



Taking Indigenous Self-Determination in Chile Seriously

*Lessons from Indigenous
Experiences in the United States and
Their Possible Application in Chile*

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Taking Indigenous Self-Determination in Chile Seriously:

Lessons from Indigenous Experiences in the United States and Their Possible Application in Chile

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Abstract

In 2007, Chile voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples. One year later, the State ratified International Labour Organisation Convention 169 on Indigenous Peoples. Among the rights that these instruments recognize and promote is the right to self-determination for indigenous peoples. The recognition of the right to self-determination, and its implementation in practice, implies a redefinition of state–indigenous relations and a reassessment of power distribution. The right also imposes obligations on the State, but at the same time it increases indigenous responsibility as well. While the Chilean State and the indigenous peoples that are living there enter into this new legal landscape, there is value in studying the experience of the United States and the indigenous peoples there. The right to self-determination was recognized in domestic legislation in the United States in 1975 and its recognition has brought with it a rebirth of indigenous economies and societies—converting this once marginalized and poor population into a population that is thriving today. This transformation is part of a long process that has yielded important lessons about self-determination which have application in the Chilean context.

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I. INTRODUCTION

In September of 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples (“Declaration”).¹ Chile was among the 143 countries that voted in favor of its adoption. Just one year later, on September 15, 2008, after nearly twenty years of debate, Chile ratified International Labour Organisation Convention 169 (1989) on Indigenous and Tribal Peoples in Independent Countries (hereinafter “Convention 169”).² The Convention went into effect in the country in September of 2009.

These decisions related to the human rights of Indigenous peoples signal—at least on paper—change, and thus the country finds itself at a turning point. Now that Convention 169 has been ratified and is in effect, Chile—including the Indigenous peoples living there—are now presented with an opportunity to take the momentum garnered through the passage of this legislation and use it to achieve additional positive ends. But the question is: How can that be accomplished? Specifically, now that certain rights—established in Convention 169, as well as the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”)—have been recognized on paper, how can they be realized in practice? Or, to put it another way: How does Chile effectively and meaningfully transition to a robust policy of Indigenous self-determination?

In Chile, the need to address issues raised by Indigenous peoples is not novel, but the legal landscape for addressing such issues has changed dramatically in the recent past as a result of the government’s new international obligations. The advancement of the global Indigenous movement combined with the explicit promise by the government to seek solutions from within the framework established by Convention 169 and the Declaration has created new opportunities for both the Chilean government and the Indigenous peoples living there to shape a better future. Recognizing these rights in writing obviously does not solve everything, nor does it change the

¹ 61st Session of the United Nations General Assembly, 13 September 2007 (A/61/PV.10), in which Resolution A/RES/61/295 was adopted.

² International Labour Organisation ILOLEX Doc. No. 192008CHL169.



past. There are still obstacles—some pragmatic and others theoretically—to overcome in order to achieve full implementation.³ But, the ratification of Convention 169 does change the debate and it opens the door to a better future for both the Chilean state and Indigenous peoples in Chile. In this new age of state – indigenous relations, one of the most important changes is that Indigenous peoples are now guaranteed the right to self-determination, meaning that the responsibility for what happens to Indigenous peoples is now where it should be—in Indigenous hands. This change highlights the importance of a crucial question: what can Indigenous peoples themselves do to advance their own self-determination? And, as Chile, and in particular the Aymara, Atacameña, Colla, Diaguita, Kawashkar, Quechua, Mapuche, Rapa Nui y Yagan,⁴ peoples enter into this new framework, there are lessons to consider from the experiences of Indigenous peoples in other countries that have wrestled with similar circumstances.

One such country is the United States. At first glance, the U.S. is admittedly an unexpected source of comparison given that the United States has not ratified Convention 169 nor expressed its commitment to the Declaration⁵, and that is to say nothing of the fact that the U.S. has a significantly different legal, cultural and political history than Chile has. However, despite these differences, there are clear areas of overlap in the experiences and challenges faced by Indigenous peoples in these two countries, as well as similarities in the policies adopted by both of these countries throughout their respective histories. For instance, while the United States has not ratified Convention 169, the fact of the matter is that the current situation with respect to

³ For a discussion of the current tensions present in the implementation phase of ILO Convention 169, see Sebastián Donoso, “Chile y el convenio 169 de la OIT: reflexiones sobre un desencuentro.” Pontificia Universidad Católica de Chile, *Temas de la Agenda Pública*. Abril 2008. Currently, Sebastián Donoso serves in President Sebastián Piñera’s administration as the Special Advisor on Indigenous Issues, in charge of the Indigenous Issues Coordination Unit within the Ministry of the Secretary General of the President.

⁴ These are the nine indigenous peoples recognized in Article 1 of the Law to establish norms for the protection, promotion and development of indigenous peoples and that establishes the National Indigenous Development Corporation (the ‘Indigenous Law’), Law No. 19.253 of 1993.

⁵ The United States government, under President Obama, is currently reviewing its position on the United Nations Declaration on the Rights of Indigenous Peoples. See the Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at the UN Permanent Forum on Indigenous Issues, 20 April 2010, available online at: <http://geneva.usmission.gov/2010/04/21/april20-ambassador-rice/> (last visited 12 July 2010); and Secretary Salazar’s Statement of Support Regarding the United States Undertaking a Formal Review of the U.N. Declaration on the Rights of Indigenous Peoples, United States Department of the Interior News Release 22 April 2010, available online at: <http://www.bia.gov/idc/groups/public/documents/text/idc009002.pdf> (last visited 12 July 2010).

Indigenous rights within the U.S. does coincide with *some* of the demands of Convention 169. Specifically, in 1975, the U.S. Congress passed the Indian Self-Determination and Education Assistance Act,⁶ giving birth to the so-called, “Indian Self-Determination Era,” a period marked by a return of control over local affairs to the multiple and diverse number of tribes living there. Thus, although the right to self-determination emerged from different sources in each country—domestic legislation in the United States, and incorporation of international law in Chile—today both countries find themselves operating within a legal framework that explicitly favors Indigenous self-determination.

That key similarity—a policy which recognizes Indigenous self-determination—serves as the jumping off point for this article, which argues that there is great value in a comparative study between the situations of the tribes in the United States, and of the Indigenous peoples in Chile. More specifically, this article will demonstrate that there are strong reasons for policy-makers, NGOs, academics and Chile and Indigenous leaders in Chile to consider the U.S. experience, specifically paying attention to the results achieved during the self-determination era. Such a study is necessary not because the U.S. experiences contains all the answers, but because conducting such a study can contribute dramatically to the current questions of how, and why, to make Indigenous self-determination a functioning reality. The United States experiences show that self-determination is the only Indigenous policy that has been successful in the U.S. history. In addition, there are more than 500 federally-recognized tribes in the United States, whose experiences with self-determination are invaluable for Indigenous peoples in Chile.

To make the argument that the U.S. experience has value in the Chilean Indigenous context, this article begins with three brief case studies of tribes from the United States. These tribes have emerged from some of the worst conditions imaginable to socially, economically and culturally vibrant communities in a very short time span. Furthermore, none of these examples could have occurred without self-determination as a recognized policy objective, and thus, they serve to demonstrate what is possible—in terms of economic and cultural achievements—under a meaningful policy of self-determination. Second, this article argues that these examples—and

⁶ The Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, 25 U.S.C. §§ 450 et seq.



others like them from the U.S. context—do have relevance in Chile because these examples could only exist under a policy of self-determination, and Chile—thanks to its recent ratification of Convention 169—is now also under an obligation to recognize and promote self-determination. This obligation coincides with another political interest of the Chilean state: the eradication of poverty. Here too, the U.S. tribal experience is relevant in Chile because overcoming Indigenous poverty in the U.S. only occurred—indeed it was only possible—following the recognition of self-determination. Finally, this article returns to the U.S. case studies and asks the question: What lessons did the U.S. tribes learn about practicing self-determination? The answer—in the U.S. context at least—is found in three fundamental principles that have emerged from a series of studies aimed at understanding why some tribes are more successful than others when allowed to exercise self-determination, and this paper will present those research findings. Upon completing the argument for why a comparative study is valuable, this article closes with some brief recommendations for possible next steps for realizing a comparative study.

