live on, a historic moment in Canadian society, widely ignored.

The registrar of land titles for the Nisga’a government is Diane Cragg. Though not Nisga’a herself, she was adopted into the Nisga’a Nation and has lived and worked in the Nass Valley for more than 13 years. Cragg was instrumental in the push for fee simple property ownership and scoffs at the objections of critics like Palmater. “If people say the Nisga’a are giving away Nisga’a land, they’re talking through their hats,” she says. Cragg points out that land available for fee simple ownership comprises fewer than 750 residential lots of half an acre or less. That amounts to .05 percent of the whole Nisga’a territory. “We’re not creating a land rush. There’s no stampede of people waiting at the door to get their hands on Nisga’a land,” she says. “There is nothing assimilationist about this. It is very carefully structured to maintain jurisdiction over the land for the Nisga’a, and to ensure that the primary beneficiaries are Nisga’a citizens.”

Mitch Stevens agrees. “A lot of my colleagues [other chiefs] have said they disagree with what we’re doing, but we tell them that what we’ve done is for our citizens and nobody else,” he says.

Although a handful of Nisga’a citizens at first opposed the concept, support now seems widespread. Also ubiquitous, even as the first winter snow starts to filter down on the valley, is a kind of springtime of enthusiasm, energy and hope.

If the economy picks up, Scotty Stanley may not have to migrate to the oil patch to find work. Bert Mercer can practically smell the saltchuck and feel the roll of the ocean swells beneath his fishing boat. Esther Adams says fee simple ownership came too late for NassCo: she had to shut the company down over Christmas. But the entrepreneurial spirit still burns in her. She’s thinking about applying for ownership of her land and using the extra borrowing power to buy a house in Terrace to rent out.

And Bonnie Stanley can finish constructing her restaurant. In a town of 341, it could be difficult to sell enough spicy crab legs, deep-fried halibut collars and half-smoked salmon to pay the mortgage, but nothing ventured, as they say. And that’s what it really all comes down to, Stevens says: First Nations people making their own decisions, according to their lights.

Are Nisga’a leaders right? Does a little capitalism go a long way toward fixing seemingly intractable problems? Or is Palmater right to be fearful that assimilation lies ahead? When the federal government first proposed the First Nations Property Ownership Act that would give all First Nations what the Nisga’a have, there was immediate and vocal opposition to the concept from the Assembly of First Nations. The idea seemed to move to the back burner. When the prime minister met with First Nations leaders in January in response to Attawapiskat Chief Theresa Spence’s hunger strike, the First Nations Property Ownership Act was not on the agenda. But, as Palmater observes, neither is it officially dead.



RICHARD WRIGHT is a freelance writer in Toronto, Canada, formerly a current affairs television producer for CBC, Canada’s national broadcaster. His stories have appeared in top ranked newspapers and magazines, and have garnered many awards, including an Amnesty International award for social justice reporting in 2010 for “A National Disgrace,” a story about First Nations schools.



# Escaping Canada's Indian Act



"We need to be unified in the way we do our work.  
We need to be unified in the way we stand together..."

—Chief Shane Gottfriedson

## Editor's preface

Canada's First Nation land tenure system was designed in the mid-nineteenth century. It was meant as a temporary measure: Indians would be placed on reserves until they were sufficiently acculturated to hold property in their own right, live independently of government supervision and protection, obtain the right to vote, and become subject to taxation. Reserves were isolated geographically and legally from the rest of society and were expected to disappear over time as the Indian population entered the surrounding world.

Much like Indian reservations in the United States, Indians were to be granted property rights only when they decided to leave their former way of life and enter "white" society. Until they did so, they would have to live under the land tenure system of Canada's Indian Act, where the land they lived on was owned by the government. The idea behind this land tenure system was not to incentivize economic activity by the Indian population; quite the contrary. It was intended to incentivize leaving the reserves and the Indian way of life in order to gain the possibility of a "normal" economic and political life.

History has not accorded with this view. Yet, the land tenure system of the Indian Act continues to exist and to frustrate the economic aspirations of First Nations in Canada.

Reserve land under the Indian Act is Crown land, the legal title to which is held by the government for the use and benefit of an Indian band. Because the land is held by the Crown, a

trust or fiduciary responsibility lies with the government regarding its management of the land. The land itself is inalienable and cannot be sold or mortgaged unless the Indian interest in it is yielded by the band to the government. As far as Indians are concerned, they can only hold a right of "possession" of a parcel of reserve land, which can only be sold or passed on to other members of the band. To lease reserve land to a non-band member requires the approval of the government.

The First Nations Property Ownership (FNPO) initiative has been underway in Canada since 2006. The initiative is led by the First Nations Tax Commission, under the leadership of Chief Commissioner Clarence T. (Manny) Jules.

## OVERVIEW OF FIRST NATIONS PROPERTY OWNERSHIP INITIATIVE

- ▲ First Nations should have the option to hold the legal title to their existing reserve land.
- ▲ Individual First Nations should have the power to transfer the full legal title to individuals, while retaining their jurisdiction over the land despite any possible change in ownership.
- ▲ First Nation jurisdiction over their reserve land should be substantially expanded.
- ▲ Safeguards should be included to preserve the First Nation character of the land.



## Who Should Own Our Lands?

BY CHIEF SHANE GOTTFRIEDSON

In 1910, my ancestors issued a statement to Prime Minister Wilfred Laurier. We call it the Shuswap Memorial because it has guided every Shuswap leader since then. In the Memorial we spoke to our recent history. We stated that in the past “No one interfered with our rights or disputed our possession of our own ‘houses and ranches.’” However, by the time the Memorial was written, the Indian Act had been passed and we found ourselves “without any real home in our own country.” And we concluded the Memorial by stating that “So long as what we consider justice is withheld from us, so long will dissatisfaction and unrest exist among us, and we will continue to struggle to better ourselves.”

It has been over 100 years but, to this day, Tk'emlups te Secwepemc home and native land remains “a tract of land... whose legal title is held by her Majesty.” We don't own our land in the eyes of Canadian law and, consequently, we find ourselves with justice withheld and no real home.

Our former leaders believed we should own our land. Our community members today believe we should own our own land. I believe we should own our own land. This is why our community, along with other First Nations, is advocating for the First Nation Property Ownership legislation. This legislation would return Tk'emlups land to the Tk'emlups te Secwepemc. And when it does, we, and not the Department of Aboriginal Affairs, will make the decisions pertaining to our land.

We believe that taking back title to our land is the key to justice and the path out of dependency. FNPO will not only create real Tk'emlups land, but it will provide the Tk'emlups Nation with permanent legally recognized jurisdiction over this land. In short, it means we will govern our land and the people living on it, and we will be able to enjoy the same property rights that all other Canadians enjoy.

In the Shuswap Memorial our leaders said of the newcomers, "we shall help each other to be great and good." They meant it then and we mean it now.

Our community has been an important part of the local economy for decades. We started one of the first industrial parks on First Nation lands in British Columbia in the 1960s. Today, our lands generate thousands of employment opportunities for our members and non-members alike. Our economy contributes millions of dollars to the regional economy and supports the tax base of every order of government. Our people have never

been idle and we resent the assertion that we have been, that we don't contribute, or that we are incapable of managing our own affairs.

Yet, we could do so much more. And this does not require special rights. We just need what other Canadians take for granted: the right to own our homes, access to a mortgage or a business start-up loan, the ability to bequeath our assets to the next generation, and the capacity to resolve disputes related to estates and marital breakdown with marketable assets.

Our poverty isn't because of culture or race. We are as entrepreneurial and innovative as other Canadians yet we have lower incomes, more dependency on welfare, and higher incarceration rates than other Canadians.

Our problems are solvable. We lack the laws and legal framework that support markets, reduce the costs of doing business, and provide individuals with economic opportunities. We lack land registry,



We believe that taking back title to our land is the key to justice and the path out of dependency. FNPO will not only create real Tk'emlups land, but it will provide the Tk'emlups Nation with permanent legally recognized jurisdiction over this land.





title, and surveying systems that provide certainty and security to lenders and investors. We lack the revenues to build infrastructure and implement our laws. All of these deficiencies can be addressed with a stroke of a pen through the passage of the FNPO legislation.

