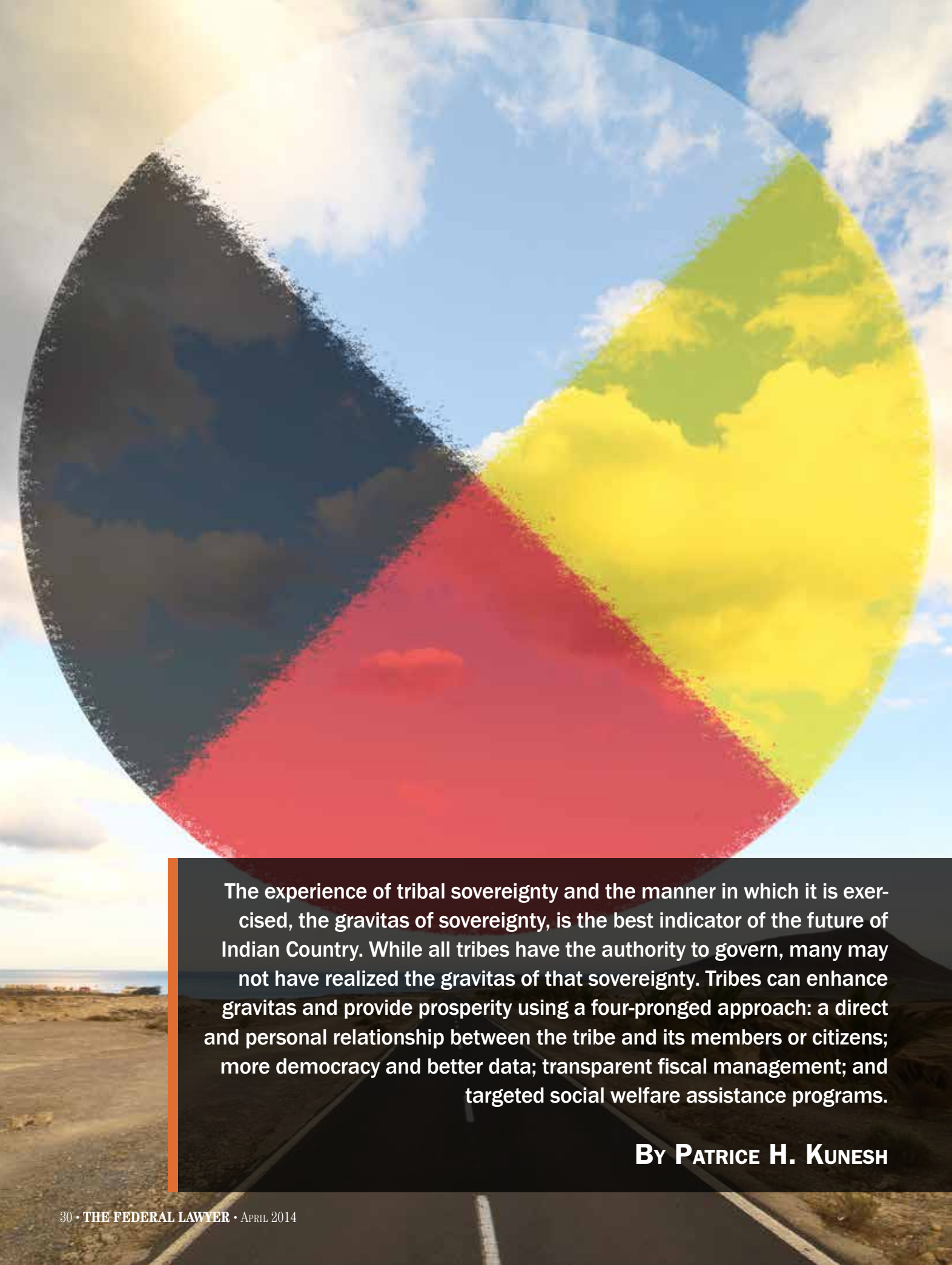

The experience of tribal sovereignty and the manner in which it is exercised, the gravitas of sovereignty, is the best indicator of the future of Indian Country. While all tribes have the authority to govern, many may not have realized the gravitas of that sovereignty. Tribes can enhance gravitas and provide prosperity using a four-pronged approach: a direct and personal relationship between the tribe and its members or citizens; more democracy and better data; transparent fiscal management; and targeted social welfare assistance programs.

