

NATION BUILDING THROUGH LANDS MANAGEMENT

Application of the Harvard Project on American Indian Economic Development to Canada

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ABSTRACT

The research findings of the Harvard Project on American Indian Economic Development and the principles of Nation Building arising from the Harvard project have been central to the progression of new policy on Aboriginal Economic Development. However, key differences exist between American Indian Tribes and Canadian First Nations that warrant concern about the appropriateness of using American-based research findings as the basis of policy development for Aboriginal people in Canada. This paper demonstrates that the Harvard principles can be extrapolated into a Canadian context through an analysis of the statutory requirements under the First Nations Lands Management Act and a comparison to the Nation Building Model as defined by the Harvard Project. This article will also recommend specific research activities that will test the effectiveness of the Nation Building Model in Canada (1) to ensure that responsible policies are based on Canadian-based research, and (2) to strengthen the business case for increased financial investment by the Government of Canada to support best practices in First Nations lands management and economic development.



INTRODUCTION

The Harvard Project on American Indian Economic Development (Cornell & Kalt, 1998) has provided the basis for several recent government commissioned reports on Aboriginal economic development (Peoples, 2007), and Aboriginal self-government (Cornell, Kalt & Jorgensen, 2002) that is integral to the work of the National Center for First Nations Governance and Research (NCFNG). As such, the Harvard Project has become increasingly popular among government policy makers and First Nation leaders in Canada. However, many critics (Simeone, 2007) of the Harvard Project warn that the research findings may be difficult to apply outside of the U.S, and that the Harvard project should not be so indubitably accepted and used as the foundation for new policy on Aboriginal economic development. While there are important differences between Indigenous nations in Canada and the U.S, differences that may make the application of the Harvard findings difficult to apply in Canada, the founders of the Harvard Project did not suggest that Nation Building was a simple endeavour. It is important that the fundamental concepts of the Harvard findings do not get lost in the argument of applicability and scholarly rebuttals. Instead, the focus should be to find innovative ways in which the Harvard findings may be extrapolated into a Canadian context so that First Nations can go

about the business of making positive changes that will drive sustainable and successful Aboriginal economic development. The primary purpose of this paper is to display how the Harvard project may be applied in a Canadian First Nations context through an analysis of First Nations land management practices and a comparison to the Nation Building Model as defined by the Harvard Project. Furthermore, this paper will argue the need to test the applicability of the Nation Building Model and suggest specific activities warranting further research.

BACKGROUND

Nation Building Model

The Harvard Project on American Indian Economic Development was founded by Professors Stephen Cornell and Joseph. P. Kalt in 1987 and operates jointly through Harvard's Kennedy School of Government and the Native Nations Institute at the University Arizona's Udall Center. The Harvard Project attempted to understand why some American Indian Tribes enjoyed sustained and successful economic development, while others remained paralyzed by poverty. The research suggested that there are essentially two approaches to economic development in Indian country: (1) the Standard Approach and (2) the Nation Building approach.

The Standard Approach focuses on short term economic solutions that are more concerned with starting businesses to create jobs and income *now*, rather than *sustaining* businesses to build an economy for the *future*. The standard approach allows external governments to set the development agenda and views economic development as an economic problem typically attributed to issues such as access to capital, proximity to markets and a lack of business development resources. The Nation Building approach is an innovative strategy to economic development that is currently being implemented by various Indigenous Nations who have recognized that the Standard Approach results in failed enterprises and creates a false economy that jeopardizes the Nation's credibility and well being. The Nation Building Model (NBM) of economic development is summarized by five key determinants: (a) Sovereignty, (b) Capable Governing Institutions, (c) Cultural Match, (d) Strategic Thinking, and (e) Leadership. All of these determinants are founded on the principle that challenges to economic development are political in nature rather than economic. While it is unclear whether the Harvard Project research has been able to define a weighted contribution or significance that each of the five determinants has to successful economic development, it is clear that sovereignty is considered the most important, if not compulsory, determinant. The five key Nation Building determinants are summarized as follows:

(a) Sovereignty

Sovereignty means that Indigenous Nations are responsible for what happens on Indigenous lands and by marrying consequences to decisions, better decisions will result. The Harvard Project found evidence that suggests if an Indigenous Nation is to realize sustained and self-determined economic development, then the nation must have the authority to set its own development agenda. Within the sample of tribes studied throughout the Harvard Project, every single example of sustained economic development was correlated with effectively exercised self-government (Cornell & Kalt, 2003).