In 2013 in Canada, only the mentally incompetent, children, and First Nation people on reserve are not allowed to own land. Property ownership is a basic human right. We cannot continue our work of making all the people on our traditional territory “great and good” until our right to property ownership is restored. We should own our own land.

► For more information on FNPO, visit:  
[fnpo.ca/proposal.aspx](http://fnpo.ca/proposal.aspx)



SHANE GOTTFRIEDSON is the Chief of the Tk'emlups te Secwepemc in Canada and Chair of the Shuswap Nation Tribal Council.

## FIRST NATIONS PROPERTY OWNERSHIP ACT

Key policy elements of the proposed enabling legislation:

### Federal Legislation in Canada

FNPO lands will remain First Nation reserve land but with the First Nation holding the title to the land.

### Voluntary Participation

Participation in this legislation will be voluntary. The purpose is to limit the application of the legislation to the First Nations who have indicated their desire to enter under it.

### Majority Consent of the First Nation Membership without Surrender of Land

Majority consent of the members of the First Nation through referendum should be required; however, there is no requirement for “surrender” of the land under the Indian Act.

### Title Vested in First Nation Transferable to Individuals

The First Nation would have the power to transfer title to individual members of the First Nation and to allow the transfer of interests—to the extent it chooses to allow—to non-members.

### Expanded Jurisdiction over FNPO Reserve Lands

Jurisdiction of First Nations over its reserve lands should be substantially expanded. It should be made explicit that lands remain reserve lands regardless of any change in ownership.

### Taxation of Interests in FNPO Reserve Lands

The First Nations would have the power of taxation of any interest in their reserve lands, including fee-simple title held by non-members.

### Tax Exemption Continues

Tax exemptions under the Indian Act should continue to apply on reserve lands under FNPO.

### Torrens Registry for FNPO Reserve Lands

The legislation should provide for the establishment of a Torrens-style land registry for all FNPO reserve lands.



Dear friends of PERC:

I'm often asked if I miss running The Orvis Company. Of course I miss it—it was my life for 27 years. But I have been put out to a nice pasture surrounded by plenty of birds, dogs, fishing streams, and grandchildren. Plus, there is a lot more time now for the kind of charitable philanthropic work in which I have always been involved.

I have served on the PERC Board for many years and have gotten much satisfaction out of the relationship. PERC's ideas about free market solutions to environmental problems match my own experiences. Without question, my best hunting and fishing days have come on private property where landowners have an incentive—either for profit or personal ethics—to preserve the environment.

Whether you support PERC's research, education, or outreach, you can be assured that your investment will be well spent. Orvis grew by blending a love for nature with business acumen. Since 1980, PERC has promoted this same philosophy and I urge you to make your tax-deductible contribution to PERC today by mailing a check or credit card information in the attached envelope or by donating at [perc.org](http://perc.org). Thank you for helping PERC pursue its mission of improving environmental quality through property rights and markets—now and into the future.

Sincerely,

Leigh Perkins





## WITHOUT PERC'S WORK...



Thirty years ago policy analysts assumed market failure was to blame for western water allocation problems. Today, with PERC's influence, the dynamic power of water markets is working to solve our water crisis.



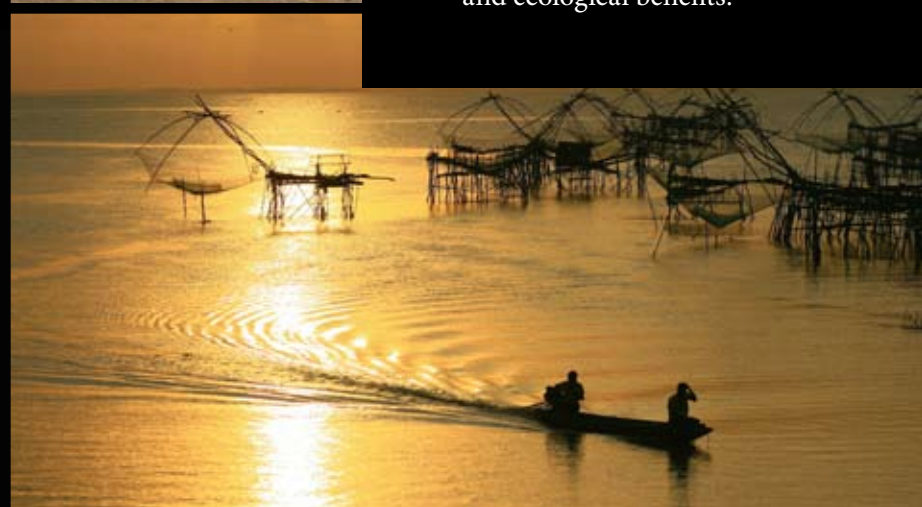
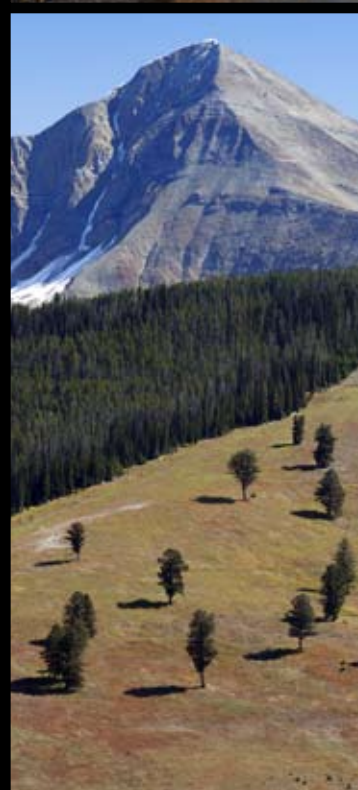
In 1900, less than 20 white rhinoceros remained in a single reserve in South Africa. Today, thanks in part to the work of PERC scholars, white rhino numbers have climbed to more than 20,000.



Because of PERC's solid research on public land management, PERC scholars have been asked to offer congressional testimony on funding the national park system for the next century.



For more than two decades, PERC's research has shown that catch share systems for marine fisheries promote safety, encourage sustainable harvests, and enhance social and ecological benefits.