II. Self-determination is the Only Way: Three Case Studies from the United States

For the Indigenous peoples of Chile, Convention 169 along with the UN Declaration reinforce the claims and demands that they have been making since colonization began. However, this newfound recognition of the right to self-determination remains far from being fully realized and implemented. And with it have come a number of unanswered questions: How should the right to self-determination be defined within the Chilean context? How does Chile—its government and Indigenous peoples there—transform the right from something on paper to something done in practice? What will this right look like when it is meaningfully implemented? What might the results of implementation be for Chile and for Indigenous peoples themselves?

In considering the answers to these important questions, and as part of designing a strategy to confront the difficult challenges that are already emerging from this new framework of self-determination, it is useful to look at the situation of tribes in the United States. Simply put, the U.S. policy of self-determination—at least in some cases—has produced some phenomenal



results in such areas as economic development, education, health, culture and language. These exemplary results were never achieved under policies characterized by integration and assimilation, but rather only came about when self-determination was truly embraced.

The three cases summarized below are a sampling of these achievements. They serve only as a greatly simplified overview of some of the challenges faced, and overcome, by U.S. tribes, and they are offered here with the goal of highlighting the fundamental role that self-determination played in producing some amazing success stories. Obviously, the situations within the three communities presented here were very complex, and likewise, so were the methods chosen to overcome the various problems they were facing. A more detailed discussion of the strategies adopted and actions taken by the tribes is reserved for another day. The important thing to note at this point is that in each case, regardless of the number and size of the obstacles facing a tribe, when a tribe is given control of its own problems, and only when it is given that control, it can find a path to dramatically improve its own community.

The Citizen Potawatomi Nation

Historically, the Citizen Potawatomi Nation inhabited the north-central region of the United States. At the beginning of the 19th century, settlers began moving into the territory traditionally used and occupied by the Citizen Potawatomi, giving rise to a series of dislocations. In 1838, under a federal policy of relocating tribes throughout the United States, the Potawatomi were forced to march over 1000 kilometers, where they were united with another Potawatomi group and settled within a reservation established by the U.S. Federal Government. After nearly 30 years in that location, the Potawatomi were again forced to move, ultimately settling in the southern United States. Initially, they received from the federal government a parcel of land in this area, but in 1867, the Federal Government began allotting Indigenous lands—including lands within reservation boundaries like the one the Potawatomi now called home—and over the course of the next 75 years the Potawatomi lost nearly everything they had.⁷ One hundred years after this policy of allotment began—in 1970—the Citizen Potawatomi had only US\$550 in

⁷ The Citizen Potawatomi Nation, <http://www.potawatomi.org>, (last visited 12 July 2010).



assets and roughly one hectare of land. Despite these harsh realities, the members of the Citizen Potawatomi nation fought for something better. They dedicated their time and energy to improving their capacities for self-government so that they could better determine their own future. Time after time, they met with resistance—political and legal—but they never abandoned their goal. They believed that they should control their own destiny and solve their own problems, and were convinced that no outside government could do it for them. Despite their poverty and marginalization, today the Citizen Potawatomi has US\$371 million in assets,⁸ and they now manage many of their own social programs, including those related to health and education. The nation has succeeded at substantially improving the quality of life for their members in a short amount of time.

Beyond having the capabilities to provide important services to its members, the Citizen Potawatomi Nation has also embarked on a project to define itself as a nation. Like many Indigenous peoples in other nations, the Citizen Potawatomi people are spread widely throughout the United States. This happened over time, and for a variety of reasons. However, their culture and history still binds them. In recognition of this, the Citizen Potawatomi has taken several unique steps to try to involve all of their people in present-day Citizen Potawatomi culture—and this includes reaching out to those outside of the reservation. In recent years, the Citizen Potawatomi’s leaders have extended various services to those outside the reservation and have given them an active voice on the direction of the tribe through representation in the Citizen Potawatomi government. Specifically, the Potawatomi are the first-known case in the U.S. that carry out voting and government via an elaborate teleconferencing network. This means that Potawatomi all over the U.S. can run for election, vote, and have their voice heard in the future of their people. It is just another way that Native peoples are reinventing themselves to ensure their continued growth and power over their own lives.⁹

⁸ Honoring Nations Report: Citizen Potawatomi Community Development Corporation, 2006 Honoring Nations Honoree, Harvard Project on American Indian Economic Development, Honoring Nations Program. Available online at: <http://hpaied.org/images/resources/publibrary/Citizen%20Potawatomi%20Comm%20Dev%20Corp.pdf> (last visit 12 July 2010).

⁹ “Regional Councils and Legislative Districts: A great difference.” John “Rocky” Barrett, Citizen Potawatomi Nation Tribal Chairman. Available at <http://barrettforchairman.com/articles/regionslegislature.pdf> (last visited 12 July 2010).



The Mississippi Band of Choctaw Indians

The Mississippi Choctaw live in the southern United States, near the Mississippi River. Traditionally, the tribe maintained a strong economy based on extensive trade with other tribes in the region, and later, with European settlers. However, shortly after the formation of the United States, the Choctaw began to lose their land base until—as a result of unfavorable treaties, U.S. Federal policies, and gradual encroachment by white settlers—it was reduced to only a fraction of its original size. By the early 20th century, the Choctaw were one of the poorest communities in the entire country, a status that persisted for decades. Despite having Federal recognition as early as 1945—and with it the right to form its own government—even in the 1960s, the unemployment rate on the Mississippi Choctaw reservation was over 80%. During the course of the next three decades, the conditions of poverty and marginalization would change as the Choctaw decided to exercise the small amount of power that they had and attempted to create an environment that would attract economic investment. Multiple steps were necessary for this change to occur. They created an effective governing and administrative system; they took advantage of available Federal programs to support development and capacity-building; they negotiated with external corporations and governments to acquire funds and resources necessary for development. Throughout this entire process, they encountered many obstacles, but were able to overcome them. And in the span of three decades, the Choctaw reversed their situation of poverty and unemployment and they did so to such an extent that they currently have no unemployment and enjoy substantial economic resources.¹⁰ Another impressive achievement of the Choctaw is not the improved economic situation for the tribe, but what they have done with those new resources. Since the beginning of their economic resurgence, Choctaw leaders have reinvested those resources in projects and programs designed to enrich the lives of their people, and to revitalize their own cultural heritage. For example, they have developed a language revitalization project that has produced significant results in bringing back their own language. Between economic successes and cultural revitalization, the hopes and expectations of an entire community have been raised, and today, there is pride in identifying as Choctaw.

¹⁰ “Historical Choctaw Timeline.” Mississippi Band of Choctaw Indians. <http://www.choctaw.org/History/Historic%20Timeline/Historic%20Timeline.html> (last visited 12 July 2010).