(b) Capable Governing Institutions

Assertion of sovereignty is necessary, but it is not sufficient on its own for sustained

development to occur. Authority must be backed up with stable institutions that are capable of dealing with contemporary challenges. In addition, it should keep politics from interfering with sound decision making, and provide independent and fair dispute resolution mechanisms. A capable governing institution establishes the framework that ensures that a bureaucracy can make binding decisions in a timely manner, and get things done.

(c) Cultural Match

In order for governing institutions to be legitimate they must match Indigenous ideas about how authority should be organized and exercised. If the framework through which an elected First Nations band council must govern is created and imposed by external, non-Indigenous authorities, there is some likelihood that it will not earn respect or acceptance from the people it is meant to serve. To ensure that the institutions have the support of the people, they must believe that the government is of their own design.

(d) Strategic Thinking

There must be a shift from reactive, short term thinking to proactive long term thinking and planning. Instead of only worrying about what is on the agenda is for the day, Indigenous Nations also need to determine what their priorities are for the future.

(e) Leadership

Nation building entails having a champion that is up to the task and has the ability to inspire others to work together to bring about change. A leader may be anyone in the community, who has a vision of the Nation's future and can promote the foundational changes that the vision requires, such as knowledge, experience, spiritual guidance and a desire for change (Dr. Manley A. Begay, Jr., faculty chair of the Native Nations Institute at the Udall Center for Studies in Public Policy, personal correspondence, June 23, 2009).

First Nation Lands Management in Canada

There are over 600 First Nations and 2.7 million hectares of land in Canada that are subject

to the land management provisions of the *Indian Act* (Government of Canada, 2009). Since 1980, these reserve lands have been administered by INAC under two land management regimes, which are the Regional Lands Administration Program (RLAP), and the Delegated Lands Management Program (53/60).

RLAP is a co-management form of devolution, which means First Nations Lands Staff share the responsibilities of land management with INAC Staff. RLAP offers no delegated authorities, and therefore less control, as accountability for lands management functions resides with the Minister. The 53/60 program was introduced in the 1970s in response to First Nations who expressed a desire to exercise more authority over their lands. The 53/60 program authorizes the First Nation to exercise delegated land management authorities on behalf of the Minister under Sections 53 and 60 of the *Indian Act*. While the 53/60 was a good start, it was ultimately inadequate in addressing the major concerns of both Aboriginal and non-Aboriginal groups that land management provisions under the *Indian Act* are antiquated, ineffective and act as an obstacle to Aboriginal economic development (Auditor General of Canada, 2009). As a response to this long-standing concern, First Nations worked with the Government of Canada to develop the Reserve Lands and Environment Management Program (RLEMP). The RLEMP was designed to strengthen First Nation governance and improve accountability, whereby INAC plays only an advisory and supervisory role. It involves an integrated training approach with skills development mechanisms as well as institutional development support. For many First Nations, the RLEMP is considered an opportunity to build the capacity required to prepare for self-government of lands and resource management under the *First Nations Land Management Act* (FNLMA). The FNLMA is a Canadian federal law enacted in 1999 to provide signatory First Nations autonomy over their lands and resources. The FNLMA ratifies the Framework Agreement on First Nations Land Management, which was signed by 14 original signatory First Nations in 1996 and is the source of First Nation land management authorities.