By Patrice H. Kunesh

Sovereignty Gravitas

Creating Prosperity for Tribal Nations in the 21st Century

On Dec. 2, 2013, the Monday following the Thanksgiving holiday, in a hushed courtroom packed with practitioners of federal Indian law from across the country, Justice Antonin Scalia asked, "Who made these Indian tribes sovereign, was it Congress?" As a nation, we had just celebrated a tradition tracing back to 1621, where settlers at the Plymouth Plantation feasted on their bounty after a successful harvest. Invited to participate in this celebration were the Wampanoag Indians, whose generosity of food and farming support during the fledgling colony's first winter ensured its survival. The sovereign status of American Indians and Alaska Natives was an axiomatic truth in 1621—the new settlers implicitly understood they were dealing with autonomous, self-governing, indigenous entities. Today, almost 400 years later, tribal sovereignty remains manifest in the 566 federally recognized American Indian tribes and Alaska Native villages. The U.S. Supreme Court, however, still struggles with the scale and scope of that sovereignty.[1] Indeed, this is the crux of Justice Scalia's question—the contours of tribal sovereignty in the 21st century.

The experience of tribal sovereignty and the manner in which it is exercised, the gravitas of sovereignty, is the most important indicator of the future and sustainable economic and social growth of Indian Country. The outer demonstration of sovereignty warranting respect and deference conveys an inner power toned by history and experience and attuned to challenges and opportunities. While all tribes have the authority to govern, many may not have realized the gravitas of that sovereignty, a quality earned through leading with a greater awareness, reflection, and focus. This article discusses four leadership skills critical to enhancing the gravitas of tribal sovereignty and realizing prosperity throughout Indian Country: a direct and personal relationship between the tribe and its members or citizens; more democracy and better data; transparent fiscal management; and targeted social welfare assistance programs.

Personal Sovereignty and Community Knowledge

The personal relationship between the sovereign and the people is so much more than public services—it is about identity, culture, and belonging to a community. A culturally rich community with a wealth of internal and external knowledge and engagement will preserve the historic nucleus of the community, possess the capacity to envision a future of enhanced economic activity and community well-being, and pursue sustainable investments in infrastructure, roads, schools, housing, and social and commercial facilities. With technology now driving almost every aspect of tribal life, from our personal relationships to business connections, there is an ever-pressing need for heightened awareness, cultural leadership, and technical proficiencies in Indian Country.[2] To do this well, cultivating and sharing information must be deployed under the aegis of good governance.

Self-governance in this sense is the epitome of self-knowledge channeled through a finely crafted plan. Governance through knowledge requires gathering and sharing a host of information about the basic business of government, from budgets, laws, and court decisions to public safety records and school board meetings. It is intensely relational work and requires openness to learning and leveraging that information in a new way, both within the community and outside its borders. What works within one tribal community may not work with another—each of the 566 federally recognized tribes presents a unique legal history and physical geog-

raphy. This is both the beauty and the burden of working with tribes: challenges are opportunities rather than impediments to affirming sovereign rights, and change is inevitable in an environment of constantly shifting legal and economic policies and emerging new technologies.

Targeted Development and Investment

Community knowledge is essential to creating economic growth and well-being. Coupled with good data about the community, this collective information reveals particular needs and the community's capacity to develop resources and deliver services to meet those needs. In addition, good data ensures that tribal services and investments are targeted and purposeful and that development opportunities relate to the realities on the ground and in the home. Importantly, economic development is distinct from wealth creation and improved quality of life. A tribe can have much of the former, with an extensive portfolio of casino properties and entertainment operations, but have none of the latter if economic activity fails to fit the community's needs, benefits only a few, or burdens the community with huge debt loads.