In addition, and just as importantly, the Choctaw have drastically increased the quality of life of all their tribal members. In addition, and just as importantly, the Choctaw have drastically increased the quality of life of all their tribal members. As late as the 1960s, the Choctaw were living in horrible health conditions—only 10% of the population had plumbing, and nearly a third didn't even have electricity. As a result, infant mortality rates were among the highest in the U.S., and life-expectancy was less than 50 years. So, the Choctaw people decided that things needed to change. They began negotiations to take over administering federal health programs in their area. This decision marginally improved conditions, but was an important step to what they did next. After administering services (through government contracts) for a number of years, the Choctaw again went into negotiations with the federal government and ultimately were given full control over their own health care. This meant that all federal monies that had previously gone into specific federally-designed health care programs for the Choctaw, were not at the disposal of the Choctaw to do with as they thought best. The Choctaw began redesigning their system and implemented inventive ways to cut costs, while adding new services that were of special importance to their citizens. By the year 2000, the overall health of the Choctaw people had improved by an incredible amount. Infant mortality rates plummeted, youth health improved, and life-expectancy jumped up to 68 years.¹¹ As such, the improved economic development for the Choctaw people has resulted in very real and substantial benefits for all of the tribe's members.¹²

The Akiachak Native Community of Alaska

In contrast with other Indigenous peoples in the United States, the groups that live in the state of Alaska do not have reservations, nor do they have the same type of Federal recognition that other

¹¹ Honoring Nations Report: Choctaw Health Center, Mississippi Band of Choctaw Indians, 1999 Honoring Nations Honoree, Harvard Project on American Indian Economic Development, Honoring Nations Program. Available online at: <http://hpaied.org/images/resources/publibrary/Choctaw%20Health%20Center.pdf> (last visited 12 July 2010).

¹² Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't* 16 (Harvard Project on American Indian Economic Development & the Native Nations Institute for Leadership, Management and Policy 2005) (JOPNA N° 2005-02 available at http://www.jopna.net/pubs/jopna_2005-02_Approaches.pdf, last visited 12 July 2010).



tribes have. Instead, the Alaskan Natives are organized in villages and, under the relevant legal framework, each village is essentially treated as a corporation. Each village has a property right in its lands and the ability to form a municipal government, but unlike the rest of the tribes in the United States, its limited sovereignty is not legally recognized, it cannot negotiate directly with the U.S. Federal Government and it lacks many other government powers—such as the power to tax. Despite these differences, the Alaskan Indigenous groups have developed novel ways to expand their political and governmental powers. For example, at the beginning of the 1980s, the Akiachak decided to try to regain control of their territory, their natural resources, and some of the social services that were, at the time, being managed by the Federal Government. To achieve these ends, they reorganized their municipal government, set up a municipal judicial system, and began administering—little by little—various Federal programs. In addition, they improved their own abilities and capacities so that they could negotiate and cooperate more effectively with other groups and government agencies in the region. Everything that they did was planned and implemented as part of a strategic vision that was developed for the benefit of their own community. Ultimately, the process gave rise not only to increased political and governing power, but also to significant improvements in the community's overall well being.¹³

* * *

These three examples, in addition to countless others throughout the country, illustrate the achievements possible under a self-determination policy. The success achieved in each example emerged only during the era of Indian self-determination. Additionally, given that many studies have focused primarily on the successful economic development, examples such as these frequently give rise to questions about the effects that such development has on the culture of the people. The assumption underlying these questions is that economic development—having companies, factories, banks, for example—collide with ‘culture’ and simply represent another form of integration or assimilation. However, that concern is not felt within the communities themselves. To be Indian does not mean, and never has, to be poor. Indigenous peoples

¹³ Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't* 16 (Harvard Project on American Indian Economic Development & the Native Nations Institute for Leadership, Management and Policy 2005) (JOPNA N° 2005-02 available at http://jopna.net/pubs/jopna_2005-02_Approaches.pdf, last visited 12 July 2010).

recognize that maintaining a culture has a concrete cost; it requires money. And, in tribe after tribe, Indigenous leaders and members, now that they are leading and directing the development, have decided to reinvest their new economic resources in cultural programs. Thus, businesses and activities that at first glance seem counter-cultural in fact provide the resources necessary for language revitalization, traditional ceremonies and celebrations, construction of cultural centers and museums, among other important activities for the maintenance of traditions and culture. But, perhaps the most precise measure of cultural vitality is the fact that tribes today are enjoying the rebirth and growth of their populations. It is not possible to have a culture without people, and as Philip Martin, the late chief of the Choctaw Tribe, once said, “It used to be, everyone was leaving. Now they’re coming home.”¹⁴

Another point to note is that self-government did not always exist at the same magnitude that it does today. Up until the 1970’s—and for some tribes, still—the United States government designed in Washington and administered on the reservation every single program that was oriented for the benefit of the tribes. These programs were diverse, including the construction of schools and curriculum development; the design of health services; the management and sale of natural resources; housing construction; and the administration of justice. On every reservation, there were Bureau of Indian Affairs offices, staffed by Washington bureaucrats who were the ultimate authority on every issue. Whatever indigenous leaders or members wanted to do had to first be authorized by the Bureau. Under these circumstances, while limited tribal sovereignty was part of U.S. jurisprudence, sovereignty, self-determination, and self-government simply did not exist in practice. Nor was it clear how tribal sovereignty or self-government could exist with such overwhelming federal presence. However, the most successful tribes recognized that sovereignty is not a black and white phenomenon; instead it exists along a scale. While it seemed that the federal government enjoyed absolute power, tribes searched for space to exercise self-determination, or sovereignty. More importantly, they found space, even when it only existed on a very small scale. By exercising self-determination within the areas possible, they succeeded in building their own management and administrative capacities across a range of issues. Not only did their self-government abilities improve, but the outer-limits of its exercise expanded as well.

¹⁴ Chief Philip Martin, Mississippi Band of Choctaw Indians.

III. The United States case studies have relevance in Chile

While these three cases are impressive, do they hold any relevance for the people of Chile? To re-state the question, are there enough similarities between the circumstances that gave rise to these stories in the United States, and the circumstances that currently exist in Chile? This section explores two major reasons indicating that the lessons learned in the U.S. do have relevance for the Chilean context. First, each case study was made possible only after Indigenous self-determination was recognized in the United States. It was this policy that opened the door—for the first and only time in centuries—for Indigenous peoples to take control of their own lives. This section demonstrates how the Chilean government now finds itself committed to a similar policy through the ratification of Convention 169, and thus finds itself in a situation that has substantial similarities to those found in the U.S. after self-determination was recognized there in the 1970's. Second, each case study demonstrates how self-determination is the only policy that is effective in combating poverty among Indigenous peoples. And from that point of view, both the U.S. and Chile have much in common—their respective Indigenous populations are the poorest groups in their own countries, and both nations are seeking ways to combat this problem; in fact, poverty eradication is a central component of current Chilean President Sebastián Piñera's platform. As such, again, the U.S. and Chilean situations retain enough similarity that comparison is meaningful for both countries.

a. Indigenous Self-Determination Policies

A comparative study about the situation of the Indigenous peoples in Chile and the United States, immediately raises questions about the obvious differences: Spanish versus British colonization, civil law versus common law traditions, fundamental differences in the concepts of property and the significance of title, and a centralized government versus a federalist government. Certainly, these fundamental differences cannot be ignored; the strategies adopted in one country to address political and legal questions must emerge from its own history, culture, and politics and cannot be identically replicated in another country.

Despite these obvious differences, however, there are also substantial similarities, especially in the arena of State-Indigenous relations. Even a brief overview of the distinct histories of state-Indigenous relations in each country reveals that, throughout history, these relations have largely been characterized by the adoption of similar strategies to confront the situation of Indigenous peoples, or to put it in the language of the colonizing powers, to “solve the Indigenous problem.” Despite not doing so along the same timelines or to the same extent, both Chile and the U.S. have histories: of having signed treaties with Indigenous groups, only to later ignore them; of physically relocating and/or exterminating Indigenous communities; of trying to integrate or assimilate the Indigenous population with mainstream society; of creating reservations and later dividing these land bases into individual parcels; and of imposing uniform policies on all communities within the country, thus ignoring the significant differences between Indigenous communities.¹⁵

Not only were the policies in Chile and the United States similar, but the results were too. Strategies ostensibly adopted to help Indigenous peoples and raise them out of poverty and underdevelopment did not succeed in improving the lives of Indigenous peoples. These strategies, now often seen as paternalistic, did not work in the United States, not in Chile, and not in any other country where Indigenous peoples continue to live to this day. Not a single one of these strategies succeeded in raising the poorest and most marginalized sectors of society out of that position, and Indigenous peoples throughout the world who are subject to these types of policies, remain in a position of disadvantage and marginalization. But, obviously many of these policies were never designed to improve such conditions; rather they were designed to assimilate or eliminate Indigenous groups. Fortunately, with respect to that goal, they also largely failed, as Indigenous peoples today continue to maintain their cultures, customs, institutions, languages, religions, and societies.