There are currently 33 First Nations that are fully operational under the FNLMA with another 10 still in the developmental stage who

have yet to ratify their funding agreements and land codes. There are also an additional 70 First Nations who have submitted a band council resolution seeking entrance into the *Framework Agreement* and are currently on the "waiting list" by Aboriginal Affairs and Northern Development Canada (formerly known as INAC). Insufficient funding has prevented many of the First Nations from becoming operational under the FNLMA regime. The Report of the Auditor General on Land Management and Environmental Protection of Reserves describes the effects that a lack of adequate funding has had on the FNLMA:

When developing the programming for the FNLMA, the Department anticipated that about 90 First Nations could become fully operational in all provisions of the Act. In 2002, its plans called for having 30 First Nations in the developmental phase of the FNLMA regime at any given time. The Department anticipated that up to 75 First Nations would be operational by the end of 2007. At the time of our audit, only 22 First Nations were operational, 19 were in the developmental stage, 2 had negotiated self-government agreements, and 9 were inactive. Another 61 First Nations were waiting to enter the FNLMA, most of whom were still waiting to be assessed by the Department to determine whether they were ready to enter the FNLMA regime. At the end of 2008, 15 of these 61 First Nations had been waiting for more than seven years. In March 2008, INAC had to close the FNLMA regime to new entrants due to a lack of funding. The Department is currently seeking additional resources to effectively implement the FNLMA regime for participants and expand it to new First Nations (Auditor General of Canada, 2009).

It is clear that without sufficient Federal funding required to facilitate a First Nations' operation under FNLMA regime, the FNLMA will never realize its full potential. In response to this concern, KPMG was commissioned by the Lands Advisory Board to conduct a cost-benefit analysis of the *Framework Agreement* with the intent of establishing a business case for increased investment by Canada to support

First Nations seeking sectoral jurisdiction of their lands and resources under FNLMA.

The KMPG findings were indicative of the positive contributions that the ratified *Framework Agreement* has had on Aboriginal economies (Lands Advisory Board, 2009–2010). For example, they found that *Framework Agreement* First Nations showed an overall increase of land transactions by 9%, compared to a decrease of 1% for *Indian Act* First Nations. The KPMG report also found that the time to complete a land transaction was significantly reduced for FNLM First Nations. For instance, commercial leases may take up to several years to complete under the *Indian Act* land management regimes, but only months or weeks to complete under the FNLMA. The KPMG study also suggests that *Framework Agreement* First Nations attracted approximately \$48 million in external investments, \$53 million in internal investments, and created a total of 1,959 jobs, over half of which were filled by Aboriginal people.

Fortunately for aspiring FNLM First Nations, a four-year funding agreement was secured in 2009 through the Aboriginal Economic Development Action Plan, which should allow up to 20 new First Nations to enter the RLEMP program each year. Even more encouraging is the renewed enthusiasm by the Federal Government to support on FNLM as a priority under the New Federal Framework on Aboriginal Economic Development. This commitment was apparent in the Conservative 2011 Budget, which provided for an additional \$20 million dollars over two years into the First Nation Land Management Regime as an investment into the development of the Aboriginal Canadian economy. With the growing support for First Nations Land Management by First Nations and the Federal Government, it is expected that there will be a surge of First Nations looking to build capacity in the area of land management.

ISSUE

Nation Building is a highly desirable goal for many First Nation leaders and government officials whose attention has been drawn to this increasingly popular approach to Aboriginal economic development. Representatives from the Native Nations Institute who are actively

involved with the Harvard Project are frequently invited to work with various First Nations in Canada and federal, provincial and territorial governments are often willing to foot the bill. The concept of Nation Building is exciting, and those who are fortunate to have the opportunity to attend a workshop on the Harvard Project are left with a sense of hope that positive change is on the horizon and a belief that a lasting change can happen if only the Nation is willing to roll up its sleeves and begin some very hard work on governance reform.