One economic incongruence is gaming—while Indian gaming has burgeoned in the past 25 years, reservation poverty has persisted for generations. The $27.4 billion industry belies, however, a complex matrix of incongruent economic and social principles.

One economic incongruence is gaming—while Indian gaming has burgeoned in the past 25 years, reservation poverty has persisted for generations. Gaming on Indian lands, now a $27.4 billion industry,[3] has completely transformed the way tribes do business. It belies, however, a complex matrix of incongruent economic and social principles.

First, despite the flush of casinos, hotels, and entertainment venues, poverty has a gripping hold on Indian Country. American Indians and Alaska Natives experience the highest rate of poverty of any racial group in the United States, an overall poverty rate of more than 29 percent, compared the nation's overall poverty rate of 15.9 percent.[4] While the economic recessions of the past decade have exacerbated its prevalence, particularly in rural America,[5] more troubling for American Indian communities is the persistence of reservation poverty. While gaming continues to be touted as an essential tool in a tribe's economic toolbox, as well as a primary exercise of sovereignty, the harshest conditions still are not being ameliorated.

Second, reservation economies inextricably are tied to tribal lands, mostly remote and seeped in history. The geography of place shapes a person's sense of self. As does a person's government—revealed through the kind and quality of investments and services in the community. Most tribes stitch their budgets together with a patchwork of public funding to fix roads, feed the school children, and keep the lights on in the health clinic. Gaming has created a different seam of tribal revenue to subsidize services and salaries, make per capita payments, and hire lawyers and lobbyists. It also has changed the way tribal governments interact with their people. Governance focused on transactions rather than transformation, on profit rather than people, on attention rather than agency, on control rather than clout, will be mired in dissension.

Third, notwithstanding the federal government's trust responsibility to tribes, sequestration has wrought deep cuts in federal programs and services to American Indians.[6] Today, the realization of the self-determination era policies of tribes administering their own budgets and programs is writhing under the squeeze of diminished contract funding and support costs.[7] Avid expectations for the future funding of Indian Country across the federal government must be adjusted.

Envisioning a more prosperous future requires robust governance, community engagement, and cultural leadership. In Indian Country, rapidly changing reservation demographics, increased mobility, and erratic budgets all signal a necessity of a personal, inclusive, and responsive form of governance. This view, focused on integrating knowledge about the individual into public decision-making, differs from the oft-touted self-governance. While self-governance describes a state of political autonomy vis-à-vis tribes and the federal government, self-integration describes the character of that government. A government that really knows about the people being served will deliver more effective programs and services and will make better strategic decisions. These governments fully appreciate and respond to the community's needs, to whatever extent and means available. Weaknesses and vulnerabilities are not ignored. Rather, a focus is on developing the capacity of the community as a whole to progress and grow. Finally, a fluid and transparent flow of information between the government and the community heightens trust, strengthens solidarity, and creates a hardy yet nimble community.

Principles of Sovereignty Gravitas

Tribes practicing these principles of knowledge integration and active sovereignty are realizing momentous success, not just in size and scale, but also in the significance of tribal action. Constitutional reform exemplifies the kind of leadership needed to make positive and enduring transformational changes. Since 1934, when Congress wholly redefined the federal government's relationship,[8] many tribes have been regulated by ill-fitting, culturally unsound, federally imposed generic constitutions. After years of drafting and deliberation, two large land-based tribes in the Midwest amended their constitutions and created a tribal-centered and tribally authorized form of governance and governing document. In Minnesota, the White Earth Nation held a referendum on Nov. 19, 2013, wherein almost 80 percent of the voters approved the new constitution.[9] A few years earlier, in 2007, a gathering of Sicangu women formed Lakota Women for Change and petitioned the Bureau of Indian Affairs of the U.S. Department of the Interior to conduct a special election to amend the Constitution of the Rosebud Sioux Tribe. Seventy-one percent of tribe's members approved the referendum.[10] Changes like these, that spring from the ground up, reflect wide participation, and evolve over time, are the most successful and enduring. The agents of this transformational change, animated by capacity-building knowledge, yearn to awaken the community and disturb the status quo and low-level equipoise.