Regardless of the distinct historical differences in the U.S. and Chile, and regardless even of their similarities with respect to Indigenous peoples, one simple fact remains: Currently, both Chile

¹⁵ See generally, David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law: Fifth Edition* 186-87 (West 2005).; Informe de la Comisión de Verdad Histórica y Nuevo Trato con los Pueblos Indígenas (28 de octubre de 2003), Editado por el Comisionado Presidencial para Asuntos Indígenas. Primera edición, Santiago de Chile, octubre de 2008.

and the U.S. have made a commitment—at least in writing—to a policy of Indigenous self-determination. That is, no matter how they got to this point, at this moment in time both countries are stating that they desire to advance Indigenous self-determination as a matter of their respective national policies. And, at least in the United States, for the first time since the country was created, the self-determination policy has created an environment in which there are positive indications that life is improving for Indigenous peoples.

Indigenous Self-Determination in the United States

Although it would not take its current form until at least the 1960s, the era of Indigenous self-determination in the United States is rooted in a piece of legislation from 1934. Previous U.S. strategies of “solving the Indigenous problem”, were, above all else, geared towards their eventual assimilation and integration, and did not succeed in exterminating the tribes nor in integrating them with the rest of the population. After several decades of experience with assimilation policies, and particularly allotment of indigenous territories, it was clear that the intentions to convert the Indigenous peoples to agriculturalists, indistinguishable from the rest of the population had failed.¹⁶ As a result, by the 1920s, U.S. Federal policy took on a new form, commonly referred to as “the reorganization era,” which lasted approximately from 1928 until 1945. The hallmark piece of legislation passed during this policy era was the Indian Reorganization Act of 1934 (“the IRA”).¹⁷

The IRA brought to a close the policy of allotting vast expanses of Indigenous territories and began to gradually return control over local affairs to the tribes. Specifically, the IRA granted tribes the right to draft and adopt their own constitutions, and was responsible for granting tribes the right of self-government.¹⁸ The rhetoric of the IRA was strong and it was an extremely

¹⁶ David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law: Fifth Edition* 186-87 (West 2005).

¹⁷ See e.g. Institute for Govt. Research, Studies in Administration, *The Problem of Indian Administration* (John Hopkins Press 1928) (“The Merriam Report”).

¹⁸ The Indian Reorganization Act, 25 U.S.C.S. §§ 461 et seq.

important step towards an eventual policy of Indigenous self-determination in the United States. In practice, however, the IRA proved to be simply another form of assimilation and integration.¹⁹

Despite the IRA's promising language, it did not constitute a true recognition of self-determination nor of self-government, and while it planted important seeds for their future recognition, the IRA did suffer from several problematic defects. Among the most important of these deficiencies was the fact that the IRA was a strategy imposed uniformly on all tribes, each of which had its own history, traditions and values. For example, although the IRA permitted, and even promoted, the adoption of a tribal constitution and the establishment of a tribal government, it was an empty promise. The IRA contained a trap, because it did not permit tribes to design their own constitution and their own government, according to their own values. Instead, the IRA essentially only permitted the tribes to "choose" *one* specific type of government structure and one constitutional model to go along with it. In reality, to achieve implementation of the IRA, the federal government drafted a single constitution, modeled on western values, and offered it to tribes throughout the country, who had only the power to vote for or against its wholesale adoption. Tribes that voted in favor, 'won' the right to self-government, while those that voted against continued under federal administration and oversight. In short, the IRA imposed on the tribes a system or organization of government designed in Washington and exported to the reservations. The constitution stipulated that each tribe would have an elected chief and a tribal council that would be in charge of legislating, resolving conflicts, and managing tribal businesses. This model aligned with western democratic values prevalent in the United States, and for the majority of tribes, it lacked any sort of match with their culture, a deficiency that would prove fatal to its success.²⁰ Ultimately, this one-size-fits-all strategy failed, just as assimilation had.

¹⁹ For general commentary about the IRA, see Felix S. Cohen, *On the Drafting of Tribal Constitutions*, edited by David E. Wilkins, and with a foreword by Lindsay Gordon Robertson. (University of Oklahoma Press 2006); David E. Wilkins y K. Tsianina Lomawaima, *Uneven ground: American Indian sovereignty and federal law*. (University of Oklahoma Press 2001).

²⁰ Duane Champagne, *Challenges to Native Nation Building in the 21st Century*, 34 *Ariz. St. L.J.* 47, 48-9 (Spring 2002); Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't* 16 (Harvard Project on American Indian Economic Development & the Native Nations Institute for Leadership, Management and Policy 2005) (JOPNA No. 2005-02 located at http://www.jopna.net/pubs/jopna_2005-02_Approaches.pdf, last visited 12 July 2010); Eric Lemont, *Developing Effective Processes of American Indian Constitutional and Governmental Reform: Lessons From the Cherokee*

This first attempt to advance self-determination on the part of the U.S. government did not yield success; it was rhetorically strong but practically weak. However, in the 1960s, after a decade of policies that rejected the principles of the IRA and that had seen the attempted termination of tribes and the Indigenous way of life, U.S. Federal policy again began to shift towards the idea of permitting the tribes to govern themselves, but this time it came with more force than that found in the IRA, and corrected many of the errors that had led to its downfall. In 1970, then-President Richard Nixon gave a speech to Congress, announcing his administration’s vision of State-Indigenous relations. In his speech, President Nixon declared the need for Federal policies to “recognize and build upon the capacities and insights of the Indian people.” Presenting it as a fundamental question of “justice”, he stated: “The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.”²¹

As part of his speech to Congress, President Nixon called for legislation and new Federal policies that would reinforce Indigenous autonomy; that would ensure Indigenous control over their own lives; and that would make Indigenous communities independent of Federal control, without losing all Federal support.²²

Five years after his speech, Congress passed the Indian Self-Determination and Education Assistance Act (“the ISDEA”), which is still in effect today. The ISDEA established a new legal framework for State-Indigenous relations.²³ In its initial provisions, Congress declared that the “prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full

Nation of Oklahoma, Hualapai Nation, Navajo Nation, and Northern Cheyenne Tribe, 26 Amer. Indian L. Rev. 147, 162 (2001/2002).

²¹ President Richard M. Nixon. Special Message to the Congress on Indian Affairs. (July 8, 1970). 1970 Pub. Papers 564.

²² President Richard M. Nixon. Special Message to the Congress on Indian Affairs. (July 8, 1970). 1970 Pub. Papers 564.

²³ Indian Self-Determination and Education Assistance Act, P.L. 93’638, 25 U.S.C. 450.

opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities.”²⁴

The ISDEA provides for the strengthening of Indigenous self-government through a policy of Indigenous self-determination. Thus, under the ISDEA, tribes have made themselves responsible for controlling and operating a large variety of services and programs previously administered by the U.S. Federal Government.²⁵ The primary innovation of the ISDEA was a directive to the Secretary of the Interior, who is in charge of Indian affairs in the U.S., and to the Secretary of Health, Education and Welfare, which states that the Federal Government and tribes can contract with each other so that tribes can design, operate and administer certain Federal programs.²⁶

Initially, the central promise of the ISDEA to recognize and promote self-determination was nothing more than a promise on paper. There was no special interest on the part of Congress or President Nixon to address Indigenous issues. In fact, the policy was politically convenient for Nixon, a conservative who believed strongly in local government and strict limitations on federal power and who also faced a budget deficit. But regardless of the government’s motivations, the day on which self-determination was recognized, the debate over the respective roles of federal and tribal governments change substantially. The door was open—at the beginning very little—to a future in which Indigenous peoples could truly exercise self-determination.