What often follows is that the First Nation leaders start to walk the path of Nation Building toward the first and most important step, which is asserting jurisdiction and claiming sovereignty, and soon meet their first roadblock. A major obstacle is the realization that Canada has been unsuccessful in enacting legislation that would recognize the self-government rights of First Nations and provide them with a statutory alternative to the Indian Act. A constitutional amendment explicitly recognizing an inherent right to Aboriginal self-government was proposed in the Charlottetown Accord, but failed ratification in the 1992 federal referendum. The most recent attempt to introduce First Nations self-governing legislation was proposed by the First Nations Governance Act (Bill C-7). After consultation with over 500 witnesses, including First Nations organizations, community leaders and individuals, serious deficiencies (Cornell, Kalt & Jorgensen, 2002) were identified in the Act and Bill C-7 subsequently died on the *Order Paper* with the prorogation of Parliament in November of 2003. To date, the only method by which a First Nation can achieve self government in Canada is to engage in self-government treaty negotiations. According to the International Indian Treaty Council (2003), treaty negotiations in Canada have taken an average of 15 years to reach Final Agreements, and a further 10 years to complete the initial implementation phase. While this process is still very worthy of engagement for First Nations wishing to achieve self-government, it does not address the immediate needs of the nation who wish to build successful Aboriginal economies that set the foundation for healthy and prosperous communities.

If a First Nation is unable to claim sovereignty in an effective timeframe, how are they to

engage in Nation Building if they cannot accomplish the fundamental task of self government? This is one example of the challenges that critics (Simeone, 2007) of the Harvard Project refer to when they warn that there are important differences between Indigenous Nations in Canada and the U.S. that make the application of the Harvard findings in Canada difficult to put into in practice and quite overwhelming for First Nations to attempt.

It is apparent that there is a critical need to rethink the Nation Building Model and explore ways in which it can be applied in a Canadian First Nations context. Although comprehensive self-government is extremely difficult for First Nations to achieve, there are legislative tools that allow First Nations to exert self-governing jurisdiction over specific subject matters such education, land management or family services. Perhaps self-rule does not have to be all-or-nothing in order for the Nation Building Model to be utilized. Is it possible that if the Nation Building approach is considered in a more limited scope, it can actually be achievable to implement? If so, First Nations up to the task of Nation Building can get beyond the "concept" and mobilize their efforts in an achievable, but incremental manner.

RESULTS OF ANALYSIS AND COMPARISON

Nation Building through Lands Management — Requirement One: Sovereignty

There are essentially two methods by which First Nations may assert sovereignty over their lands and resources. As was mentioned in the previous section, First Nations have the option to engage in government-to-government negotiations for comprehensive self-government. Without a statutory framework to facilitate this process, the timeframe, costs and other challenges may negate comprehensive self-government as a desirable option. The source and distribution of land management authorities are summarized in Table 1, which demonstrates that *Framework Agreement* for First Nations Land Management serves as a sectoral statutory alternative to comprehensive self-government in that AANDC cannot interfere with management of reserve lands and resources as it can under the Indian Act. The Framework Agreement sets out a government-to-government process to transfer jurisdiction over lands and resource management from the Aboriginal Affairs and Northern Development Canada to the First Nation. The Framework agreement has

TABLE 1
Options for First Nations Lands Management (*adopted from Lands Advisory Board (2009–2010)*)

Optional First Nation Land Management Regimes	Land Administration by AANDC	Regional Land Administration Program	Delegation of s. 53 & s. 60 authorities	Framework Agreement (sectoral self-government)	Comprehensive self-government
Statutory Regime	<i>Indian Act</i>	<i>Indian Act</i>	<i>Indian Act</i>	FN Land Code and FNLMA	Other (e.g., FN Constitution)
Distribution of Authority and Responsibility	Minister of AANDC			First Nation	

three main components that include a community ratification process, a Land Code and an individual funding transfer agreement. In order for a First Nation to ratify the Framework Agreement, they must develop a Land Code that is approved by majority vote. Once the ratification process is concluded, the *Indian Act* provisions relating to land management no longer apply and the First Nations assumes full control and management responsibilities of their reserve lands.

A First Nation who becomes a signatory to the Framework Agreement and is successful in ratifying its Land Code will effectively be opting out of approximately 25% of the *Indian Act* (First Nations Land Management Resource Centre, 2010). Under the *Framework Agreement*, the First Nation has the power to enforce the Nations land laws, including the appointment of the Nations own Justice of the Peace. The community Land Code represents an element of a “constitution” for a First Nation government, and is certainly more achievable than developing a full-fledged constitution that would take upwards of a quarter century to be recognized by the federal government. In summary, lands management under the FNLMA is an achievable, sectoral form of self-government that provides First Nations with sovereignty over their lands and resources.