# UNCONVENTIONAL ENTREPRENEURS OF THE NAVAJO NATION

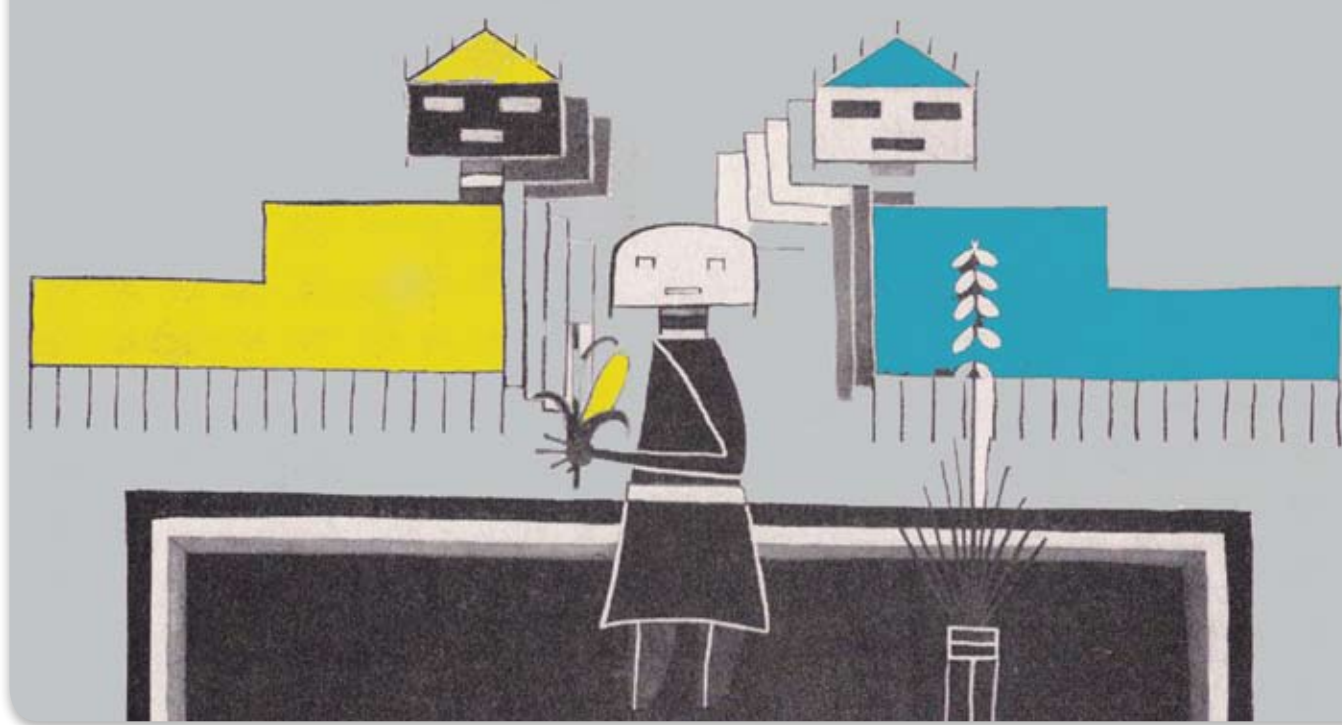
Before considering a request to create an economic development strategy for the Aneth Chapter of the Navajo Nation, a visit was in order. I set out with two of my colleagues, Megan Hansen and Ryan Yonk, on a 450 mile drive from northern Utah to Montezuma Creek in southern Utah—a town so small you might drive through it and not even realize it.

First stop, the Northern Regional Business Development Office where we met Dorothy, the Aneth Chapter's Senior Economic Development Specialist. We hoped to learn more about the institutional impediments to local, bottom-up entrepreneurship facing the Navajo Nation. Dorothy said that when it comes to starting a new business, there is often a lack of passion among locals. It turns out there are many reasons why you might be deterred from starting a business in Montezuma Creek. On Navajo Nation land, for example, just getting the rights to build something on the land could take years. First, you have to get the leaseholder to agree to give up the land. Next, you must do archaeological assessments to make sure you are not disrupting any sacred sites. Then, you would need to record the lease transfer with both the Bureau of Indian Affairs and the Navajo Nation and get each entity to approve the transfer. Finally, you have to write a business plan and get it approved by the tribal council. In Dorothy's words, "It's a quagmire here."

There is no grocery store in Montezuma Creek. Nor is there a bank. This means a local entrepreneur would have to travel at least 50 miles to purchase supplies or visit a bank. There used to be a bank, Dorothy said, but problems with security make the town a risk. Because it is so remote, criminals often come to the area to hide out from law enforcement.

Another obstacle is the Navajo Tribal Utility Authority. In short, a new business cannot start until the utility authority agrees to provide water and electricity. In Montezuma Creek, the utility claims it does not have enough water to supply any businesses.

A bit depressed after the first meeting, we were pleasantly surprised to meet an entrepreneur named Misty. She walked into the room of Navajo men and women wearing a pink camouflage sweatshirt and a trucker hat pulled down over her brown hair. Misty mentioned that she started out with nothing more than a snow cone



machine that she moved around selling cones door to door. “I took fifty dollars, doubled it, and just kept going.” Soon she branched out, selling jewelry and bread to people traveling through town. Today, Misty is the proud owner of a bed and breakfast and a sandwich shop. Her sandwiches have become so popular, she now encourages people to call and place their orders ahead of time.

Misty is optimistic about entrepreneurship in Montezuma Creek. But she is luckier than most because her bed and breakfast is on a section of private land, part of the checkerboard system of land ownership that occurs on many reservations across the West. Because of this she does not have to deal with the complicated bureaucratic rules for acquiring leases. In addition, she also has her own well, which means she can bypass the utility company for water. She is also on the side of the creek that is served by Rocky Mountain Power, not the Navajo Tribal Utility—meaning she is able to avoid most of the difficulties of starting a business on the reservation.

After talking with other community members, it became apparent that the storage buildings, repair shops, and offices that serve the oil and gas drilling industries in the area are on sections of state or private land, not on reservation land.

There is, however, one way to flourish on reservation land. The final stop of the day was with a group of local entrepreneurs known as “the burrito people.” This band operates outside the legal rules (no permits, business licenses, etc.) to sell their wares from vans, cars, and trucks. Along with burritos, they offer kneel bread and tamales. It seemed like everyone had a favorite burrito seller, and even felt committed to buying food from that particular person. One community member admitted, “You feel like you’re cheating on your burrito lady when you go to someone new.”

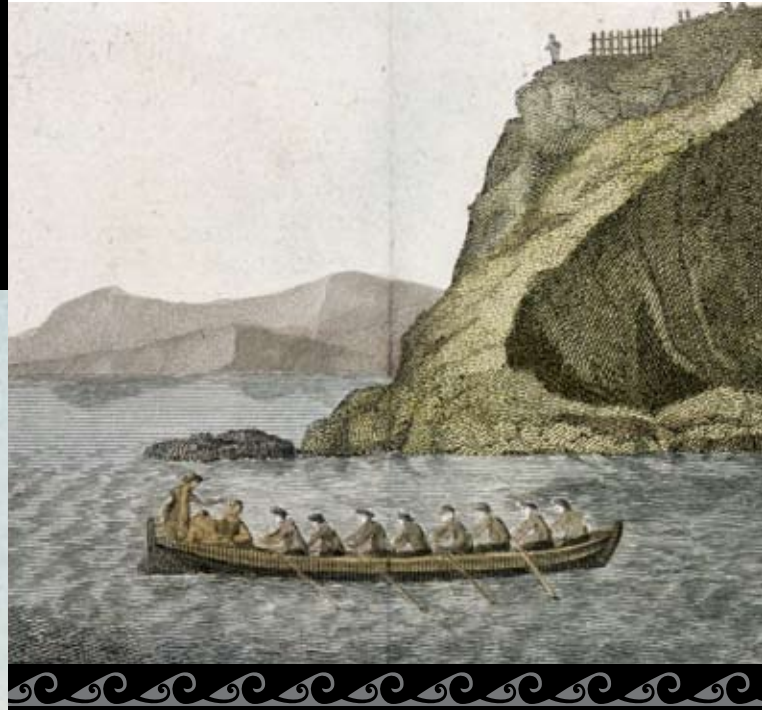
Misty and the burrito people demonstrate that entrepreneurship is happening in Montezuma Creek, but not of the sort found in traditional economic development plans. The entrepreneurship we witnessed within the Navajo Nation happens largely outside tribal rules or on state or private land. How the institutional impediments to larger-scale entrepreneurship on reservation land within the Navajo Nation can be tackled is a subject for a *much* longer article.

RANDY T. SIMMONS is a PERC senior fellow, professor of political economy at Utah State University, and founder of STRATA Policy. He can be reached at [randy.simmons@usu.edu](mailto:randy.simmons@usu.edu).