Many other tribes have achieved institutional reform and economic success through public–private partnerships. In the area of developing tribal leadership, the Harvard Project on American Indian Economic Development (the Harvard Project), housed at the John F. Kennedy School of Government, works directly with tribes to build and foster sustained, self-directed social and economic devel-

opment. Along with the Native Nations Institute for Leadership, Management, and Policy at the University of Arizona, the Harvard Project's researchers and economic experts have ascertained four key indicators of positive development outcomes on American Indian reservations: tribal sovereignty, capable institutions of governance, culturally grounded institutions and values, and informed leadership, whether elected, community, or spiritual, that inspires tribal membership to assume the mantle of change.[11] The Bush Foundation's Native Nations Rebuilders program also develops emerging tribal leadership to take up this responsibility.[12] In cooperation with their elected leadership, rebuilders in 23 Minnesota, North Dakota, and South Dakota tribes are helping their communities realize their tribes' unique goals.

The Casey Family Programs[13] believes that the future of Indian Country hinges on the well-being of Indian children. Casey has worked directly with tribes throughout the country to improve the lives of vulnerable children and their families involved in public and tribal foster care systems. The Bill and Melinda Gates Foundation also knows that educational opportunities are essential to developing the next tier of tribal leaders. For 14 years, the Gates Millennium Scholars program has made higher education accessible to thousands of talented American Indian students who otherwise would not have that opportunity.[14]

The abiding commitment to tribes of these and many other organizations throughout the country is making a positive impact in their communities. These kinds of efforts succeed for several reasons. First, they are personal and relational, inclusive, and multidirectional. Like the connection to the land, the heart of Indian Country is in the people. The intensely personal and deeply cultural relationship between the tribal government and the people must not be taken for granted or treated superficially. The best way of fostering this rapport is by sharing information, targeting government programs to actual need, and building capacity to weather transitions. There is no better way to do this than by creating access to basic services such as education, clean water, electricity, housing, even the Internet. These essential services significantly influence a child's opportunity to succeed in life.

And a final point. In the fiscal space of governmental resources and recognizing the importance of investment in infrastructure to help their economies grow, tribal governments can leverage these relationships even further to meet funding gaps and help realize the full range of development opportunities.

Investing and Leveraging in Indian Country

Every tribal community is different, with distinct needs and varying opportunities. Tribes that are making the most progress share four common core practices. They bring together people and resources around a shared community-based goal. They gather, assess, and share information and value public accountability. They diligently pursue long-term goals by forgoing short-term limited gains for sustainable widespread benefits. And they put children first. Regardless of history, geography, or a successful casino, childhood is revered, protected, and supported because they know that secure housing, proper nourishment, potable water, sanitation, and early childhood education yield the biggest payoffs.[15]

Government has an important role to play here. In Indian Country, the federal government plays many roles—as a trustee and a property owner, as well as policy-maker and bureaucratic overseer. It also is a ready funding source waiting to be capitalized on and leveraged, along with funding from state and local governments, nonprofits, and businesses. Across the country, government resources are investing in Indian Country by building houses, installing water and waste systems, and constructing facilities such as libraries, hospitals, and community centers.[16]

Money is not the only asset being capitalized on in these transactions. Most demonstrably, so is the community's diverse capacity. Today tribes are creating their own food hubs, bringing farm produce to the market,[17] investing in clean energy projects,[18] building their own schools and houses,[19] creating jobs on the reservation, and spending their money close to home.

One of these successes is the Choctaw Nation of Oklahoma, a recently named Promise Zone by President Barack Obama.[20] Facing high poverty rates, the tribal community leaders are determined to change things by making financing available to help women start their own businesses, investing in new water and sewer systems that will serve their own communities and make the area more attractive for companies looking to locate there, helping farmers and ranchers create more jobs, and making healthy food more accessible to families and school children.