Nation Building through Lands Management — Requirement Two: Capable Governing Institutions

The Framework Agreement requires that the Land Code developed by a First Nation include provisions for a dispute resolution process to address any disputes relating to interests in First Nations lands. Effective and non-politicized resolution of disputes is one of the characteristics that the Harvard Project attributes to a good governing institution. Another characteristic is the ability to make binding decisions in a timely manner. One of the primary complaints that *Indian Act*-managed First Nations make is the length of time it takes to receive Ministerial approval for land transactions, and the destructive effect that time delays have on economic development.

First Nations are governed by about 35 land-related sections of the *Indian Act*, including about 25 provisions that involve the Minister or Governor in Council in reserve land and

resource management decisions (Auditor General of Canada, 2009). Approval for various land transactions, such as land designation, have been known to take upwards of 11 years to finalize under *Indian Act* processes—long after economic opportunity that initiated the transaction has dissipated. Under the FNLMA, a First Nation has full authority over lands management without interference from INAC, which significantly improves the Nations ability to make timely decisions.

Nation Building through Lands Management — Requirement Three: Cultural Match

If the community is involved from the beginning of the Land Code development process, the laws of the land will surely reflect the community’s vision on how the land ought to be managed and how authority should be exercised. In this sense, the Land Code and the institution that implements and enforces it will have legitimacy with the community it was designed to serve. Accordingly, full participation of the community is very important for a successful ratification vote.

Nation Building through Lands Management — Requirement Four: Strategic Thinking

A First Nation’s Land Code may include provisions that require rules and procedures developed to address land use planning and zoning. Additionally it also requires community approval through a majority vote. Land use planning helps the Nation decide how the community will grow; where businesses, homes and recreation areas should be built; where sewers, roads and other infrastructure should be provided, and how the environment and sacred lands will be protected and balanced with economic development. The goal of land use planning is to formulate policies that will be consistently applied, and provide a roadmap for future planning, while encompassing traditional land use principles and guidelines (cultural match!). A land use plan fulfills the requirement of having a strategic orientation for successful land management under the Nation Building model.

Nation Building through Lands Management — Requirement Five: Leadership

Leaders of First Nations communities are typically thought of as elected officials, or members of Council. In truth, leaders can be anyone in the community, such as political activists, environmental watchdogs, or spiritual elders. A leader is anyone not afraid to break away from the standard way of doing things, has a new vision of the Nation's future and can promote the foundational changes that the vision requires. A leader should demonstrate the behaviours and attitudes the Nation needs to affect change through Nation Building efforts. In the context of Nation Building through land management, First Nation communities should rethink their ideas of how to govern their lands and devise new land management tools and strategies that reflect the values of the community. There is no question that a strong, public-spirited leader is necessary to undertake the development of a Land Code and land use plan that is ratified by the community.

The Reserve Lands and Environment Management Program is a two-year certification program that allows leaders in First Nations lands management to emerge. During the first year a participant completes a one-year accredited academic program through the Indigenous Peoples Resource Management Program at the University of Saskatchewan. In the second year participants attend lands-management specific training with the National Aboriginal Lands Management Association (NALMA), while fulfilling a work experience component. At the end of the two years, the student will receive certification as a Professional Lands Manager from NALMA. The RLEMP program allows aspiring or existing First Nations lands managers to acquire the knowledge, skills and experience that they will require in undertaking land code development and community land use planning as well as performing lands and natural resources transactions, environmental management, and compliance management duties.

CONCLUSION

The theory that First Nations land management is a critical component of sustainable Aboriginal

economic development is by no means a new concept. It is a highly supported theory as is reflected in recent policy directives and legislation such as the RLEMP program and FNLMA. Similarly, the Harvard Project's Nation Building Model for Indigenous Economic Development has been favourably received and has had widespread influence on the decisions of Canadian Aboriginal leaders and government policy makers. This paper was intended to introduce the connection that exists between the NBM, FNLMA and lands management best practices. Furthermore, this paper suggests that the Nation Building Model can be applied to First Nations lands management, and argues that, under the FNLMA, a First Nation is essentially fulfilling the requirements of the Nation Building approach to Aboriginal economic development. Based on the successes of American Indian Tribes who have built their Nations using the Nation Building approach, it is reasonable to expect that a First Nation that applies the NBM approach to land management should experience great success in the management of its lands and resources. Given the interconnection between lands management and Aboriginal economic development, success in lands management using the NBM should be reflected in the healthy development of the local First Nation economy. Perhaps it is also arguable that the KPMG report summarized earlier in this paper support the conclusions presented here. At the very least, there is no question that over \$100 million of increased investments in First Nations and nearly two thousand new jobs created is a successful outcome of the FNLMA and is certainly evidence for justifying the continued support of the land management regime by AANDC.

FURTHER RESEARCH

It is important to remember that this paper simply argues that the FNLMA regime offers sectoral self-government and requires a First Nation to develop land management tools that exemplify the five determinants of the Nation Building Model. It is still unknown if it is *necessary* for a First Nation to fulfill all five key components of the Nation Building Approach to land management in order to mirror the successes highlighted by the Harvard research. According to the Harvard Project, the Nation Building

Approach works for American Indian Tribes with respect to economic development. Will Canadian First Nations experience the same success if they apply the Nation Building Model to lands management? This may be an important question to answer because in doing so, it tests the Nation Building Model for effectiveness with Canadian First Nations. This should be of particular interest to Canadian Aboriginal policy-makers, who have been adopting the Harvard Project principles and should be concerned that responsible policies are influenced by sound Canadian-based research.

One possible method by which to test the Nation Building Approach to lands management would be to undertake a research project that would examine the economic status of those First Nations who meet any of the five key determinants under the Nation Building Model, as it applies to First Nations Lands Management. To clarify, consider sovereignty, which was determined to be a crucial factor in the sustainable development of American Indian Tribes economies. The results of the comparison and analysis presented in this paper suggest that FNLMA fulfills the sovereignty requirement for Canadian First Nations in terms of lands management. Extrapolating from those conclusions, it may be fair to suggest that opting into the FNLMA is a requirement for successful lands management. If it is true that not one single American Tribe studied in the Harvard Project experienced sustained economic development without the effective assertion of sovereignty, then it should also be true that Canadian First Nations will not experience success in lands management and reap economic benefits unless they opt into the FNLMA or achieve comprehensive self-government. So then, how is the success of the Osoyoos Indian Band (OIB) explained? OIB has been highly recognized as a successful model of economic development for First Nations in Canada. OIB is considered to possess strong leadership, have built capable governing institutions, be strategically oriented, and utilize an economic development model that is a good cultural match. However, in 2007, their land code was not ratified (First Nations Land Management Resource Centre, 2010) and as a result, they do not currently have sectoral self-government over their lands and resources. One could argue that they only meet four out of the five key determi-

nants for success under the NBM. Now, consider the Westbank First Nation (WFN) who has successfully ratified the *Framework Agreement* and is another highly respected model of successful economic development. The Westbank First Nation is an example of a Canadian First Nation that meets all five of the Nation Building requirements. How does WFN compare against the OIB, economically speaking? To expand further, how would a First Nation that only has two of the key determinants of successful lands management under the NBM (e.g. a land use plan representing strategic thinking, and a policy framework that is paired with a dispute resolution process representing capable governing institutions) compare to both the OIB and WFN who meet four and five of the Nation Building Model requirements, respectively? What controls could be used to ensure that differences in economic successes between First Nations resulting from the best land management practices can be isolated from other contributing variables?

A definite need exists to test the applicability of the NBM in Canada, and this paper has argued that this task can be accomplished by analyzing the various successes that First Nations have had with various lands management regimes. If the hypothesis that FNLMA First Nations achieve all five requirements under the Nation Building Model and enjoy significantly higher rates of social and economic prosperity, then a strong business case can be developed to pressure the Canadian government to provide adequate levels of funding to First Nations who wish to take back control of their own destiny, starting with regaining autonomy over their lands and resources.

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