# Māori Land Rights:

## *Living on the Periphery*

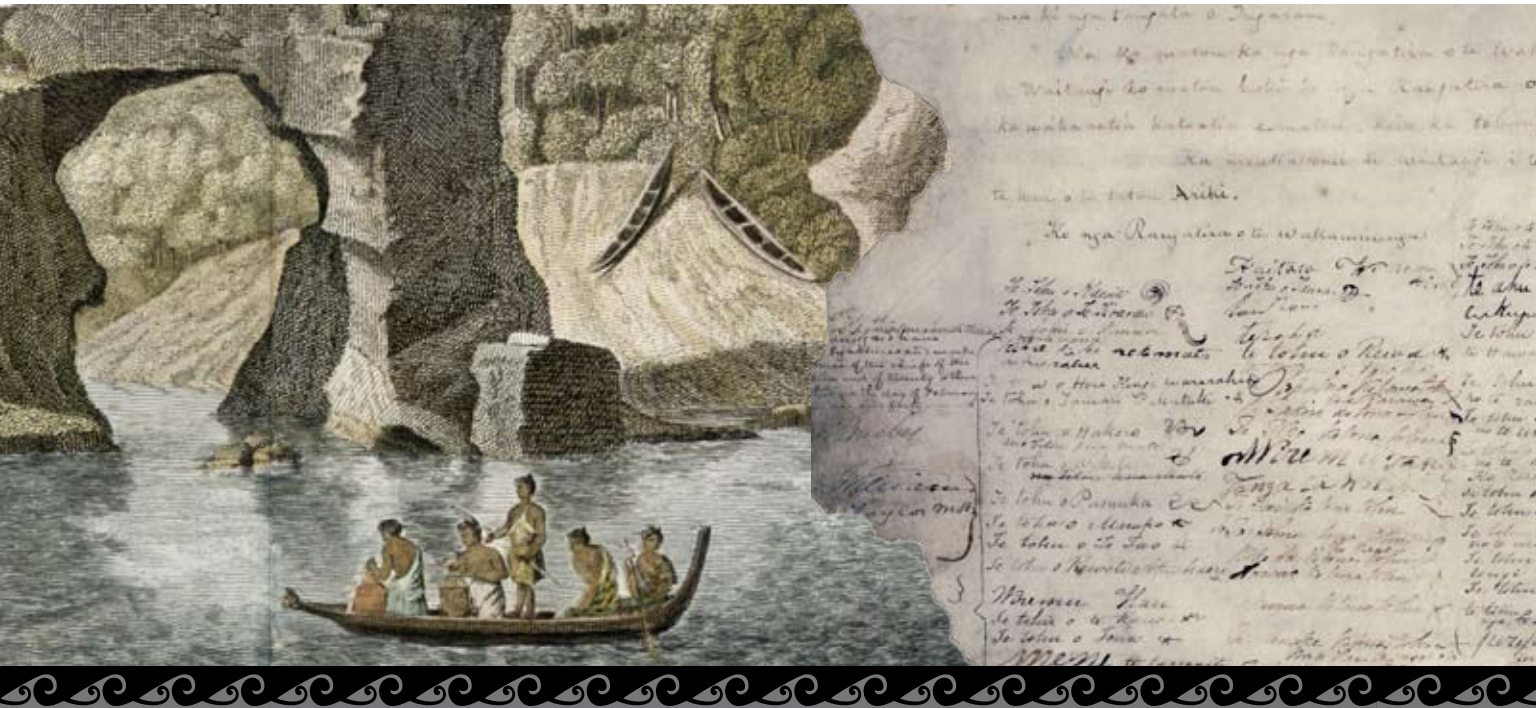
BY TE MAIRE TAU



What is the link between culture and development? Several scholars believe that the reason some countries are better off lies in the cultural values that shape people's economic, political, and social performance. Many of the distinguished contributors to Lawrence Harrison's *Culture Matters: How Values Shape Human Progress*, for example, argue that certain cultural values and attitude changes are indispensable to progress for those who are lagging behind.

Despite the attraction of the arguments from the "culture school," there are three problems. The first is that the message is easily translated and misinterpreted to mean that one has to be white to be successful. Protestant Calvinist values are, after all, western values. The second problem is that anyone who works among the poor knows that these individuals often have a strong work ethic, understand the virtue of living frugal lives, and appreciate the importance of saving. Finally, many ethnic groups are not culturally static. The Māori of New Zealand were heavily influenced





by early whalers and sealers who visited the islands. In fact, this was the basis for the Treaty of Waitangi, New Zealand's founding document between the British Crown and about 540 Māori chiefs. In the period preceding the signing of the treaty, Māori were already trading in New South Wales. To continue their international trade, they needed to be registered as a civil nation, which meant establishing a formal relationship with the British Empire. Māori were industrious and entrepreneurial—characteristics that contributed significantly to New Zealand's economy from 1820 to 1860.

### WHAT LOCALS REALLY WANT

Much of the current debate about poverty and indigenous development is swamped in moral platitudes. One of the worst clichés is the idea that it is better to give a man a net to catch a fish rather than a fish. The story is about empowerment. The nonsense of the argument dawned on me some years ago when my family and I took a vacation at my grandmother's village along the coastline. It is

absurd to think that an outsider could teach anyone in the village how to fish.

What locals want is ownership of the beach, the seaside, the waterways, and the fish in it. What they want is what the Crown promised them when the Treaty of Waitangi was signed: ownership and title to their resources. The adage about the net focuses on teaching indigenous people skills they often already possess. It obscures the real issue, which is ownership of the resource.

### UNLOCKING DEAD CAPITAL

The question for the Māori leadership is how to incentivize tribal members to move "dead capital" to "active capital." This is where Peruvian economist Hernando de Soto's book, *The Mystery of Capital*, comes into play. De Soto undertook a major study in which he recorded how long it took an average person to apply for the necessary consents and permits needed for housing through the proper bureaucratic channels. He found that it took an average of 83



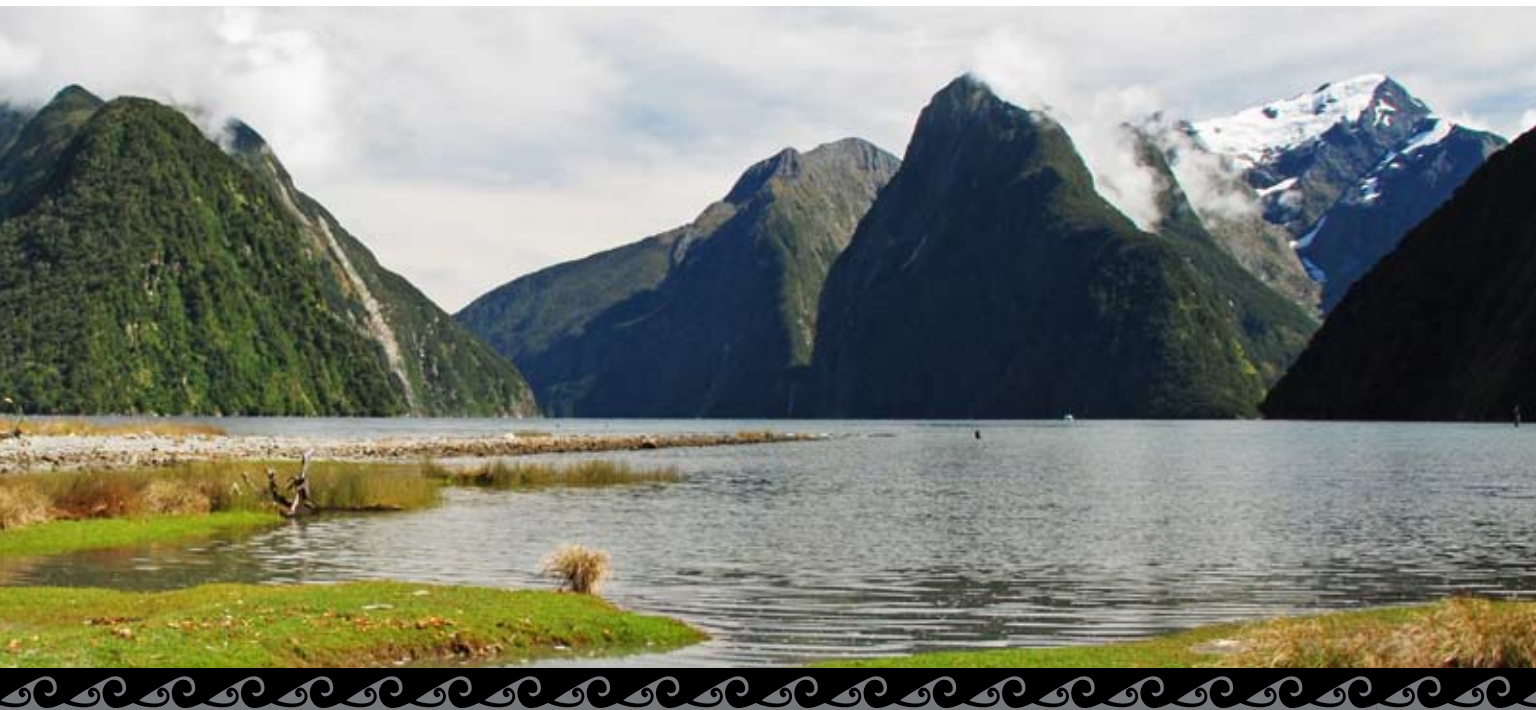
“The voice of all the people is, that our land Reserves be subdivided, so that each may have his own portion. We ask you to give to each man a title in writing to his own allotment.”



months for the required steps to be completed. Based on this research, de Soto concluded that government legislation, bureaucracy, and a lack of a legal framework were major stumbling blocks for enterprise and the reason there is so much dead capital in the developing world. He further argued that unlocking the dead capital that existed in the developing world was the key to addressing poverty.

In 2006, Tahu Potiki, the CEO of our tribal corporation, Te Runanga o Ngāi Tahu, developed a plan that blended de Soto's theory of capital with the "culture matters" school of thought. The result was a tribal savings scheme called Whai-rawa. The system is designed to build three types of capital: knowledge, financial, and personal. Whai-rawa is a portfolio investment entity locked in for three purposes: first home purchase, post secondary education, and retirement, and is nationally recognized as a retirement savings program under the Income Tax Act. In short, the tribal council allocates \$100 NZ to every tribal member enrolled in the plan on an annual basis from the profits it





receives from its subsidiary companies. For every dollar a tribal member saves, the tribe contributes an additional dollar up to the sum of \$100. A tribal member could acquire \$200 annually if he or she saved \$100. Calculations in 2004 showed that one could have saved \$35,000 for a down payment on a home by the time he or she turned 35. The theory is that the house could then serve as collateral to finance a small business. By embracing the Whai-rawa savings scheme, the tribal leadership hopes to fully investigate de Soto's idea of promoting the ability of a tribal member to acquire capital. Although this path looks good on paper, testing the idea requires community engagement and a deed and certificate of title—something tribal members lack.

### NEW ZEALAND RESERVES

In New Zealand, Māori were placed on Reserves, which were originally vested as communal title. By legislation, the land was individualized in an attempt to undermine the political weight of the tribes. Yet, despite what

modern indigenous scholars say, tribal members wanted individual title and the right to subdivide. They understood the basic connection between effort and reward. In fact, in 1860 our elders met with the governor of the day and petitioned him with these words:

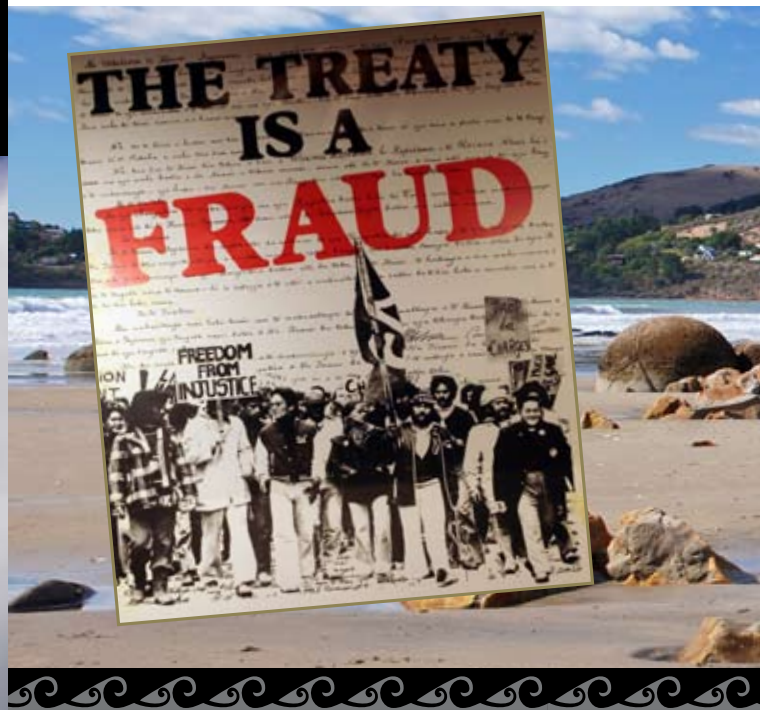
The voice of all the people is, that our land Reserves be subdivided, so that each may have his own portion. We ask you to give to each man a title in writing to his own allotment. . . . Our reason for urging the subdivision of our land is that our difficulties and quarrels may cease, that we may live peaceably, and that Christianity and good works may thrive amongst us.

On the South Island, home of my village, tribal members were allocated individual title and the right to subdivide. This right lasted through the 1960s. Parents would apportion their children land to build their homes upon. By the late 1960s, however, Crown policy changed and allowed local



Overnight Māori lost not only the right to build, but their capital base was removed and devalued. The social consequence for people in our village was devastating.

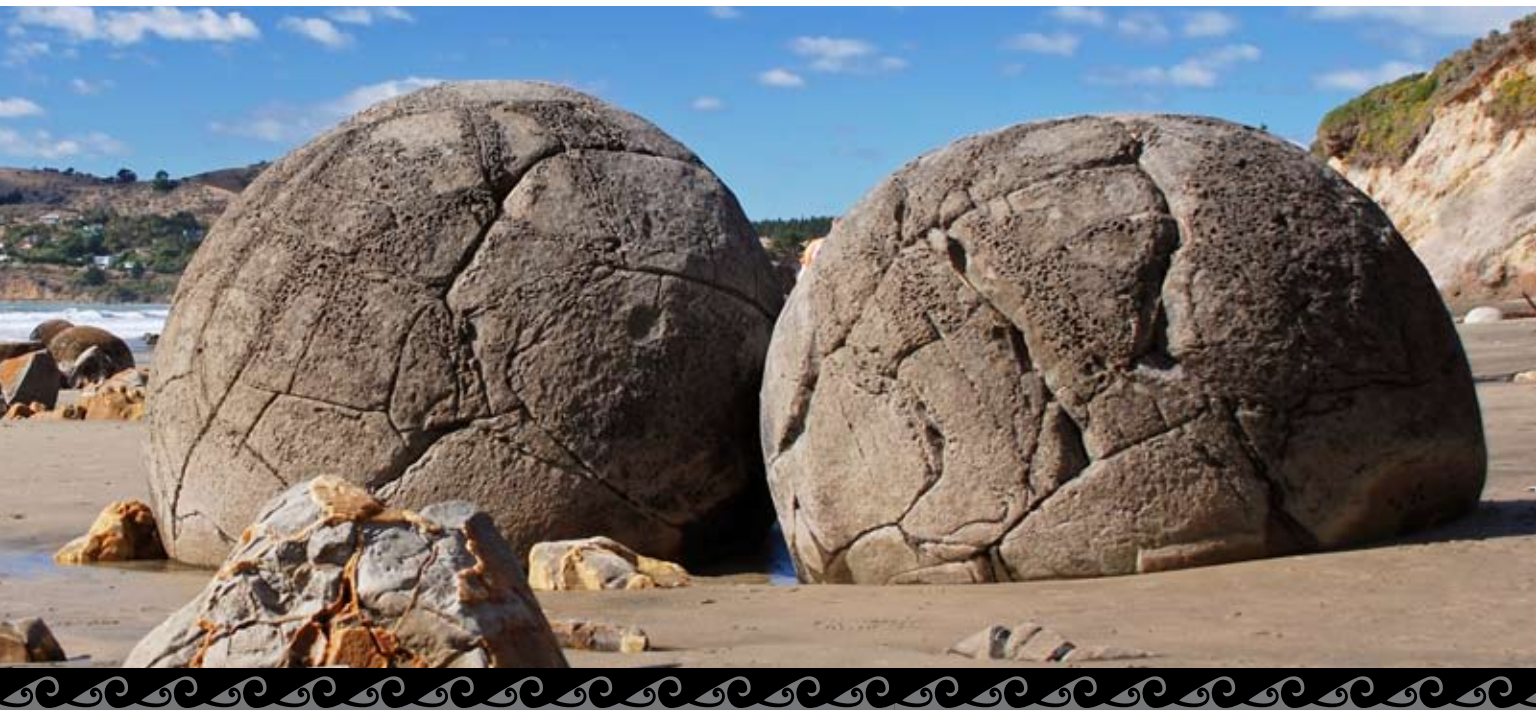
Poster from Māori Land Rights Movement in the 1980s.