Now, with the luxury of hindsight that permits an evaluation of the progress through the eyes of history, Indigenous peoples themselves are the true protagonists in the growth and current strength of self-determination. At the same time, the federal government plays a supporting role, whose importance cannot be ignored. Through legislation, the State opened the door to the

²⁴ 25 U.S.C. §. 450(a).

²⁵ Michael P. Gross, “Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy.” 56 Tex. L. Rev. 1197 (1977-1978).

²⁶ Michael P. Gross, “Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy.” 56 Tex. L. Rev. 1199 (1977-1978).; Indian Self Determination and Educational Assistance Act, 25 U.S.C. §§. 450f(a) and 450g(a).

possibility of self-determination, and through important modifications to the way money is channeled to tribes for various programs, tribal efforts were strengthened. But, at the end of the day, the actions and attitudes of the tribes, their members and leaders, determined the success of the self-determination policy. The level of success has been so impressive and State – Indigenous relations improved that since its passage, every presidential administration has upheld the central commitment of the ISDEA, recognizing that Indigenous self-determination is the only proven strategy to build healthier economies, as well as stronger, and more effective tribal governments. As such, it is understood that this policy benefits not only the tribes, but also the communities surrounding the tribes, as well as the Federal Government itself. The results possible with this a meaningful self-determination policy are seen in the summaries about the Citizen Potawatomi, Mississippi Choctaw, and Akiachak communities discussed above, not to mention the countless other tribal success stories found across the United States.

Indigenous Self-Determination in Chile

In Chile, the roots of Indigenous self-determination can be traced to the 1980s. Although it was a period of great oppression under the military dictatorship, there were some positive developments for Indigenous peoples. During the 1980s, the first explicitly Indigenous organizations began forming: in the north the Aymara started to organize; in the south the Mapuche Cultural Centers were created; on Easter Island, the Rapa Nui reconstituted their traditional Council of Elders.²⁷ The appearance of these organizations definitively marked the beginning of the Indigenous movement within Chile. That is, it was a turning point, where the demands made by these groups derived from their status as Indigenous peoples—and not, for example, from their status of being in poverty. By formulating their demands in ethnic terms, these groups sought solutions that were also exclusively Indigenous in nature.

Even before the return to democracy, demands from indigenous organizations effected what would eventually become national policy, as the foundation for a new relationship with Indigenous peoples began to take shape with the Acuerdo del Nuevo Imperio, an agreement

²⁷ Informe de la Comisión de Verdad Histórica y Nuevo Trato, pp. 51-52.

between the principal Indigenous organization and then-presidential candidate Patricio Aylwin. Following the return to democracy in 1990, the Indigenous movement within Chile met with the support of a global Indigenous movement that had made significant advances at the international level, principal among them being the International Labour Organisation’s drafting and adoption in 1989 of Convention 169. Alongside that international progress, Chile began formulating its own portfolio of policies, legislation, programs and institutions addressing Indigenous issues—a portfolio that explicitly recognized Indigenous peoples in a manner that previous Chilean law and policy had not. While progress on the promises made in the Nuevo Imperio agreement has at times been slow, since the return to democracy, a series of actions, including legislative reforms, the development of public policies, and support programs, specifically addressing the situation of Chile’s Indigenous peoples have occurred. Among the diverse efforts are: the Indigenous Law of 1993;²⁸ the creation of the National Corporation for Indigenous Development (*Corporación Nacional de Desarrollo Indígena*—CONADI), along with the Fund for Indigenous Lands and Water and the Fund for Indigenous Development; Programa Orígenes; the creation of the Commission for Historic Truth and New Deal with Indigenous Peoples,²⁹ and its final report; the policy initiative known as *Re-conocer: Pacto Social por la Multiculturalidad* (*Renew: Social Pact for Multiculturalism*); constitutional reform efforts aimed at achieving the constitutional recognition of indigenous peoples in Chile³⁰; and various other legal and political efforts addressing indigenous issues. In light of these advances, the Commission, established to address the situation of Indigenous peoples in Chile and make policy recommendations to the Chilean government, suggests that “it is possibly the end of a long period of ‘failed integration’”.³¹ New State policies, although far from perfect, demonstrate a reorientation towards a period that could be called the “Indigenous self-determination” period in Chile.

²⁸ Ley N°19.253 del 5 de octubre de 1993 sobre Protección, Fomento y Desarrollo de los Indígenas.

²⁹ Decreto Supremo N° 19 del 18 de enero de 2001, que crea Comisión Verdad y Nuevo Trato.

³⁰ Boletín N° 5427-07, Reconocimiento de los pueblos indígenas, introducido en la Cámara de Diputados el 30 de octubre de 2007 y Boletín N° 5522-07, Reconoce a los pueblos indígenas de Chile, introducido en el Senado el 23 de noviembre de 2007.

³¹ Informe de la Comisión de Verdad Histórica y Nuevo Trato, p. 52.

The ratification of Convention 169 in 2008, and Chile’s vote in favor of the UN Declaration on the rights of indigenous peoples adopted in September of 2007, are among the most recent advances to promote self-determination. Additionally, twice in the last decade, Chile has been the subject of a visit and report by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people—once in 2003, and again in 2009. This second visit took place during the months in between the ratification of Convention 169 and its entry into force as Chilean law.³²

Although many of the measures taken by the Chilean government—particularly the constitutional reform and regulation dealing with consultation—have been strongly criticized either for being empty promises, or for having excluded Indigenous peoples from the process of their elaboration, or for being overly paternalistic,³³ they still indicate a certain level of positive progress with regards to the rights of Indigenous peoples within the country. Additionally, the mere fact that Chile has ratified Convention 169—despite the fact that not all domestic legislation has been reformed to comply with the Convention—unquestionably establishes concrete rights for the Indigenous peoples of Chile that did not previously exist.³⁴

³² Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Mission to Chile. U.N. Doc. No. E/CN.4/2004/80/Add.3 (17 November 2003); Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, The situation of indigenous peoples in Chile: Follow-up on recommendations made by the previous Special Rapporteur. U.N. Doc. No. A/HRC/12/34/Add.6 (5 October 2009).

³³ One of the most recent initiatives that has received heavy criticism is Decree No. 124 of the Ministry of Planning 14 September 2009 that regulates Article 34 of the Indigenous Law to regulate consultation and participation of indigenous peoples. The critiques highlight the Decrees lack of compliance with Convention 169. See, for example, “Texto comentado del Decreto 124 de ‘Reglamento de Consulta y Participación de los pueblos indígenas en Chile’” Centro de Políticas Públicas. Disponible en: <http://www.politicaspublicas.net/panel/consulta/392-decreto-124.html> (última visita 15 de julio de 2010); For texts that critique State policies in a more general sense, see: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, The situation of indigenous peoples in Chile: Follow-up on recommendations made by the previous Special Rapporteur. U.N. Doc. No. A/HRC/12/34/Add.6 (5 October 2009); José Aylwin, “Implementación de Legislación y Jurisprudencia Nacional Relativa a los Derechos de los Pueblos Indígenas: La Experiencia de Chile” Documento de Trabajo N° 3, Observatorio Ciudadana (2005), available online at www.observatorio.cl.

³⁴ Political Constitution of the Republic of Chile, Art. 5, Par. 2, which states that “the exercise of sovereignty recognizes as a limitation the respect for basic rights that emanate from human nature. It is the duty of State organs to respect and promote such rights, guaranteed by this Constitution, as well as international treaties ratified by Chile and in force.” (Author’s translation; in the original: “El ejercicio de la soberanía reconoce como limitación el respeto a los derechos esenciales que emanan de la naturaleza humana. Es deber de los órganos del Estado respetar y promover tales derechos, garantizados por esta Constitución, así como por los tratados internacionales ratificados por Chile y que se encuentran vigentes.”); “Informe Anual Sobre Derechos Humanos en Chile, 2009” p. 221, Centro de Derechos Humanos de la Facultad de Derecho de la Universidad Diego Portales, Santiago, Chile 2009.

Thus, the ratification of Convention 169 in Chile marks the beginning of a new era of rights for the Indigenous peoples within the country. The right to self-determination is central to this newly-recognized body of rights.³⁵

While a significant body of literature exists that addresses the meaning and content of self-determination and its evolution and development in international law,³⁶ in simple terms, self-determination means that Indigenous peoples themselves have control over issues that directly and uniquely affect them. Put another way, self-determination answers the question, “Who should make decisions for Indigenous peoples?” with a very clear response, “Indigenous peoples should make decisions for themselves.” Neither the form nor the topic of the initiative or program matter—that is, whether talking about a legislative act or an administrative decision, and whether it addresses development, education, health, or land and resource uses does not matter—because the answer is always the same so long as it directly and uniquely affects Indigenous peoples. Self-determination means that Indigenous peoples should have the power to make the decisions that affect their lives. When Chile ratified Convention 169, it definitively obligated itself to the recognition and promotion of this principle.³⁷

The values of this commitment cannot be ignored. Even if the right still only exists on paper, the mere recognition of self-determination means something. It fundamentally changes the debate on Indigenous rights and the roles of the state government and those of local, Indigenous governments. Specifically, the recognition of self-determination as a positive legal right brings

For an analysis of the legislative process surrounding Convention 169, see “Informe Anual Sobre Derechos Humanos en Chile, 2008” pp. 366-374, Centro de Derechos Humanos de la Facultad de Derecho de la Universidad Diego Portales, Santiago, Chile 2008.

³⁵ In the preamble of ILO Convention No. 169, the General Conference highlights the need to reverse the “assimilationist orientation of the earlier standards” and recognizes the desire of indigenous peoples to “exercise control over their own institutions, ways of life and economic development . . .” These objectives are evident in the various provisions of ILO 169, for example Article. 6 of ILO Convention 169, recognizing the cornerstone right to consultation. The United Nations Declaration on the Rights of Indigenous Peoples explicitly recognizes the right of indigenous peoples to self-determination in its Article 3.

³⁶ See, for example, Lee Swepston, “The ILO Indigenous and Tribal Peoples Convention (No. 169): Eight Years After Adoption,” *The Human Rights of Indigenous Peoples*, 17, 18-28 (1998).

³⁷ See note 36, *supra*. Véase el artículo 5, inc. 2 de la Constitución que declara la supremacía de los tratados internacionales ratificados por Chile; el Informe de Derechos Humanos de la UDP 2008

with it a new question. Under self-determination, the actions—or in-actions—of the Chilean state are not the only ones that matter. Self-determination imparts concrete responsibilities for Indigenous peoples. Under self-determination, the actions of Indigenous peoples themselves matter, and in fact, they are what matters most. The question changes from what is the government doing for Indigenous peoples, to what can Indigenous peoples do for themselves. Responding to this question is itself a manifestation of self-determination and offers Indigenous peoples the opportunity to influence how Convention 169 is understood and interpreted.

The position that Chilean law and policy has currently reached is similar to the point in 1975 when Indigenous self-determination was recognized in the United States. At that point in time, the right to Indigenous self-determination in the U.S. only existed on a sheet of paper signed by Congress. There was nothing more. No one had predicted the outcome of that policy and those outcomes certainly weren't guaranteed. In fact, the future of self-determination depended most heavily on the action of Indigenous peoples themselves, and, above all, required a change in perspective about what it meant to have control of their own futures and to be responsible for themselves. Some of the tribes in the United States—the most successful tribes today—saw a unique opportunity when the door to self-determination was opened and they took advantage of it. Now, with the luxury of judging the policy through time, it is clear that the results of self-determination were not only beneficial for Indigenous peoples, but for the entire nation as well.

b. Indigenous Self-Determination as a Pragmatic Strategy to Confront Indigenous Poverty

As the cases summarized previously show, the Indigenous self-determination policy in the United States has had positive results across a range of measures of socioeconomic status. Since its adoption and implementation in the 1970s, many tribes throughout the country have experienced the rebirth of their local economies, impressive educational achievements, improved access to health services, reduced delinquency, and the strengthening of their cultures and languages. The simple fact that these positive developments are only connected with a policy that promotes self-determination shows that the United States experience warrants attention in Chile.

The promise to raise Chile's population out of poverty has been a political promise of each of Chile's most recent presidents, including the current President, Sebastián Piñera. In his first speech following his inauguration, President Piñera conveyed to the Chilean people his vision of "constructing a developed Chile, without poverty, with real equality of opportunity and with the opportunity for all of the country's people to progress, regardless of the conditions of their birth."³⁸ Two months later, in his first message to the nation, Piñera reiterated his central promise to "eradicate extreme poverty by 2014 and poverty by 2018 and bring an end to excessive inequalities."³⁹ Describing this goal as a "moral imperative", he announced his concrete proposal to confront poverty with initiatives aimed at both eliminating the causes of poverty and alleviated its consequences.⁴⁰

These promises respond to problems of poverty and socioeconomic inequality that are well documented in national censuses, as well as in various surveys undertaken by both government and non-governmental organizations. Within the broader Chilean population, Indigenous peoples occupy the lowest position on the socioeconomic ladder. In a 2006 survey concerning the Mapuche in Chile's eight, ninth, tenth, and Metropolitan regions undertaken by the Center for Public Studies, poverty and employment were identified as the problems most urgently in need of government attention.⁴¹ In the same study, when the participants were asked about the problems that the Mapuche, in particular, face, poverty was the second most important problem needing resolution, with Indigenous land claims being the first.⁴²

The problem of Indigenous poverty in Chile is not solely a Mapuche issue. The results of the 2006 CASEN survey reveal that, although it is decreasing, the percentage of Indigenous peoples

³⁸ President Sebastián Piñera, Speech from the Balcony of the Palacio de La Moneda, 11 March 2010. (author's own translation)

³⁹ President Sebastián Piñera, Mensaje a la Nación. 21 May 2010.

⁴⁰ President Sebastián Piñera, Mensaje a la Nación, 21 May 2010.

⁴¹ "Los Mapuche rurales y urbanos hoy: Datos de una encuesta 2006." Centro de Estudios Públicos p. 6

⁴² "Los Mapuche rurales y urbanos hoy: Datos de una encuesta 2006." Centro de Estudios Públicos p. 8

in poverty is 19% as compared to 13.3% for the non-Indigenous population.⁴³ In every other socioeconomic status measure—education, literacy, housing, health—Indigenous peoples find themselves disadvantaged compared with the rest of the Chilean population.⁴⁴

Current President Sebastián Piñera’s proposed plan to overcome poverty focuses on three areas: lack of jobs, low-quality education, and weak family structures.⁴⁵ The plan announced does not consider the particular vulnerabilities of the Indigenous population, and thus does not contain an ethnic component, a shortcoming that has received some criticism in the context of previous poverty elimination attempts that also fail to adopt an ethnic perspective.⁴⁶ Nor does the proposal incorporate the principles of Convention 169, thus lacking respect for basic human rights of Indigenous peoples.⁴⁷ Fortunately, an important opportunity exists right now to advance hand in hand two inter-related issues: self-determination as a pragmatic strategy to eradicate poverty and promote development. From the United States tribal experience, data has emerged indicating that a policy of self-determination is the only proven method to improve the socioeconomic status of Indigenous peoples. In the Chilean context, where Indigenous peoples suffer the highest rates of poverty, advancing self-determination not just in writing, but in practice, is also an opportunity raise this sector of the population out of poverty. Since poverty reduction is a stated goal of the Chilean government, there is no doubt that further research and comparisons between the U.S. and Chilean Indigenous situations could be beneficial for all involved.

⁴³ “CASEN 2006: Encuesta de Caracterización Socioeconómica Nacional: Pueblos Indígenas,” p. 11 Ministerio de Planificación.

⁴⁴ See in general, CASEN 2003 and CASEN 2006 of the Ministerio de Planificación; “Estadística Sociales de los Pueblos Indígenas en Chile, Censo 2002.” Instituto Nacional de Estadísticas en convenio con el Ministerio de Planificación.

⁴⁵ President Sebastián Piñera. Mensaje a la Nación. 21 May 2010.

⁴⁶ Claudio A. Agostini, Philip H. Brown, and Andrei Roman, “Poverty and Inequality among Ethnic Groups in Chile” Forthcoming, *World Development* (November 2009).

⁴⁷ José Aylwin. “El mensaje de Piñera y los Derechos Humanos.” *Observatorio Ciudadano*. 10 June 2010.

IV. The Fundamental Principles of Effective Self-Determination in the United States

In the United States, the adoption of a policy of self-determination has had positive results, as seen in the previous examples. Since the passage of the Self-Determination Act in 1975, the situation of marginalization and poverty has been improving in the United States. However, positive results are not guaranteed. And if that is the case, then what can truly be learned from the United States' tribes? To put it another way, is there data from the U.S. context that might be useful if applied elsewhere?

Over the last few decades since the passage of the Indian Self Determination and Education Assistance Act in the United States, the Native Nations Institute (NNI), in partnership with the Harvard Project on American Indian Economic Development (HPAIED)⁴⁸, have systematically investigated the situation of U.S. tribes, focusing their studies on one central question: Why are some tribes more successful than other in creating healthy, prosperous communities? This question draws from the fact that even when tribes are finally able to exercise self-determination, the results of their actions vary significantly from one tribe to another—some exercise the right in a manner that effectively improves their communities and economies, while others do not. The research that NNI and HPAIED have done indicates that this phenomenon cannot be explained solely by access to natural resources, educational attainment levels, proximity to markets, or culture. Instead, the answer seems to be related to the manner—formal or informal—of organization within a given Indigenous community. This means that the way a tribe organizes itself and carries out its decisions is actually the most important factor for whether a tribe is going to be successful or unsuccessful in creating a healthy, prosperous community. More specifically, from the studies conducted, a series of fundamental principles have emerged that appear to be determinative in the success of the tribe: (1) practical self-rule; (2) strong, effective and capable governing institutions; and (3) cultural match.

a. Practical Self-Rule

⁴⁸ NNI was created in 2001 as an outgrowth of the Harvard Project on American Indian Economic Development, which has been conducting economic development and governance research in Indian Country since the 1980's.

The first principle highlighted in the research conducted is the so-called “practical self-rule,” and it exists when the power to make decisions resides with the Indigenous peoples themselves.⁴⁹ There is a very important distinction between having the right to self-determination in writing (the current situation in Chile), and exercising it in daily practice. It is the latter—the *exercise* of the right—which is significant to a tribe’s success. Essentially, the research indicates that when Indigenous peoples make decisions for themselves, the results are better. For example, there is evidence from case after case, that when external or foreign governments or organizations try to administer Indigenous resources, or run programs for Indigenous peoples—regardless of good intentions by these outsiders—they are substantially less effective as compared to when Indigenous peoples run and design the programs for themselves.⁵⁰ This principle remains true across a range of situations, and has produced results such as: more efficient and sustainable management of natural resources; better prices for the sale of products; better social programs, such as health and education; and higher rates of members returning to Indigenous communities.⁵¹

There are two main reasons why these impressive results occur. First, with practical self-rule, the development strategy rests in Indigenous hands and thus better reflects the interests, vision and concerns of the Indigenous group that will be affected by the strategy. Second, practical self-rule ensures that there is a connection between those who make the decision and those who have to

⁴⁹ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 12 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006).

⁵⁰ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

⁵¹ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

live with the consequences of the decision, which ultimately results in better decision-making.⁵² Indigenous leaders are closer to local conditions and possess a better understanding of the needs, values, and desires of their communities than do outsiders. As such, their decisions more closely match the community's priorities than would those of some outside person or entity.⁵³

b. Strong, Effective, and Capable Governing Institutions

The second principle of successful Indigenous communities in the U.S. is the presence of “strong, effective and capable governing institutions.” This principle addresses the *way* in which self-rule is exercised. A community can have the rights to self-determination, and even to self-government, but those rights are meaningless without the ability to exercise them effectively.⁵⁴ “Without effective institutions, self-government powers mean little. The powers of government come with the responsibility to govern effectively.”⁵⁵ Only when stable and capable governing institutions exist can the right to self-determination and self-government be fully realized. At the

⁵² Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 13 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006); Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

⁵³ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

⁵⁴ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 14 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006).

⁵⁵ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3-4 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

most basic level, when a community has strong, effective and capable institutions, it simply means that it has the capacity to turn the desires of the community into concrete actions.

To understand the importance of institutions and how they are defined, it is necessary to identify the role that they fill within a society, whether Indigenous or not. One important role is to establish the acceptable rules of conduct within a community. Institutions, by carrying out the activities of the community, are at the same time defining norms that govern a wide range of situations, including: decision-making, conflict resolution, relations between the community and outside entities, among others. Additionally, while institutions fill that same role—establishing norms—in each society, the actual norms they are establishing differ greatly from one community to another.⁵⁶ For example, within one community it may be expected that a council of elders will negotiate agreements with outside entities, while in another community, a single elected leader might attend to the same issue.

When government institutions are referenced, it is easy to think in terms of a written constitution, bureaucratic offices, courts and the other familiar components that form modern-day democracies. However, “having institutions” in this classic sense of the word is *not* necessary for tribal success. Viewing institutions as a mechanism of assigning and defining limits of authority, institutions, in this sense, can be based on a written constitution, oral tradition, or on daily customs; the important thing is that they be designed by the indigenous peoples themselves.⁵⁷ Thus, the word “institution,” as used here, simply refers to: the accepted forms of organization—whether formal or informal—within a community; the way authority is exercised in a community—that is, who exercises it and through what procedures; and the mechanisms by which community decisions are carried out. When a community has strong, capable, and

⁵⁶ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 14 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006).

⁵⁷ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 3-4 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

effective governing institutions, that simply means that the community can turn its collective will into meaningful action.

Although institutions can take on a variety of forms, tribal experiences in the United States indicate that not all institutions are equally effective. There are three key criteria that define an institution as effective. First, institutions—whatever form they take—must be stable. The norms of conduct and the processes for assigning authority to someone cannot change frequently nor in an arbitrary or easy way. Second, institutions must give form to a bureaucracy that is capable of executing tasks in a timely and trustworthy manner. The institutions must be capable of converting a decision into concrete actions. Third, there should be a separation between political issues and the other activities that the community carries out, such as conflict resolution, services management, or business administration.⁵⁸

c. Cultural Match

The third principle uncovered by the research of NNI and HPAIED helps answer the question: What makes an institution effective? It is a question of finding legitimacy within the community itself. To be legitimate, and thus, more effective, a necessary component of any institution is its ability to “culturally match” the community in which it is found. That is, the institutions and activities carried out by a community need to be rooted in the culture and values concerning the appropriate distribution of power and authority of that same community. Such a connection between institutions and culture is necessary because a component of effectiveness is legitimacy, and institutions are only legitimate in the eyes of the people they are serving when cultural match exists.⁵⁹ For example, in some Indigenous societies, the concentration of political power and authority in a single elected official conforms to their expectations, while other Indigenous

⁵⁸ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 15 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006).

⁵⁹ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 15 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006)

peoples value power that is dispersed and shared among several people chosen by consensus of all community members. It is important that the manner of organization conforms to the expectations of the people.

In light of this understanding, the principle of cultural match responds to a history in which Indigenous peoples were subjected to foreign practices, norms and institutions. One of the greatest problems facing Indigenous peoples throughout the world—including both the United States and Chile—is the practice of Indigenous peoples being subjected to rules, institutions, and processes that do not match their culture and do not reflect their values.⁶⁰ Historical experience has revealed that foreign systems lack legitimacy and authenticity within the communities they are intended to benefit.⁶¹ The results of this history are seen in the United States with tribes that adopted constitutions during the era of reorganization; these constitutions were written by outsiders, and were offered to tribes as a one-size-fits-all solution, but in reality they solved very little. This was especially true for those tribes that maintained values and expectations about the distribution of authority that were vastly different from the distribution of authority found in the constitutions and structures that the U.S. government imposed. Institutions that were created with foreign values did not enjoy legitimacy and thus were not capable of effectively carrying out activities on behalf of the tribe. Similarly, in Chile, various Indigenous groups have been forced to organize themselves according to the requirements of the Indigenous Law, or the structure of CONADI, instead of being able to organize according to their own values and their own understandings of how decisions should be made, and how power should be exercised.⁶² The principle of cultural match seeks to reverse this historical trend of cultural assimilation by the

⁶⁰ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, p. 15 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006)

⁶¹ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 4-5 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

⁶² Véase en general *Los derechos de los pueblos indígenas en Chile: Informe del Programa de Derechos Indígenas*, Instituto de Estudios Indígenas, Universidad de la Frontera (2003).

creation—or *recreation*—of institutions and structures that build upon the Indigenous peoples’ own cultural values.

The search for cultural match is not necessarily an attempt by Indigenous peoples to turn back the clock. In many cases, ancestral traditions and customs have been lost. In other cases, returning to customary practices is neither practical nor ideal. The reason for this is because culture is not static—it is dynamic, always changing and adapting to new situations and challenges. Thus, it is necessary for Indigenous peoples to work towards identifying what problems they currently face, and then also determining what their current values and goals are with respect to those very real concerns.⁶³ It may be necessary to revive old institutions and practices, or it might be necessary to invent and develop new ones. Indigenous peoples today do not have the luxury of living in isolation from the rest of the world. The problems they face are different than those of their ancestors.

In addition to recognizing the importance of designing culturally-appropriate institutions, it is also necessary to recognize that institutions must be effective in today’s world and not simply a replication of old practices and traditions that have no application in the present. Thus, although it can prove difficult, the institutions must seek a balance between the demands of modern society and the values of the Indigenous people.⁶⁴ Seeking this equilibrium is not abandonment of culture, or of tradition, but rather a re-invention of traditional values to confront new problems—something that Indigenous peoples have done time after time throughout history.⁶⁵

⁶³ Cornell, Stephen and Joseph P. Kalt. *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t*, p. 15 (JOPNA No. 2005-02. Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy 2006)

⁶⁴ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 4-5 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

⁶⁵ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 4-5 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

Regardless of what the final product looks like, the important factor to remember is that the institutions must reflect the expectations and values of the communities that they represent and serve, or they will not be effective.⁶⁶

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The research in the United States has demonstrated—again and again—that Indigenous communities who are committed to an attitude of practical self-rule, as well as the practice of having capable governing institutions that match the culture of the communities they are serving, are flourishing. But the research has also uncovered two broader lessons that are worth mentioning here:

First, positive changes seen among U.S. tribes have never been achieved by a single policy, program, or fund designed in Washington D.C., and then imposed on the tribes across the country. Rather, positive change for Indigenous groups comes solely from recognizing, in practice, the right to self-determination. Although the U.S. Federal Government has played an important supporting role with respect to many efforts, ideas, programs and strategies of the various tribes, no real success nor sustainability was realized until change came about from within the tribes themselves. To put it another way, the success stories of the U.S. are not stories of a top-down policy implemented by the U.S. Government; rather, they are stories of bottom-up policies designed and implemented by tribes themselves.

Second, concepts such as sovereignty, self-determination, and self-government are no longer easily viewed as simple dichotomies; that is, they are not things that a community simply has or lacks. As desirable as it may be to think of them in black and white terms on occasion, the fact is that in a world that is forever becoming more complicated, there is real benefit to seeing sovereignty, self-determination, and self-government as existing on a spectrum. There are issues

⁶⁶ Taylor, Johnathan B. *Determinantes del éxito del desarrollo en las naciones nativas de los Estados Unidos: Una introducción a los resultados de la Investigación del Proyecto de Harvard Sobre el Desarrollo Económico de las Indígena [sic] y el Instituto de Naciones Nativas para Liderazgo, Gerencia y Política*, p. 4-5 (Native Nations Institute for Leadership, Management, and Policy. Udall Center for Studies in Public Policy. The University of Arizona. 2008) (Harvard Project on American Indian Economic Development. John F. Kennedy School of Government. Harvard University. 2008).

over which Indigenous people have power to make decisions right now, and there are others where they currently do not have that power. An important step towards positive change in the implementation and exercise of self-determination is locating those spaces—no matter how small they are—in which self-determination and self-government can be exercised. Oftentimes, and as the U.S. experience shows, the effective exercise of power in those spaces is precisely where the fight for self-determination is ultimately won. Acting in areas where one can, and doing so effectively, is a proven method in the U.S. of growing the right to self-determination

V. Conclusion

It is well accepted that the world's Indigenous peoples share in common a history that has: vacillated between extermination and assimilation; resulted in harmful effects to their cultures, lands and languages; and relegated them to a position of marginalization and poverty. The international normative framework—elaborated primarily in Convention 169 and the Declaration—seeks common solutions to these problems. One such solution is the recognition and implementation of the right to self-determination. In Chile, this normative framework is taking root. As part of the process, Indigenous peoples and the Chilean Government are confronting new challenges related to adapting the right to self-determination to their own domestic context, and are striving to make the transition to real recognition and implementation. As a part of this process, it is worthwhile to consider the efforts of other Indigenous peoples throughout the world. Indigenous peoples in the United States offer a potentially meaningful source for comparison. Since the 1970s, they have been exercising their own right to self-determination, and there are now decades of U.S. Indigenous experience—both successes and failure—from which to draw.

There is no guarantee that successful U.S. practices will work in Chile, but now is the time to investigate. Decades of research conducted by NNI and HPAIED provides hypotheses that can, and should, be tested in Chile, as well as ample data to make comparisons between the two countries. NNI and HPAIED research began with the recognition that, while all the United States tribes were poor, they were not equally so. The next question asked was why these disparities exist. In Chile, it is worthwhile to conduct a similar exercise. In doing so, it will be necessary to

locate those issues over which Indigenous peoples already can and do exercise the right to self-determination. In all likelihood, there are examples in Chile—much like those from the United States—of groups that have succeeded in effectively exercising their right to self-determination. And now the questions are: How did they do it? What were their results? And what could it mean for other Indigenous peoples in Chile?

Right now there is much focus being paid attention to what the Chilean Government is going to do next, but there is also great value in attempting to approach the right to self-determination from a different direction—one that focuses on what Indigenous peoples themselves can and are doing. Such a perspective seeks solutions to Indigenous problems that are developed and implemented from the bottom-up, instead of from the opposite direction. Looking at things from this point of view is crucial if Indigenous peoples are going to produce true and lasting change. The simple truth is this: Indigenous self-determination is here, and now it is up to Indigenous peoples to influence what its future holds.