Sovereignty Gravitas

Indian Country is poised to capitalize on its energy, faith, and determination—in essence, its sovereignty gravitas. This is exciting work—opportunities abound in Indian Country and pathways to progress are clearing up. Only a few decades ago, a federal agent would single-handedly decide whether a road, a dam, or a school would be built in Indian Country, as well as who would build it. Little consideration was given to the cost of maintaining that infrastructure, the rights associated with the land, or the impact on the people. Now, a new way of planning, investing, and supporting Indian communities is taking shape. Policies are being informed by up-to-date information, while outcomes and impacts, both positive and negative, can be measured. Tribes are making informed policy decisions and challenging unsupported ones. They are driving limited funds and valuable resources to the highest and best uses by individually and directly assisting people in need and prioritizing economic development opportunities. Leveraging these opportunities should be a collective effort; it should involve governments at every level, private investors, stakeholders, and above all members of the community.

To be most effective, many reforms in Indian Country need tribes to act together. Over the next few years, whether or not tribes succeed depends in large part on the political sustainability of tribal sovereignty. To ensure sustainability, economic progress needs to be a shared experience, notwithstanding that markets of any kind, particularly gaming and natural resources, are not easily shared. But in reality, tribes risk stagnated development and regressive policies when they are fragmented. Thus, thinking optimistically, solutions and resolutions will be found and lessons will be learned from mistakes and successes. What will make sovereignty continually relevant and impactful are knowledge and gravitas. ⊙

Patrice H. Kunesh is the deputy under secretary for rural development for the U.S. Department of Agriculture (May 2013 to present), the only federal department with the primary responsibility of serving rural America. Kunesh believes that as much as

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strong rural communities are the key to economic growth and prosperity in America, strong Indian communities are essential to self-determination and well-being in Indian Country. In the past two years alone, her department directly invested more than $648 million in Indian Country in broadband, businesses, housing, safe water, and community facilities. Prior to joining USDA, Kunesh was the deputy solicitor–Indian affairs at the Department of the Interior (2011–2013); associate professor of law at the University of South Dakota (2005–2011); in-house counsel with the Mashantucket Pequot Tribe (1995–2005); and senior staff attorney at the Native American Rights Fund (1989–1995).

Endnotes

[1]In a recent article, Professor William Woods firmly situates the doctrine of tribal sovereign immunity in law and history, and "the intentional result of relationships negotiated across centuries between the United States and [] tribal nations … and is intertwined with these nations' legal and political histories…" William Wood, *It Wasn't an Accident: The Tribal Sovereign Immunity Story*, 62 American Univ. L. Rev. 1587, 1588-89 (2013).

[2]The Supreme Court's decision last year, *Adoptive Couple v. Baby Girl*, turned in large part on the legal significance of a text, with the fate of the Indian Child Welfare Act hanging in the balance. 133 S.Ct. 2552. *See also*, Jack Trope, *Understanding the Supreme Court's Decision in Adoptive Couple v. Baby Girl*, The Federal Lawyer, April 2014, 34–41.

[3]See, Gale Courey Toesing, "Latest Gaming Industry Report: Indian Gaming Made Small Gains in 2011," (March 26, 2013), available at indiancountrytodaymedianetwork.com/2013/03/26/latest-gaming-industry-report-indian-gaming-made-small-gains-2011-148353.

[4]See, Profile America Facts for Features, American Indian and Alaska Native Heritage Month: November 2013, available at www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb13-ff26.html.

[5]See, Tracey Farrigan and Timothy Parker, "The Concentration of Poverty Is a Growing Rural Problem," by U.S. Department of Agriculture, Economic Research Service (Dec. 5, 2012), available at www.ers.usda.gov/amber-waves/2012-december/concentration-of-poverty.aspx#.UsncCv21JuY.

[6]See, News Release, Office of the Assistant Secretary-Indian Affairs, "President's Fiscal Year 2013 Budget Request for Indian Affairs Maintains Commitment to Improving Conditions Throughout Indian Country," (Feb. 13, 2012), available at www.bia.gov/cs/groups/public/documents/text/idc016383.pdf.