councils to rezone Māori land from residential to rural. Overnight Māori lost not only the right to build, but their capital base was removed and devalued. The social consequence for people in our village was devastating. I witnessed the decline of my village from an active community to the situation today where there are few tribal members remaining. From about 150 village elders 50 years ago, we now have less than five. Neither my mother or brothers can build on their land despite the fact that they have the financial ability to do so. This sad situation was created by modern government and surprisingly reconfirmed in 2005 by the local councils. A good part of this problem is due to the prevalent and mistaken belief that tribal land tenure was communal and that individuals did not have a right to property, which is simply wrong.

#### REINSTATING RIGHTS

Our village has been advocating for the return of the original terms of the title wherein tribal members had the right to build on their land and



subdivide. It appears from recent council minutes that the reinstatement of these rights looks likely. The council has also committed to rolling out services and utilities throughout the village. This is a significant victory.

Our tribe has dealt with a series of issues outlined by de Soto such as the legal failure of property laws and the problem of documentation—all of which have been articulated and explained. I expect that by March 2014, much of our village will begin to return back to its original status allowing tribal members to live on their land and to possess title. In theory, their children should have enough within the tribal savings account to pay for post-secondary education and a deposit for a home. This is a solid step toward creating tribal wealth, but what does it mean for a tribal economy?

Despite the fact that we have actively worked to provide the conditions for tribal and family development, our people still remain as passive watchers of a movie in which we have no real role. Whether we concentrate on the values of

capitalism, capital itself, or even institutional capacity, we ignore the one attribute that underpins our economic system. The economy we have looks the way it does because the British defined the pieces that were allowed to function in the economy and more importantly what pieces would not be permitted such as tribal property.

A tribal economy will not evolve by simply imitating western values or creating capital. Unless tribal groups actively shape the legislation that defines their economic future, real development will be an elusive ideal and an intellectual backwater for indigenous conferences.



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# POLLUTION & PRODUCTIVITY

Why do we care about air pollution? The aesthetic costs of vistas obliterated by smoggy air are obvious. And, as I have earlier reported in this column (March 2004, Winter 2006), there is growing evidence that air pollution can have adverse health effects, including increased morbidity and higher death rates. Recent research by Joshua Graff-Zivin and Matthew Neidell (2012) shows that air pollution has additional costs in the form of reduced worker productivity.

Ground-level ozone is a nationally important air pollutant formed by interactions between nitrogen oxide (NO<sub>x</sub>) and volatile organic chemicals (VOC) in the presence of heat and sunlight. Ozone irritates lung airways, decreases lung function, and increases respiratory symptoms such as coughing and difficulty in breathing. This can aggravate asthma and cause bronchitis and pneumonia. The Environmental Protection Agency (EPA) has established a national standard for ozone, specifying that ambient levels not exceed 75 parts per billion (ppb). The agency is considering a tightening of this standard; many commentators believe that the permissible level will be cut by about 10 ppb.

Graff-Zivin and Neidell examine the impact of ozone on agricultural productivity and find that even in circumstances in which the national air quality standard is generally met, higher ozone levels reduce worker output by economically important amounts. Indeed, according to the authors' estimates, the productivity of agricultural workers could be raised by about 5.5 percent if their average ozone exposure was cut by 10 ppb. Translated to a national scope, this suggests that a 10 ppb reduction in permissible ozone levels would raise agricultural productivity by about \$700 million.

In the developing world, where incomes depend heavily on agriculture, ozone likely has much larger adverse effects on economies and human well-being. Nearly 1.1 billion individuals—35 percent of the labor force—work in the agricultural sector worldwide. The effects of ozone may be especially large in countries such as India, China, and Mexico, where rapid industrial growth and automobile penetration help produce large emissions of NO<sub>x</sub> and VOCs, yielding substantially higher levels of ozone pollution.

The explicit focus of Graff-Zivin and Neidell is solely on the impact of ozone on agricultural productivity, but the paper is noteworthy for the quality of the data and for the authors' meticulous attention to details. They utilize daily data on the measured output of individual workers who are paid strictly on the basis of the amount of each crop they harvest. Environmental factors, such as ozone concentrations, are observed on a daily basis at nearby





reporting stations, and the authors control for other important factors that affect worker productivity, such as ambient temperature, sunlight, humidity, and precipitation. They also go to exhaustive lengths to ensure that no other confounding factors might contaminate their findings. The EPA has been known to promulgate regulations based on evidence and assumptions that might charitably be described as “weak.” As the agency considers a revision of the ozone standard, it is work of the caliber of Graff-Zivin and Neidell that should be relied upon.

Even so, there is a cautionary tale here when it comes to the regulation of ozone. The EPA has extensive rules governing the permissible formulation of gasoline in the United States. The chief objective of these regulations is to lower ozone concentrations by cutting volatile organic compounds, an important ozone precursor. These regulations are estimated to cost about \$1.5 billion to \$2 billion every year in the United States. The rules also have contributed to periodic localized shortages of gasoline, because they inhibit transshipments of gasoline across many areas of the country. Despite these high costs, recent research by Auffhammer and Kellogg (2011) finds that the EPA’s gasoline content regulations have failed to produce

any measurable reduction in ground-level concentrations of ozone in the United States.

The moral of this story is twofold. First, sensible environmental regulations can only be achieved if the EPA relies on research of the quality discussed here. Second, as Auffhammer and Kellogg make clear, this is not enough, for the EPA’s gasoline formulation standards have failed to produce what is ostensibly their objective: lower ozone concentrations. This raises the very real specter that the EPA’s next round of ozone regulations may once again produce high costs with little to show in benefits.

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# In the Badlands, a Tribe Helps Buffaloes Make a Comeback

BY JULIET EILPERIN

BADLANDS NATIONAL PARK, S.D.—Buffaloes stroll undisturbed, pausing occasionally to wallow in the grass and caked dirt, while prairie dogs yip intermittently as they dive into their holes and pop out again to survey the landscape. This northern stretch of the park, known as Sage Creek Wilderness, is what the Northern Great Plains used to look like.



Tens of millions of bison used to range freely in North America before they were almost wiped out in the late 1800s.





Several miles away, in the park's 133,300-acre South Unit, on the Pine Ridge Indian Reservation, the scene is more barren. The U.S. Army forced more than 800 Oglala Sioux families to leave their homes here in 1942 so part of the reservation could be turned into a bombing range. The land has partially recovered, but the bison have yet to return.

That could soon change. The Oglala Sioux and National Park Service are drafting legislation to create the first tribal national park—giving the tribe the right to manage and operate the lands—in an effort to bring buffaloes back to the grasslands where they roamed long before human settlement.

These steps would reshape only a portion of the Great Plains, a landscape that has been transformed by cornfields, highways and big box stores. But for the Oglala Sioux, the wildlife that has defined their tribe and the region's ranchers,

it is a chance to reclaim an area that served as a crucible for the nation's economic and political expansion in the 1800s.

"Our buffalo are going to be coming back to our country," Ruth Brown, an Oglala Sioux tribal council member who is helping draft the legislation to establish the new park, said in an interview.

The group envisions a herd of more than 1,000 animals to ensure that it has sufficient genetic diversity.

Tens of millions of bison used to range freely in North America before they were almost wiped out in the late 1800s. The American Bison Society disbanded in 1935 with the understanding it had saved the species by placing 20,000 animals in conservation herds; there are now an additional 400,000 or so being raised in the United States and Canada for meat production.

But those numbers are not enough for the buffaloes to reclaim their traditional role



The Oglala Sioux and National Park Service are drafting legislation to create the first tribal national park—giving the tribe the right to manage and operate the lands—in an effort to bring buffaloes back to the grasslands where they roamed long before human settlement.



in the ecosystem; even those conservation herds amount to what buffalo herder Duane Lammers calls “islands,” in circumscribed areas. Free-roaming bison provide habitat for grassland birds and other animals by grazing intermittently, leaving the grass at different heights. Cattle ranching, by contrast, leaves the grass at a more uniform level.

The Wildlife Conservation Society relaunched the American Bison Society in 2005, and a coalition of tribes, environmentalists and ranchers has been working to bring them back to areas where there is enough available land.

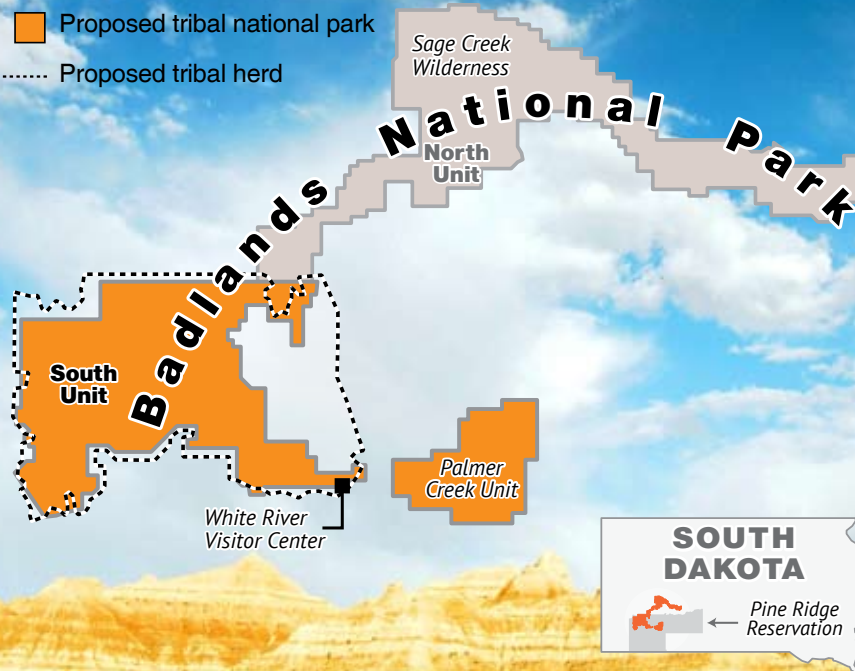
“We’re in a sort of a renaissance, where conservation groups are realizing it needs to happen on a larger scale,” said Dennis Jorgensen, a biologist and Northern Great Plains program officer for the World Wildlife Fund.

The Badlands—where sediment deposits have been eroded by wind and water over millions of years—are an ideal setting



Aerial view of the Badlands

## Proposed tribal national park



for buffaloes to make a comeback. Less suitable for agricultural development than other parts of the Great Plains, the federal Resettlement Administration started buying up ranches and farms in 1934 that failed during the Dust Bowl. The government ultimately bought more than 10 million acres; nearly 600,000 of them became the Buffalo Gap National Grasslands, west of the Pine Ridge Indian Reservation and the national park.

“It’s just a biologist’s dream, in terms of intact prairie grasslands,” said Trudy Ecoffey, senior wildlife biologist for the Oglala Sioux Parks and Recreation Authority, as she looked out at the dry, largely uninhabited terrain of the park’s South Unit.

In addition, a handful of nonprofit organizations and entrepreneurs are willing to invest in land here to make it off-limits to development. Dan O’Brien, who owns a ranch just west of Badlands National Park, founded a buffalo products company and a nonprofit

group that brings a mobile slaughtering unit to individual reservations, making it affordable for tribes to sell a few bison at a time.

O’Brien has partnered with a Boston venture capitalist to buy land from area ranchers to ensure that it remains undeveloped. Despite the fact that his company, Wild Idea Buffalo, sells grass-fed meat to customers in all 50 states, he said, “Buffalo is not our product.” He said it “is a tool” to bring back the prairie.

For the Oglala Sioux, who often describe buffaloes in more ethereal terms, the effort to gain full control of Badlands’ South Unit and repopulate it with bison has been fraught with tension. The National Park Service signed a memorandum of agreement in 1976 with the tribe to establish how it would operate the South Unit. Badlands National Park Superintendent Eric Brunnemann said the original plan was “problematic” because it failed to recognize the fact the Oglala Sioux tribe is “its own country.... This is a government-to-government relationship.”



PERC enviropreneur  
Jeremy Gingerich  
(left) working  
on tribal buffalo  
management plan.





Even though it makes sense from an ecological and economic perspective, reintroducing buffaloes poses a political challenge because some Oglala Sioux own cattle-grazing permits in the area, including on the reservation.

Monica Terkildesen, who worked on the project for years as an employee of the tribe's parks and recreation authority, said: "When I started this, I was all radical. I thought, 'We didn't need the National Park Service. Let's get the land back and let's move forward on this.'"

But after attending public meetings, Terkildesen said, she realized she was in the minority. "I had to listen to what the public was saying: 'We want a tribal national park.'"

Still, even though it makes sense from an ecological and economic perspective, reintroducing buffaloes poses a political challenge because some Oglala Sioux own cattle-grazing permits in the area, including on the reservation. On June 11, the tribal council voted to phase out all cattle leases on the South Unit by Oct. 31, 2015.

"It was a hard sell," said Terkildesen, who continues to work on the park project and attended the council meeting. "Because we raise cows. That's what we do."







The push to bring back the region's native species—including black-footed ferrets, swift foxes and bighorn sheep—has been buoyed by the fact that interest in Native American traditions has surged among Oglala Sioux on the reservation.

The push to bring back the region's native species—including black-footed ferrets, swift foxes and bighorn sheep—has been buoyed by the fact that interest in Native American traditions has surged among Oglala Sioux on the reservation. More tribal members are participating in sweat lodges and sun dances, aware that they are losing their connection to the past. The tribe also raises a small herd of bison elsewhere on its reservation for meat, but members say that is not the same as having them roam on parkland.

"Our land here is diminishing, our culture is subsiding," said Enos Poorbear, a supervisor at the South Unit's White River Visitor Center, adding that creating a tribal national park would change that. "For the first time since the 1800s, it means we would be interpreting our history."

Although the Park Service issued a record of decision last year outlining how the tribe would take control of the South Unit, obstacles remain. A working group hopes to draft legislation by the end of the year, but it will have to make it through Congress. Senator Tim Johnson (D) is the only member of South Dakota's three-person delegation to endorse the idea.

Badlands' South Unit gets less than one-tenth of the nearly 1 million visitors who flock to the North Unit of the park each year, raising questions about how the new park would support itself financially. And some of the native species in the area—including prairie dogs, hard hit by flea-borne sylvatic plague—continue to struggle.

But Brunnemann said "the science and the economics have come together," with the return of bison potentially making the tribal park financially achievable. "People want to come to prairie. They want to see bison on the land," he said. "All the pieces had to fall into place. Honestly, this could happen. It's just amazing to me."

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JULIET EILPERIN covers the environment for *The Washington Post*, reporting on areas including climate change, oceans, and air quality. In pursuit of these stories she has gone scuba diving with sharks in the Bahamas, trekking on the Arctic tundra, and searching on her hands and knees for rare insects in the caves of Tennessee.



# PRESERVING PROPERTY RIGHTS IN IOWA

Does the Clean Air Act prevent landowners from seeking private nuisance, negligence, or trespass remedies when an industrial plant emits noxious odors and chemicals that interfere with the use and enjoyment of nearby properties?

That is the question pending before the Iowa Supreme Court in *Freeman, et al. v. Grain Processing Corporation*. This is an important question because it tests the security of private property rights in a world of ever-increasing environmental regulations.

The facts of the case are simple. The defendant, Grain Processing Corporation (GPC), operates a corn milling plant in Muscatine, Iowa, that uses heat, acids, and numerous industrial chemicals to transform corn into ethanol and corn syrup. The process releases methanol, hydrochloric acid, sulfur dioxide, and other harmful chemicals into the air. Upon inspecting the plant, an expert witness for the plaintiffs found leaking valves, neglected or non-existent emissions controls, and a “blatant disregard for the environment and the community of Muscatine.”

Eight Muscatine residents claiming injury from the plant’s operation filed nuisance, negligence, and trespass claims against GPC. The trial court dismissed those claims on summary judgment, ruling that those common law causes of action were preempted by the Clean Air Act, precluded by the state’s air quality regulations, and barred as political questions not appropriate for judicial resolution. The plaintiffs appealed the ruling to the Iowa Supreme Court.

Several PERC scholars, joining other property law experts from around the country, filed an amicus or “friend of the court” brief in the case. We made several arguments for reversing the lower court’s decision.

First, and as a foundational matter, we argued that common law nuisance, negligence, and trespass define the boundaries of private property rights. A central responsibility of the government is to enforce those boundaries, and a constitutional duty of the government is to respect those boundaries.

A property right is, at the most fundamental level, the right to say “no.” When the government passes laws or regulations that preserve a property owner’s ability to say “no,” there is no taking. Indeed, laws and regulations often bolster property rights by increasing private landowners’ ability to say “no.” Zoning is one example.



If laws or regulations change or ignore that right and diminish the ability of landowners to say “no,” there is a taking that requires payment of just compensation. When what is taken is a property *right*, as opposed to real property, just compensation does not need to be money. Instead, just compensation can be a substitute remedy that preserves a landowner’s underlying rights. Neither the Clean Air Act nor the state air quality law provides a substitute remedy.

This fact raises our second argument: In determining whether the Clean Air Act or state air quality law preempt the plaintiffs’ common law remedies, it should be presumed that Congress and the Iowa legislature have not intentionally violated the constitutional rights of Iowa property owners. Because neither law explicitly preempts common law causes of action or provides substitute remedies, the Iowa Supreme Court can and should conclude that both legislatures intended their respective air quality laws and regulations to *complement* the property rights and common law remedies of private landowners, not preempt them unconstitutionally.

The common law remedies asserted by the plaintiffs are fundamental private property rights that cannot be tossed aside by federal or state

laws without the government providing just compensation to the affected parties. The right to be free from trespass and nuisance by others is a long vested property right protected by the federal and Iowa constitutions.

If the trial court’s ruling is upheld and the Clean Air Act and state air quality law are found to preempt the plaintiffs’ common law causes of action without providing them with any substitute remedies, then these Iowa plaintiffs have effectively been deprived of the right to say “no.” As our brief explains, that is an uncompensated and dangerous precedent that the Iowa Supreme Court should avoid.

► Read PERC’s latest amicus brief at:  
[perc.org/programs/applied-programs/amicus-briefs](http://perc.org/programs/applied-programs/amicus-briefs)

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# UPCYCLING IN INDIA

New Delhi has no shortage of garbage. In fact, it produces around 8,000 tons of waste every day. But to many private citizens, the city's trash contains a wealth of resources.

Ragpickers, as they are called, collect garbage from city streets and recycle it in hopes of making ends meet. They are the poorest of the poor in India. But there is one kind of garbage that, until recently, brought them no value: plastic grocery bags. As a result, plastics are strewn throughout the city.

Anita and Shalabh Ahuja, founders of Conserve India, found a solution to this plastic bag conundrum. The couple began a neighborhood composting project in 1998. The composting was short-lived, but it morphed into a different type of waste conversion. They call it "upcycling," which means converting waste into useful resources. Conserve India takes plastic bags that employees collect from the city streets and dumps in Delhi and transforms them into sheets of vibrantly colored plastic material. The sheets are used to create new bags, belts, wallets, and even shoes that are sold in the global

marketplace to stores such as Monsoon, Crate and Barrel, and Oxfam.

Initially a nonprofit, the founders recently created a for-profit arm, Conserve HRP, to help ensure long-term stability through income from product sales. As Shalabh Ahuja says, "All waste is a resource." They have patented the plastic fusion process that gets them from garbage collection to fashion design. Selling the fashion is what funds their mission of environmental enhancement and social development. A portion of the companies profits are put back into projects such as a health-care center they built for employees.

The organization also provides jobs and training to some of India's poorest citizens. They have about 300 salaried employees, which according to their website, make about three times as much collecting bags for Conserve than they would selling rubbish elsewhere. The company also offers training and loans for employees to develop their own start-up businesses.

As any enviropreneur can tell you, turning waste into resources is a trend for the future.

► For more information: [www.conserveindia.org](http://www.conserveindia.org)





Courtesy of The Butchart Gardens Ltd., Victoria, BC, Canada

# IF YOU BUILD IT, THEY WILL COME

More than a hundred years ago on Canada's west coast, a limestone quarry was dug into the depths of Vancouver Island. Robert Butchart removed the limestone to feed his cement factory but left behind a giant pit. His wife, Jennie, brought in loads of top soil—delivered by horse and cart—to eventually fill the exhausted quarry and create a place for a garden. Soon their home and quarry began to blossom. The gardens grew from a sunken pit in the quarry to blooms covering 55 acres. Benvenuto, as they called their estate—"welcome" in Italian—was open to the public.

It was the couple's grandson, Ian Ross, however, that restored and transformed the private home and gardens following World War II into today's for-profit Butchart Gardens. The gardens are fourth-generation, family-run, and continue to be financially self-reliant. Part of this success is due to the family continually adding new amenities that enhance the visitor's experience. In addition to afternoon tea, which has been served since visitors first arrived to the gardens in the early 1900s, today's attractions include dining areas, winter skating, summer concerts, fireworks, and a holiday lights tour. The number of annual visits roughly matches the more than one million bedding plants that color the landscape. The entry fee varies by season but runs from \$2.00 for a child up to \$30.00 for an adult.

Today, the only remnant of the cement factory is a tall chimney from an old kiln. These internationally acclaimed gardens began with an entrepreneurial spirit and a passion for creating a clean and enjoyable environment. Unlike many other public gardens around the world, Butchart Gardens is self-funded, generates a profit, and even allows dogs.

► For more information: [www.butchartgardens.com](http://www.butchartgardens.com)

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# ENVIRONMENTAL ENTREPRENEURSHIP

## Markets Meet the Environment in Unexpected Places

**Laura E. Huggins**, Research Fellow, PERC and Hoover Institution,  
Stanford University, US

In this innovative book, Laura E. Huggins finds path breaking entrepreneurial solutions to difficult environmental challenges in some of the world's poorest areas.

The approaches entrepreneurs are taking to these challenges involve establishing property rights and encouraging market exchange. From beehives to barbed wire, these tools are creating positive incentives and promoting both economic development and environmental improvements. The case studies are from the developing world and reveal where the biggest victories for less poverty and more conservation can be won. The pursuit begins by learning from local people solving local problems.

*Environmental Entrepreneurship* encourages a broad audience to consider secure property rights and free markets as key ingredients to moving out of poverty and improving environmental quality at the same time. It will appeal to academics and students of environmental studies, environmental economics, environmental policy, as well as international development and business. Entrepreneurs and environmental groups such as The Nature Conservancy, Conservation International, and The World Resources Institute will also find a wealth of invaluable information in this book.

**Contents:** 1. Markets Meet the Environment in Unexpected Places • 2. Saving Wildlife in Kenya and Sub-Saharan Africa with Shawn Regan and Terry Anderson • 3. Fencing Fisheries in Namibia and Beyond • 4. Ecosystems at Your Service in South America • 5. The Thirsty Dragon • 6. Un-American Indian Reservations and Resource Management with Terry Anderson • Index

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