[7]See, e.g., *Ramah Navajo Chapter v. Salazar,* 132 S. Ct. 2181 (2012).

[8]The Indian Reorganization Act**,** or the Howard Wheeler Act, 48 Stat. 984 (June 18, 1934), attempted to restore tribal self-governance, to prevent further depletion of reservation resources, and to build reservation economies. Many tribes questioned the assimilation objectives of the IRA and found, in effect, further erosion of tribal sovereignty and condescension in the treatment of American Indians and their cultures. *See also*, Richmond L. Clow, "The Indian Reorganization Act and The Loss of Tribal Sovereignty: Constitutions on the Rosebud and Pine Ridge Reservations," available at digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1316&context=greatplainsquarterly.

[9]According to the White Earth Nation's webpage, "Community members gathered at the Golden Eagle Bingo Hall in Mahnomen, Minn., and waited patiently for several hours as 3,492 ballots were opened and counted. In the end, almost 80 percent of the voters approved a new White Earth Constitution. The final tally showed 2,780 (79.61 percent) voted to approve the proposed Constitution …" *See* www.whiteearth.com and "Voting Process for the November 19, 2013, Referendum on the Proposed White Earth Constitution," available at www.whiteearth.com/programs/?program_id=24.

[10]The Rosebud Sioux Tribe Constitution (Dec. 20, 1935), available at sicanguoyatebar.org/wp-content/uploads/2011/05/Rosebud_Constitution.pdf, and the Constitution and By-laws of the Rosebud Sioux Tribe of South Dakota, (amended Sept. 20, 2007), available at www.rosebudsiouxtribe-nsn.gov/government/tribal-laws/constitution?limitstart=0.

[11]The Harvard Project on American Indian Economic Development, Overview, available at hpaied.org/about-hpaied/overview (last visited Jan. 21, 2014).

[12]The Bush Foundation Native Nation Builders Program, available at www.bushfoundation.org/native-nations-building/native-nations-rebuilders-program (last visited Jan. 21, 2014).

[13]The Casey Family Program Indian Child Welfare Program, available at www.casey.org/OurWork/DirectService/icw.htm (last visited Jan. 21, 2014).

[14]The Gates Millennium Scholars Program, Overview available at www.gmsp.org/publicweb/scholarships.aspx. (last visited Jan. 21, 2014).

[15]See e.g., The Early Childhood Initiative: Keynote Address by Dr. Jack Shonkoff, Director, Center on the Developing Child, Harvard University at web.worldbank.org/external/default/main?pagePK=64159605&theSitePK=514426&contentMDK=22497037&noSURL=Y&piPK=64157667.

[16]See, e.g., Brenda Austin, "6 Questions with USDA's Kunesh and the Need for Tribes to Use Programs," Indian Country Today (Dec. 9, 2013), available at indiancountrytodaymedianetwork.com/2013/12/09/6-questions-usdas-kunesh-need-tribes-use-programs-152578.

[17]See "First-ever Native American Food Hub Created in New Mexico," posted by Ernie Watson, U.S. Department of Agriculture, on Dec. 26, 2013, available at blogs.usda.gov/2013/12/26/first-ever-native-american-food-hub-created-in-new-mexico/.

[18]See "Nine Tribes to Receive $7 Million From Department of Energy for Wind, Biomass, Solar Projects," Indian Country Today (Nov. 14, 2013), available at indiancountrytodaymedianetwork.com/2013/11/14/nine-tribes-receive-7-million-department-energy-wind-biomass-solar-projects-152259.

[19]See "South Dakota Statewide Native Homeownership Coalition on the Horizon," posted by Christine Sorensen (July 18, 2013), U.S. Department of Agriculture, available at blogs.usda.gov/2013/07/18/south-dakota-statewide-native-homeownership-coalition-on-the-horizon/.

[20]See "Fact Sheet: President Obama's Promise Zones Initiative," The White House, Office of the Press Secretary (Jan. 08, 2014), available at www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative.