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EDUCATION AND COOPERATIVE MANAGEMENT OF TRIBAL NATURAL RESOURCES

Debra L. Donahue*

I. INTRODUCTION

In an early email conversation among the current executive committee about this joint program on natural resources and indigenous nations, Professor Judith Royster suggested that one speaker address the teaching of Native American natural resources law in law schools, and that I would be the “logical person” to do so. This was flattering—or perhaps a preemptive strike on her part—considering that she co-authors the only casebook on the subject.¹ Her suggestion may have been prompted by an essay that I wrote a couple years ago, entitled *A Call for Native American Natural Resources in the Law School Curriculum*.² That essay stemmed from my successful proposal to add Native American natural resources law to the curriculum at the University of Wyoming.

Picking up where my essay left off, I might have talked today about all the subject areas in law schools where we do not but could (and arguably should) consider Indian law. The list of such courses is long. Some prime examples are constitutional law, civil procedure, federal courts, public lands, environmental and natural resources law, tax, contracts, business planning, and land use. Professor Melissa Tatum and others have encouraged this integrative approach, and the American Association of Law Schools section on Indian Nations and Indigenous Peoples maintains a bank of syllabi and exams, demonstrating how some law teachers have incorporated Indian law in their “standard” law courses.³

More to the point, I might have discussed how law school courses on Indian law could offer better coverage of tribal “co-management” and consultation. Considerable law and policy on these topics exist,⁴ affording tremendous potential for tribes wishing

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1. Judith V. Royster & Michael C. Blumm, *Native American Natural Resources Law: Cases and Materials* (Carolina Academic Press 2002).

2. 24 J. Land Resources & Envtl. L. 211 (2004).

3. See Melissa Tatum, *Foreword: Essays on Integrating Indian Law into Law School Curricula*, 37 Tulsa L. Rev. 481, 484 (2001); e-mail from Melissa Tatum, Prof. Tulsa U. College L., to Debra Donahue, Prof. Wyo. U. College L. (Jan. 29, 2007) (on file with author).

4. See e.g. Jan G. Laitos, Sandi B. Zellmer, Mary C. Wood & Daniel H. Cole, *Natural Resources Law* 596–99 (West 2006); Connie Rogers, *Native American Consultation in Resource Development on Federal*

to play a more active role in managing off-reservation or shared resources. Professor Laitos and his colleagues, in the current edition of their natural resources law casebook, identify “four distinct roles” for tribes under the rubric “co-management,” and suggest that the term in its “broadest sense [can] capture the wide variety of roles that tribes currently play in resource management.”⁵ “As tribes become more visible ‘third sovereigns’ in the management of resources,” they write, “it will be important for the natural resource practitioner to appreciate the jurisdictional and political implications of these distinct roles.”⁶ Exploration of these authorities and their increasing real-world applications would be a fruitful area for study and ideally suited for advanced Indian law seminars or further scholarship.

But I have decided to write more broadly (and informally) about the roles law schools can play in promoting cooperative resource management, and this endeavor begins with a broader, more holistic look at *education* generally. I think it is useful for us as teachers to stand back occasionally—perhaps more often than we now do—and view the “big picture” of our enterprise. I also believe it is essential for anyone involved in matters touching on public policy to regularly reconsider whether and how the educational needs of their clients, their publics, and their constituencies are being addressed. This includes tribes wanting to assert their sovereignty and make better use of their resources.⁷

So how can we, and how should we, educate students to contribute to the field of Indian law and, more specifically, to cooperative resource management? My remarks today reflect a survey I conducted of my former Indian law students—some of whose responses I found quite thought-provoking—and are also informed by my students’ compassion for tribes struggling to make sovereignty meaningful and their frustration (which I share) in trying to make sense of current Supreme Court case law. And, lastly, my remarks are inspired by tribes’ successes in managing their resources and reinvigorating their cultures.

In commenting on the value of studying Indian law or in explaining why they would encourage others to take the course, students offered such bits of wisdom as:

- Indian law describes “a sad and racist history that needs to be brought to the forefront so that change can come! . . . Indian Law is a HUGE part of our nation’s history.”
- “The historical/social aspects of [the] course [were] riveting. . . . [E]verything was

Lands, 31 Colo. Law. 113 (Jan. 2002); USDA Forest Service, *Forest Service National Resource Book on American Indian and Alaska Native Relations* app. A, <http://www.fs.fed.us/people/tribal/tribexa.pdf> (1997) (listing legal authorities that pertain to the Forest Service); cf. David H. Getches, Charles F. Wilkinson & Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law* 619–20 (5th ed., West 2005) (describing tribal-state cooperative agreements in several areas, including environmental law); Sandra B. Zellmer, *The Protection of Cultural Resources on Public Lands: Federal Statutes and Regulations*, 31 *Envtl. L. Rptr.* 10689 (2001) (discussing, inter alia, National Historic Preservation Act, Archaeological Resources Protection Act, Native American Graves Protection Act, American Indian Religious Freedom Act, and Religious Freedom Restoration Act).

5 See Laitos et al., *supra* n. 4, at 596–97 (citing statutes, executive orders, case law, and legal articles).

6 *Id.* at 597. The authors’ observation manifests the need for education, a need that runs to tribes as well as to outsiders.

7. “Better,” in this sense, is judged by whatever the particular tribe’s goals might be—for example, more profitable, sustainable, sensitive to tradition, inclusive of tribal members.

new. We don't learn this anywhere else. . . . I feel I gained some exposure to this huge area of the law, and that perhaps I can do something useful someday to help. I would like to have the ability to help if I ever can."

- "Indian law is important in understanding how our nation developed."
- "It is a complex legal area that forces understanding in other areas of law."
- "If you can figure out the complicated jurisdictional issues [in this field of law], you can accomplish anything."
- "Indian law is important and needs to be made more accessible [and] promoted to students. There is a lack of interest which is sad because it is intriguing and relevant."
- Native American natural resource law "is very valuable when practicing [natural resource] law; especially in the West. I rarely encounter anything related to water or land management, where consideration isn't paid to tribes." (This, from a graduate who is now practicing in the field.)
- "Wish I was practicing in this area."
- And perhaps my favorite: "[Indian law] gets you to think outside the box."

Two respondents described Indian law as "eye opening." Several recommended bringing in more guest speakers who are tribal members or Indian law practitioners and taking field trips to reservations or tribal courts.

All of these comments further convinced me of the importance of educating students about Indian law and history and the place of tribes in modern American society. More particularly, they made me think about *what* that education should encompass and *how* it can be accomplished.

"Thinking outside the box" embraces both the how and the what. It can lead to creative new approaches to old problems. It can result in discarding ingrained notions about limits that discourage action or constrain responses. And it can induce the thinker to approach issues as opportunities rather than as problems. Thinking outside the box can be a fruitful path to learning in many fields because it opens minds, not only to new ideas, but to new *ways* of thinking—which then become pathways to new ideas.

The field of co-management can be fertile ground for new ways of thinking. The involvement of different disciplines and cultures can result in cross fertilization.⁸ The

8. Of course, the opposite—lack of communication—is also possible. At this point in my Association of American Law Schools address I told the following story:

A man floating along in a hot air balloon began to realize he was lost. He reduced altitude and spotted a woman below. He descended a bit more and shouted, "Excuse me, can you help me? I promised a friend I would meet him an hour ago, but I don't know where I am." The woman below replied, "You are in a hot air balloon hovering approximately thirty feet above Alkali Desert Scrub habitat, 2.7 miles west of the Colorado River near one of the remnant populations and spawning grounds of the Razorback Sucker." "You must be a conservation biologist," said the balloonist. "I am," replied the woman. "How did you know?" "Well," answered the balloonist, "everything you told me is technically correct, but I have no idea what to make of your information, and the fact is I am still lost. Frankly, you've not been much help so far." The woman below responded, "You must be a legislator." "I am," replied the balloonist, "but how did you know?" "Well," said the woman, "you don't know where you are or where you are going. You have risen to where you are due to a large quantity of hot air. You made a promise to someone that you have no idea how to keep, and you expect me to solve your problem, but you really aren't interested in the information I'm providing. The fact is you are in exactly the same situation you were in before we met, but now, somehow, it's my fault."

preconditions are that the participants listen and observe, be sensitive to each other's differences, and retain open minds—all of which are qualities that training in alternative dispute resolution could cultivate.⁹ Successful co-management can offer renewed hope to those who fear that tribal sovereignty is a waning doctrine or fear that tribes have been reduced to little more than voluntary membership organizations.¹⁰ Focusing on federal case law makes it likely that students will draw these conclusions (which most of us do not intend to convey). Worse, these fears can be millstones for Indian peoples and their aspirations. The most effective means of disabusing students and tribal peoples of these notions is to refute them with real-world examples of vibrant cultural sovereignty.¹¹

The “Honoring Nations” program of the Harvard Project on American Indian Economic Development¹² offers a wealth of thinking-outside-the-box ideas, which spring from vibrant tribal sovereignty. The program “identifies, celebrates, and shares exemplary tribal governance programs,”¹³ and bestows cash awards intended to allow the recipients “to share their stories of success.”¹⁴ Specifically, the “awards spotlight tribal government programs and initiatives that are especially effective in addressing critical concerns and challenges facing . . . Indian nations.”¹⁵ The Harvard Project also shares those stories, publishing on its website narrative descriptions of the award-winning projects and preparing “reports, case studies, and instructional materials based on the honorees’ successes.”¹⁶

The *educational* value of the Honoring Nations program cannot be overstated. The awards themselves and the publicity both serve to inspire tribes.¹⁷ Most significantly,

This humorous story, which appears in various forms on several websites, highlights the communication difficulties that can be experienced by persons of different disciplines, even when they share the same culture.

9. “Consensus-building discourse occurs in a learning environment in which points of view are shared in order for a mutual vision to emerge.” LaDonna Harris, *Voices of Multicultural America: Notable Speeches Delivered by African, Asian, Hispanic and Native Americans, 1790–1995*, at 517 (Deborah Gillan Straub ed., Gale Research 1996).

10. *Cf. U.S. v. Mazurie*, 410 U.S. 544, 557 (1975) (“[Indian tribes] are a good deal more ‘than private, voluntary organizations.’”). According to Judge William Canby: “The question raised by the line of cases from *Wheeler* to *Montana* to *Hicks*, which stress membership and, to a lesser degree, rights of land ownership as sources of tribal power, is whether the Supreme Court is evolving, purposefully or not, toward a non-governmental view of tribal power and, if so, how far and fast that evolution will proceed.” William C. Canby, Jr., *American Indian Law in a Nutshell* 86 (West 2004). *Review Nev. v. Hicks*, 533 U.S. 353 (2001); *Mont. v. U.S.*, 450 U.S. 544 (1981); *U.S. v. Wheeler*, 435 U.S. 313 (1978).

11. Professor Philip Frickey has observed that Indian law “[s]cholars need to educate the federal courts—as well as ourselves—that tribal self-government can prosper in the twenty-first century in ways that are efficacious and appropriate.” Philip P. Frickey, *Doctrine, Context, Institutional Relationships, and Commentary: The Malaise of Federal Indian Law through the Lens of Lone Wolf*, 38 *Tulsa L. Rev.* 5, 12 n. 37 (2002).

12. The full name of the program is “Honoring Contributions in the Governance of American Indian Nations.” Harvard Project, *Honoring Nations*, http://www.ksg.harvard.edu/hpaied/hn_main.htm (accessed Jan. 24, 2007). This is a program of the Harvard John F. Kennedy School of Government.

13. *Id.* Projects may be self-nominated by tribes or nominated by any other person. *Id.* at *An Invitation*, http://www.ksg.harvard.edu/hpaied/hn_invitation.htm (accessed Jan. 27, 2007). Honored projects have involved all aspects of tribal life; I will be focusing on land and natural resources-related initiatives.

14. *Id.* at *Harvard’s Kennedy School of Government Honors American Indian Nations*, http://www.ksg.harvard.edu/hpaied/documents/HN_06_Honoree_Press_Release__Oct_4_final.pdf (Oct. 4, 2006) [hereinafter *Press Release*].

15. *Honoring Nations*, *supra* n. 12.

16. *Press Release*, *supra* n. 14. The website documents all honorees and projects for every year since the program was launched in 1998. *See Honoring Nations*, *supra* n. 12.

17. Since the program began in 1999, more than one-quarter of tribes have submitted applications. *See*

the award-winning projects are *models* of what tribes can accomplish if they use their resources—human, natural, and governmental—creatively, and if they refuse to be constrained by limited views of tribal sovereignty.

Law schools can and should promote effective, cooperative tribal natural resource management, and I will suggest three major ways we can do that. The Honoring Nations program, as it turns out, features two of the three. First, law schools must strive to convey to students a meaningful picture of tribal sovereignty. Students, of course, must understand the legal concept and its historical origins, and how the Supreme Court continues to narrow its scope.¹⁸ Perhaps more important, though, is that students appreciate *why* nothing is more vital to a tribe's future than protecting its sovereign status and realizing the attendant benefits. But our standard case-law approach to teaching Indian law can make it difficult for students to understand *how* tribes can achieve this.

The solution might lie in the distinction between legal sovereignty and “cultural sovereignty.” According to Professor Sarah Krakoff:

The unsatisfactory nature of legal sovereignty has led some scholars to suggest that sovereignty ought to be defined from the inside, by looking at what tribes are doing to protect what is essential about their cultures, rather than from the outside, by looking solely to the cramped and contradictory legal definitions of sovereignty that issue from federal courts.

Solutions to the problem of the Supreme Court's redefinition of legal sovereignty should account for the diversity in the ways Indian tribes enact their sovereignty on the ground.¹⁹

Professor Frank Pommersheim also linked sovereignty with culture, describing

the pride that Indian tribal communities take in pre-Columbian sources of cultural continuity and spiritual richness. This pride of difference is at the heart of claims of tribal sovereignty. Neither the legal community nor the dominant community at large fully understands this pride of difference, which tests the vitality of old promises in a diverse society that professes a commitment to both equality and pluralism.²⁰

According to Pommersheim, “[t]his unique convergence of law, history, and sovereign identity needs illumination from all quarters, but particularly from the . . . scholarly and teaching community.”²¹

Tribal sovereignty, in other words, transcends the power to tax and to regulate.

Press Release, supra n. 14.

18. I often tell my students that understanding the concept and origins of tribal sovereignty and becoming familiar with some of the “favorable” cases will equip them to argue, if they ever have the chance, that the analysis that produced such poorly reasoned opinions as *Hicks*, 533 U.S. 353, *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001), *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), and *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), should be abandoned.

19. Sarah Krakoff, *A Narrative of Sovereignty: Illuminating the Paradox of the Domestic Dependent Nation*, 83 Ore. L. Rev. 1109, 1114 (2004). Professor Krakoff goes on to note, however, that “part of what some tribes are doing to further cultural sovereignty is adapting to federal decisional law.” *Id.*

20. Frank Pommersheim, “*Our Federalism*” in *the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts’ Teaching and Scholarly Community*, 71 U. Colo. L. Rev. 123, 134–35 (2000).

21. *Id.* at 180 (referring specifically to the community of federal courts teachers and scholars).

Furthermore, tribal sovereignty “is resilient, not fragile.”²² Tribes can engage and are “engag[ing] in activities that further their unique tribal identities, notwithstanding the cracked crucible of federal Indian law.”²³ These activities involve reestablishing functional connections with the land. For some tribes, sovereignty renewal is intertwined with restoration of the salmon or eagle or wolf—creatures on which the tribes’ cultures and very existences depend.²⁴ Stories about activities like these have a place in the Indian law classroom.²⁵ As we will see, the Honoring Nations program offers a wealth of such stories.

A second way in which law schools can promote cooperative tribal natural resource management is by recognizing the need for appropriate, tailored skills training for those who aspire to practice federal or tribal Indian law. I believe a prime focus here should be alternative dispute resolution. Alternative dispute resolution could convey valuable skills to those who eventually practice Native American natural resource law. (Conversely, alternative dispute resolution itself would likely benefit from considering tribal approaches to dispute resolution.²⁶) Communication skills, essential for all lawyers, are even more crucial—and more difficult to acquire—when language and culture impede understanding.²⁷ Moreover, communication skills include *listening* skills, which can be obtained only with practice.²⁸ Opportunities for enhancing students’ communication skills and cultural sensitivity might include guest presentations by tribal speakers and Indian law practitioners and visits to the reservation. For the latter to occur, the law teacher will need to cultivate contacts with tribal officials or elders. These efforts would be an invaluable learning experience for the teacher, the benefits of which would inure to the students.

Third, if law schools are to play a more active role in promoting cooperative resource management, we must examine our substantive curricula. Unless our materials

22. Krakoff, *supra* n. 19, at 1190.

23. *Id.* at 1191 (citing Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 Stan. L. & Policy Rev. 191 (2001)).

24. See *infra* nn. 29, 60, 64, & 109 and accompanying text. A recent story on Wyoming Public Radio’s *Open Spaces* program reflects this close association between Indian peoples and animals. The story described the Eastern Shoshone and Northern Arapahoe’s efforts to save their native languages, including a project to compile an audio dictionary of the Shoshone language. According to one of the dictionary’s compilers: “We started out with animals, of course.” Interview by Kristin Espeland, Wyoming Public Radio, with Reba Teran (Dec. 15, 2006) (available at <http://stream.publicbroadcasting.net/production/mp3/wpr/local-wpr-552069.mp3>) (accessed Jan. 24, 2007).

25. Indeed, *efforts* like these, involving tribes and other governments and landowners, are likely to be crucial to the success of biodiversity conservation and sustainable development. See Paul E. Minnis & Wayne J. Elisens, *Introduction*, in *Biodiversity and Native America* 3 (Paul E. Minnis & Wayne J. Elisens eds., U. Okla. Press 2000) (“There is a growing consensus that well-executed successful [biodiversity conservation, resource management, and sustainable development] projects must involve local [indigenous] populations.” (citations omitted)).

26. See Sandra Day O’Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 Tulsa L.J. 1, 3 (1997) (observing that tribal court systems offer “an example to the nation about the possibilities of alternative dispute resolution,” and have “much to teach the other court systems operating in the United States”).

27. See e.g. Carrie J. Menkel-Meadow, Lela Porter Love, Andrea Kupfer Schneider & Jean R. Sternlight, *Dispute Resolution: Beyond the Adversarial Model* 250–55 (Aspen 2005) (regarding cultural influences on negotiation).

28. This comment is inspired by my own experience, as well as by the thoughtful comments of Don Wharton, Native American Rights Fund attorney, who has described to my students the early lessons in “listening” he received from members of the Klamath Tribes.

and our class discussions elucidate the fundamental importance of land, and connection to land, to tribes as peoples,²⁹ the law we teach will be sterile. In this respect Professors Royster and Blumm's casebook makes exactly the right choice—it begins by contrasting land ethics of tribal peoples and Euro-Americans, then proceeds to important First Amendment Free Exercise cases.³⁰ This approach makes it easy to remind students—as I do, repeatedly throughout the course—of what we discussed in our first class meetings and thereby reinforce the fundamental importance of land. I do not begin the basic Indian law course this way, but perhaps I should.

A related, provocative idea is the distinction that Professors Vine Deloria and Clifford Lytle made “between nationhood and self-government.”³¹ “*Nationhood* implies a process of decision making that is free and uninhibited within the community.”³² “*Self-government*, on the other hand, implies a recognition by the superior political power.”³³ “Self-government,” they explain, “is not an Indian idea.”³⁴ The “movement for self-government . . . was not wrong; it was simply inadequate.”³⁵ “Both terms speak of the survival of Indian people, but they point to entirely different social realities in the future.”³⁶ The “privileges [of self-government] do not assuage the needs of a spiritual tradition that remains very strong within most tribes and that needs to express itself in ways familiar to the people.”³⁷ The Indian idea of “peoplehood, of nationality” embraces culture, tradition, and the “primacy of land.”³⁸

Tribal co-management of shared resources and good-faith consultation with tribes concerning off-reservation actions that have impacts on those resources hold tremendous potential for realizing Indian nationhood, in the sense intended by Deloria and Lytle. An active tribal role in management of shared resources—salmon, eagles, wolves, waters, or forests—can contribute to tribal cultural renewal and economic stability, as well as facilitate the establishment of “mutual respect and parity in political rights” between tribes and the federal government. According to Deloria and Lytle, positive changes in these areas would improve the prospects of Indian nations.³⁹

29. See e.g. Vine Deloria, Jr. & Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* 12 (U. Tex. Press 1984) (noting the “primacy of land in the Indian psychological makeup,” and further observing that, “as land is alienated, all other forms of social cohesion also begin to erode”); Catherine S. Fowler, “*We Live by Them*”: *Native Knowledge of Biodiversity in the Great Basin of Western North America*, in *Biodiversity and Native America*, *supra* n. 25, at 99 (explaining that “[t]he phrase, ‘we live by them,’ often repeated by elderly Numic-speaking Great Basin Indian people in the 1960s and 1970s . . . [was] meant in two ways,” i.e., “we live *by means of* them [plants and animals]” and “we live *surrounded by* them.” (footnote omitted)).

30. See Royster & Blumm, *supra* n. 1.

31. Deloria & Lytle, *supra* n. 29, at 14.

32. *Id.* at 13–14.

33. *Id.* at 14.

34. *Id.* at 15. Rather, self-government is “derived primarily from the European heritage.” *Id.* at 12. Cf. Harris, *supra* n. 9, at 517 (“Indian self-government . . . is not something friends of Indians can confer upon Indians. . . . The federal government cannot give self-government to an Indian community. All it can really do is get out of the way.”).

35. Deloria & Lytle, *supra* n. 29, at 14.

36. *Id.* at 244.

37. *Id.* at 14; see *id.* at 12 (observing that the “essential . . . nature of life” is spiritual).

38. *Id.* at 12.

39. See Deloria & Lytle, *supra* n. 29, at 245.

Thus, a Native American natural resources law course should acquaint students (at least minimally) with the wide variety of approaches and tools for managing resources that are available to tribes. The basic Indian law course cannot cover all relevant federal acts and policies that authorize, encourage, or require consultation or cooperation with tribes, much less explore the full range of economic and political tools or strategies.⁴⁰ But at the same time we must not lead students to believe that tribal resource management options are limited to regulation, taxation, and standard contractual arrangements, to be backed up by litigation when problems arise.⁴¹ Students at least should be aware that tribes asserting their sovereignty have other options: to seek (or demand) consultation, engage in discussions with neighbors or other governments, craft memoranda of agreement or understanding,⁴² enter into co-management and similar agreements,⁴³ and include in contracts and leases terms that are responsive to tribal needs and concerns.

The tribal success stories trumpeted by the Honoring Nations program epitomize what I believe Professors Coffey, Krakoff, Tsosie, and others mean by “cultural” or “on-the-ground” sovereignty,⁴⁴ and what Professors Deloria and Lytle intended by “peoplehood.”⁴⁵ They also help illustrate the broad, living-breathing concept of “education” that I am advancing today.

The word “educate” derives from the Latin “educare,” which means to lead. I was

40. I should note that “intergovernmental” agreements include *inter-tribal* arrangements.

41. A potential advantage of co-management agreements is reducing or avoiding litigation. See e.g. Harvard Project, Honoring Nations: 2002 Honoree, *Umatilla Basin Salmon Recovery Project*, http://www.ksg.harvard.edu/hpaied/hn/hn_2002_salmon.htm (accessed Jan. 25, 2007) (describing the cooperative Umatilla Basin Salmon Recovery Project as “[r]emarkable both for its success in bringing salmon back . . . [and in] avoiding endless cycles of litigation frequently associated with natural resource and species restoration conflicts”). “[T]he Tribes’ guiding philosophy has been ‘cooperation before litigation.’ . . . ‘If we have to, we will litigate to protect our treaty-reserved rights, but we have seen that we can create solutions which meet everyone’s needs by sitting down with our neighbors, listening to each other, and developing our own solutions.’” *Id.*

42. The variety of arrangements represented by this list is illustrated by the Honoring Nations projects, discussed in more detail below. Review *infra* notes 53 to 108 and accompanying text. The Confederated Salish and Kootenai Tribes, for instance, have formed “working relationships—occasionally formalized through Memoranda of Understanding—with municipalities, county governments, multiple state and federal agencies, real estate brokers, title insurance companies, utilities, universities, and surveyors.” *Id.* at Honoring Nations: 2003 Honoree, *Trust Resource Management*, http://www.ksg.harvard.edu/hpaied/hn/hn_2003_TrustResourceManagement.htm (accessed Jan. 25, 2007). The Columbia River Inter-Tribal Fish Commission and the University of Idaho entered into a memorandum of agreement to create the Collaborative Center for Applied Fisheries, which will conduct genetic research and train future tribal fishery biologists. *Id.* at Honoring Nations: 2002 Honoree, *Columbia River Inter-Tribal Fish Commission*, http://www.ksg.harvard.edu/hpaied/hn/hn_2002_fish.htm (accessed Jan. 25, 2007).

43. Such opportunities can arise under the Tribal Self-Governance Act, 25 U.S.C. §§ 458aa–458cc (2000); Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450f (2000); Fish and Wildlife Coordination Act, 16 U.S.C. § 661 (2000); National Park Service Organic Act, 16 U.S.C. § 1g (2000).

44. See e.g. *Umatilla Basin Salmon Recovery Project*, *supra* n. 41 (reporting the belief of the Confederated Umatilla Tribes that without off-reservation rights to “water, fishing and hunting, livestock pasturing, and the gathering of traditional foods and medicines . . . they would cease to exist as Indian people”); *id.* at Honoring Nations: 2005 Honoree, *Yukon River Inter-Tribal Watershed Council*, http://www.ksg.harvard.edu/hpaied/hn/hn_2005_YukonRiver.htm (accessed Jan. 25, 2007) (describing the Yukon River Inter-Tribal Watershed Council’s “overarching goal for community members ‘to be able to drink directly from the River’ . . . [as] inseparable from the people themselves” and as being “about the very substance—cultural and otherwise—of the tribes and their citizens”).

45. See Deloria & Lytle, *supra* n. 29, at 12.

reminded of this etymology in 1988 or 1989, when I was a student in Professor Charles Wilkinson's Indian law class at the University of Colorado, and the National Wildlife Federation conferred on Professor Wilkinson its "Educator of the Year" award. My high school Latin came back to me, and I sent him a note of congratulations. Good educators *are* leaders, I said, and from what I had seen of his classroom teaching and from what I knew of his work and his writing, this recognition was well-deserved. John F. Kennedy's observation that [l]eadership and learning are indispensable to each other" is apt.⁴⁶

The Honoring Nations program celebrates the symbiosis between leadership and learning. Consider the following comments by persons associated with the program:

- "The world is changing quickly and in major ways. The Native nations we are honoring are *teaching* us all how to succeed and lay the foundation for seven generations to come."⁴⁷
- "Tribes are solving complex governmental issues in meaningful ways. Their work is *inspiring*, and each holds examples for other governments to *learn* from."⁴⁸
- "Honorees serve as sources of *knowledge* and *inspiration* throughout Indian Country and beyond."⁴⁹

The ways in which one can educate by leading (or vice versa) are as numerous as pebbles in a streambed, or grass on the prairies, or—more to the point—the ideas people have. This is the fundamental idea behind the Honoring Nations program. As noted earlier, the award-winning projects are *models* of what tribes can accomplish.⁵⁰ Webster's dictionary defines "model" as a person or thing "regarded as worthy of imitation" or which "serves as a pattern or source of inspiration."⁵¹ The program honorees are indeed leading by example.

While the Honoring Nations program honors projects of all types,⁵² I have

46. Speech, *Remarks Prepared for Delivery at the Trade Mart in Dallas* (Dallas, Tex., Nov. 22, 1963) (copy of remarks on file with John F. Kennedy Presidential Library & Museum, <http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/003POF03TradeMart11221963.htm> (accessed Jan. 27, 2007)).

47. *Press Release*, *supra* n. 14 (quoting Chief Oren Lyons, Faithkeeper of the Onondaga Indian Nation and chairman of the Honoring Nations Board of Governors) (emphasis added).

48. *Id.* (quoting Amy Besaw, program director) (emphasis added). The Harvard Project's "goal is to understand the conditions under which self-determined social and economic development is achieved among American Indian nations." *Id.*

49. *Honoring Nations*, *supra* n. 12 (emphasis added).

50. Indeed, one of the selection criteria is "transferability": the project's "concepts, principles, and practices" must be "applicable to other governments." *Infra* n. 52.

51. *Merriam-Webster's Third New International Dictionary* 1451 (Merriam-Webster 1986).

52. The selection criteria are:

Effectiveness—The Contribution achieves positive and measurable results in addressing a key concern, problem, or challenge facing the nation and its citizens.

Significance to Sovereignty—The Contribution strengthens self-governance and self-determination for the nation.

Relevance—The Contribution fits, reflects, and strengthens the nation's culture.

Transferability—The Contribution's concepts, principles, and practices are applicable to other governments.

Sustainability—The Contribution shows promise of sustained effectiveness.

examined only those that relate to land or natural resources. Two program honorees—the Columbia River Inter-Tribal Fish Commission (CRITFC)⁵³ and the Nez Perce's Gray Wolf Recovery Program in Idaho⁵⁴—are highly successful and relatively well-known examples of cooperative tribal natural resource management. Other, lesser known projects⁵⁵ that have been recognized include:

- Chippewa Flowage Joint Agency Management Plan, involving the Lac Courte Oreilles Band of Lake Superior Chippewa;⁵⁶
- Trust Resource Management, Office of Support Services, Salish-Kootenai Tribes;⁵⁷
- the Yukon River Inter-Tribal Watershed Council;⁵⁸
- the Umatilla Basin Salmon Recovery Project of the Confederated Tribes of the Umatilla Indian Reservation;⁵⁹
- the Wildlife and Fisheries Management Program, Game and Fish Department, Jicarilla Apache Tribe;⁶⁰
- the Swinomish Cooperative Land Use Program;⁶¹
- the Yakama Nation Land Enterprise;⁶²
- the Zuni Eagle Sanctuary;⁶³

Harvard Project, *Eligibility Requirements*, http://www.ksg.harvard.edu/hpaied/hn_eligibility.htm (accessed Jan. 25, 2007).

53. *Columbia River Inter-Tribal Fish Commission*, *supra* n. 42 (The Columbia River Inter-Tribal Fish Commission (CRITFC) is “leading a comprehensive effort to restore salmon for the benefit of its member tribes and all people of the Pacific Northwest. . . . No other entity in the Columbia Basin acts with such authority.”).

54. Harvard Project, *Honoring Nations: 1999 Honoree, Idaho Gray Wolf Recovery*, http://www.ksg.harvard.edu/hpaied/hn/hn_1999_wolf.htm (accessed Jan. 25, 2007).

55. These include co-management with other governmental entities, as well as intra-tribal governance projects.

56. Harvard Project, *Honoring Nations: 2003 Honoree, Honoring Our Ancestors*, http://www.ksg.harvard.edu/hpaied/hn/hn_2003_HonoringOurAncestors.htm (accessed Jan. 26, 2007) (a program for managing lands bordering the Chippewa Flowage reservoir, involving the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Wisconsin Department of Natural Resources and U.S. Forest Service).

57. *Trust Resource Management*, *supra* n. 42. Another innovative Salish-Kootenai project—currently pending and thus not yet eligible for an Honoring Nations award—is a tribal proposal to the U.S. Fish and Wildlife Service to take over management of the National Bison Range, located within the reservation. See *CST Proposes Three-Year Plan for Bison Range*, http://www.nativetimes.com/index.asp?action=listheadlines&txt_Article_Age=30 (Nov. 21, 2006); but see Associated Press, *Agency Ends Tribes' Bison Role*, <http://www.billingsgazette.net/articles/2006/12/12/news/state/60-bison.txt> (Dec. 12, 2006) (reporting that the U.S. Fish and Wildlife Service “was revoking the [interim] agreement immediately, citing concerns over tribal ability to do the work,” and further that “it would not move forward with negotiations for a permanent management agreement” with the Tribes). Numerous conservation and other organizations had opposed transferring management of the National Bison Range to the Tribes. See PEER, *Tribe Seeking Total Takeover of National Bison Range*, http://www.peer.org/news/news_id.php?row_id=784 (Nov. 15, 2006).

58. *Yukon River Inter-Tribal Watershed Council*, *supra* n. 44. (a treaty-based organization of indigenous governments representing sixty-three rural, indigenous communities in Alaska and Yukon Territory, Canada).

59. *Umatilla Basin Salmon Recovery Project*, *supra* n. 41. (involving the Confederated Tribes of the Umatilla Indian Reservation and, indirectly, the Pacific Northwest Power Planning Council).

60. Harvard Project, *Honoring Nations: 1999 Honoree, Wildlife and Fisheries Management Program*, http://www.ksg.harvard.edu/hpaied/hn/hn_1999_fish.htm (accessed Jan. 26, 2007) (involving the Jicarilla Apache of New Mexico).

61. *Id.* at *Honoring Nations: 2000 Honoree, Swinomish Cooperative Land Use Program*, http://www.ksg.harvard.edu/hpaied/hn/hn_2000_coop.htm (accessed Jan. 26, 2007) (involving the Swinomish Indian Tribal Community and Skagit County, Washington).

62. *Id.* at *Honoring Nations: 2002 Honoree, Yakama Nation Land Enterprise*, http://www.ksg.harvard.edu/hpaied/hn/hn_2002_land.htm (accessed Jan. 26, 2007) (involving the Confederated Tribes and Bands of the Yakama Nation, in Washington).

- the Minnesota Ceded Territory Conservation Code of the Mille Lacs Band of Ojibwe;⁶⁴ and
- the Water Quality Standards program of the Pueblo of Sandia.⁶⁵

Time limits prevent me from recounting these projects or doing justice to the lessons that they offer for tribal governance and cooperative natural resource management.⁶⁶ Instead, I will outline several lessons common to many of the projects, and I will close with excerpts describing two of them.

The lessons that I take away from the Honoring Nations projects can be organized in seven broad categories:

1. tribal sovereignty and self-determination;
2. building capacity for self-determination;
3. the special importance of inter-governmental agreements to land and resource management;
4. the value of formalizing, or institutionalizing, agreements;
5. the process (and other specifics) of developing inter-governmental agreements;
6. the role of education in agreements; and
7. the educational value of agreements.

II. TRIBAL SOVEREIGNTY AND SELF-DETERMINATION⁶⁷

- Tribal self-government, self-determination, and resource management go hand in hand. Gains in one area translate into gains in the others.⁶⁸
- Real, significant gains in tribal governance and control of off-reservation resources are possible when tribes “unhesitatingly assert their own sovereignty [and]

63. *Id.* at *Zuni Eagle Sanctuary*, http://www.ksg.harvard.edu/hpaied/hn/hn_2002_eagle.htm (accessed Jan. 26, 2007) (involving the Pueblo of Zuni and the U.S. Fish and Wildlife Service).

64. *Id.* at Honoring Nations: 1999 Honoree, *Minnesota 1837 Ceded Territory Conservation Code*, http://www.ksg.harvard.edu/hpaied/hn/hn_1999_min.htm (accessed Jan. 26, 2007) (drafted by the Dept. of Natural Resources, Mille Lacs Band of Ojibwe, to govern off-reservation hunting, fishing, and gathering rights recognized in an 1837 treaty and affirmed by the federal courts).

65. Harvard Project, Honoring Nations: 1999 Honoree, *Water Quality Standards*, http://www.ksg.harvard.edu/hpaied/hn/hn_1999_water.htm (accessed Jan. 26, 2007) (the first set of water quality standards adopted by an Indian tribe—the Sandia Pueblo—and involving, directly or indirectly, the U.S. Environmental Protection Agency and State of New Mexico).

66. Indeed, beginning in 2000 each narrative describing an award-winning project ends with three “Lessons.”

67. That so many of the lessons apparent in these projects relate to sovereignty is, itself, telling.

68. See *Idaho Gray Wolf Recovery*, *supra* n. 54. The Nez Perce’s

effective management of wolf recovery is now opening even more doors—proof that good governance and enhanced self-determination go hand-in-hand. The Tribe’s entrepreneurial involvement in wildlife management has similarly increased tribal sovereignty. The Wolf Recovery Plan gives the Tribe a new measure of responsibility over off-reservation treaty lands . . . and promotes sovereign, government-to-citizen or government-to-government relationships between the Tribe and private land owners, the State of Idaho, and other governmental entities.

Id.

- acknowledg[e] the sovereignty of other governments.”⁶⁹
- A corollary: acknowledging the sovereign status of government partners in no way impairs a tribe’s sovereignty.⁷⁰
 - Increasing direct control over tribal resources can produce “a national ethos of accountability for [the tribe’s] management actions.”⁷¹
 - Intergovernmental agreements can allow tribes to recover from setbacks, defeat, and “powerlessness.”⁷²
 - By means of tribal-federal agreements tribes can “transition[] from being recipients of the services of a federal program to partners in the design of a program that addresses their particular cultural needs.”⁷³
 - The “pursuit of self-governance [through intergovernmental partnerships] can strengthen and support [tribal] cultural traditions and values.”⁷⁴
 - Intergovernmental agreements can “incorporate and promote both Western science and Native culture.”⁷⁵
 - Assertions of sovereignty in developing intergovernmental agreements can strengthen tribal communities. Such achievements can be seen as reflecting tribal “leaders’ desire and ability to protect and preserve the [reservation] way of life.”⁷⁶
 - “Going it alone” may not be the best way for a tribe to enhance or secure its sovereignty.⁷⁷

69. *Honoring Our Ancestors*, *supra* n. 56 (describing “crucial successes” of the Chippewa Flowage Joint Agency Management Plan, including preventing various proposed developments that would have “seriously compromised the Plan’s—and the Tribe’s—vision of how the [area] should look and be managed”); *id.* (reporting that the “Tribe is now working with Sawyer County to bring its zoning laws into accordance with the Plan”); *Umatilla Basin Salmon Recovery Project*, *supra* n. 41 (describing the “dramatic” successes of the Umatilla Basin Salmon Recovery Project: “restor[ing] salmon to a river from which they had been absent for nearly seventy years while sustaining the non-Indian agricultural economy,” as well as “contribut[ing] to the return of several other wildlife species to the area”).

70. *See Swinomish Cooperative Land Use Program*, *supra* n. 61 (“Critically, tribal sovereignty is not sacrificed.”).

71. *Trust Resource Management*, *supra* n. 42 (referring specifically to the Trust Resource Management Program of the Confederated Salish and Kootenai Tribes).

72. *See Water Quality Standards*, *supra* n. 65 (“By seizing the opportunity offered by a change in federal law, the [Sandia] Pueblo has been able to reverse its long-standing powerlessness in water quality issues.”).

73. *Zuni Eagle Sanctuary*, *supra* n. 63; *see also Idaho Gray Wolf Recovery*, *supra* n. 54 (“Nez Perce culture had languished as local populations of wolves disappeared, but it has been refreshed through wolf reintroduction. . . . [W]olf recovery is intertwined in many tribal members’ minds with Nez Perce survival and resurgence.”).

74. *Zuni Eagle Sanctuary*, *supra* n. 63 (“Indian nations that manage their own natural resources are able to craft culturally appropriate policies and procedures and measure success using tribal standards.”); *see Umatilla Basin Salmon Recovery Project*, *supra* n. 41 (reporting that “salmon restoration has spurred a revitalization of cultural practices and traditions” among the Umatilla); *see also supra* n. 57 (describing Salish-Kootenai proposal to take over management of the National Bison Range, and noting that two tribal members had started the herd there when it was in danger of extinction).

75. *Umatilla Basin Salmon Recovery Project*, *supra* n. 41; *Columbia River Inter-Tribal Fish Commission*, *supra* n. 42 (“[The Commission’s] experts do not concentrate on Western knowledge alone. Their work also reinforces tribal wisdom and knowledge that was once dismissed as mere cultural memory. [And] the Commission’s science and research validates the oral histories that address pre-contact fish activity in the Columbia River.”).

76. *Water Quality Standards*, *supra* n. 62 (regarding Sandia water quality standards). The program has “Pueblo-wide commitment. . . . Even grade-school students have become Program boosters.” *Id.*; *see also Zuni Eagle Sanctuary*, *supra* n. 63 (noting that the consultation process leading to the eagle sanctuary “bolstered Zuni citizens’ trust in government”).

77. *See Honoring Our Ancestors*, *supra* n. 56. Even in the case of the Yakama Nation Land Enterprise,

III. BUILDING CAPACITY FOR SELF-DETERMINATION

- “Interaction with other sovereign governments is a fundamental function of tribal government, and the capacity to fulfill this responsibility is a necessary attribute of self-determination.”⁷⁸
- “‘Sovereignty’ and ‘self-determination’ are not merely legal concepts. [H]ard-earned powers of self-governance must be backed up by the *capacity* to self-govern.”⁷⁹
- “Systematically building this capacity helps to lead to the enduring benefit of tribal citizens.”⁸⁰
- “Investing in a better accounting system, a first-rate property encumbrance recording system, and the like may not seem particularly newsworthy. However, it is precisely these kinds of foundational investments that can allow an Indian nation to stand as an equal—or more—in its relationships with other governments.”⁸¹
- By systematic effort, tribes can “put [] themselves in charge of their resources and programs,” thus replacing the federal government and “correct[ing] the fundamental accountability problem that has persisted in Indian Country for hundreds of years.”⁸²
- Capacity includes credible technical expertise.⁸³ Tribes who acquire such expertise earn the respect of other governments and credibility in the eyes of the public, local communities, and outside organizations.⁸⁴
- Tribes can use intergovernmental agreements to enhance “homegrown capacity,” for example, the ability to recruit tribal-member staff for co-management projects, and

supra n. 62, through which the Yakama Nation actively buys and develops land within the exterior boundaries of the reservation to alleviate problems associated with checkerboarded ownership, the Tribe is making use of federal law that allows for taking tribally owned lands into trust; taking advantage of tax-exempt status of trust lands; and developing international markets for reservation-based products. *See id.*

78. Harvard Project, Honoring Nations: 2000 Honoree, *Intergovernmental Affairs Department*, http://www.ksg.harvard.edu/hpaid/hn/hn_2000_gov_rel.htm (last accessed Jan. 26, 2007); *see also Swinomish Cooperative Land Use Program, supra* n. 61 (“[C]ooperation with other sovereigns actually [can] be a means of increasing tribal self-determination.”).

79. *Trust Resource Management, supra* n. 42 (emphasis added).

80. *Id.*

81. *Id.*

82. *Id.* (referring specifically to the Trust Resource Management Program of the Confederated Salish and Kootenai Tribes on the checkerboarded Flathead Reservation).

83. *See e.g. Columbia River Inter-Tribal Fish Commission, supra* n. 42 (“By developing credible technical expertise, tribes and inter-tribal organizations not only enhance their ability to create and manage first-rate programs, but they also garner the respect of outsiders. From this position of strength, tribes can defend and advance their sovereignty most effectively.”); *see also Idaho Gray Wolf Recovery, supra* n. 54 (“The Nez Perce were able to make a credible offer to implement wolf recovery because of the expertise, track record, and reputation the Tribe had earned in earlier wildlife management efforts. Just as these investments in institutional effectiveness and technical capacity enabled the Nez Perce to seize an opportunity for increased self-determination, its effective management of wolf recovery is now opening even more doors—proof that good governance and enhanced self-determination go hand-in-hand.”).

84. *See e.g. Honoring Our Ancestors, supra* n. 56; *Intergovernmental Affairs Department, supra* n. 78 (“[C]arefully tended external relations have shored up the [Tribes’] sovereignty and leveled the playing field in . . . [their] interactions with other governments.”); *Minnesota 1837 Ceded Territory Conservation Code, supra* n. 64; *Swinomish Cooperative Land Use Program, supra* n. 61 (including in the “spillover effects” of the Swinomish-Skagit County agreement the “first-ever Native American Day celebration” held by the town of LaConner, Washington); *Water Quality Standards, supra* n. 65; *Zuni Eagle Sanctuary, supra* n. 63.

to encourage tribal youth to acquire the necessary technical and scientific skills to participate in such efforts.⁸⁵

IV. THE SPECIAL IMPORTANCE OF INTER-GOVERNMENTAL AGREEMENTS TO LAND AND RESOURCE MANAGEMENT

- Because of their historically vast territories and their connections with other tribal groups, tribes' interests span multiple political jurisdictions and natural systems.⁸⁶ This is a strong motivation to pursue intergovernmental resource management.
- The vital importance of land and natural resources to tribes *and* the fact that “ecosystems are interrelated” make it essential that tribes “work even beyond their political boundaries in environmental preservation, land management, and community sustainability to reach their goals.”⁸⁷
- Active involvement in setting management policies and implementing decisions is crucial if tribes are to manage their natural resources in ways that meet their economic goals and are faithful to cultural norms.⁸⁸
- Cooperative land-use regulation (including zoning) can promote sound land use planning, management, and law enforcement and help avoid the ill effects of checkerboarded land ownership.⁸⁹
- Indeed, the “inherent regulatory and jurisdictional challenges of land use on checkerboarded reservations make intergovernmental cooperation vital, and tribes can engage in such cooperation without delegating any of their civil regulatory authority to non-Indian governments.”⁹⁰

V. VALUE OF FORMALIZING, OR INSTITUTIONALIZING, AGREEMENTS.

- Good individual relationships often form the basis for productive institutional relationships.⁹¹
- But “formaliz[ing] . . . intergovernmental agreements in [memoranda of

85. See *Umatilla Basin Salmon Recovery Project*, *supra* n. 41; see also *Yukon River Inter-Tribal Watershed Council*, *supra* n. 44 (reporting the Yukon Watershed Council's GIS mapping and water-quality-monitoring skills).

86. See *id.*

87. *Id.* CRITFC can be seen as an important step toward an ecosystem management approach. See *Columbia River Inter-Tribal Fish Commission*, *supra* n. 42 (“[T]he states of Oregon, Washington, and Idaho have agreed that [CITFC's Enforcement] Department and its officers bear primary responsibility for fisheries enforcement on and off reservation lands. [This] not only extends the reach of tribal jurisdiction, but has the added, universal benefit of more consistent monitoring and enforcement of fishing regulations.”).

88. See *Trust Resource Management*, *supra* n. 42.

The [Confederated Salish and Kootenai] Tribes' traditional beliefs place priority on the respectful care of the natural world. Acknowledging that water, forest, and land resources are the cornerstones of their tribal revenues, the [Tribes] desired to strike a “careful balance” between “properly utilizing resources and ensuring that abuse and waste [are] minimal.” Tribal governments that effectively assert their sovereignty, like the [tribes in this case], are among those best positioned to develop laws and policies that protect and advance the interests of their people.

Id.

89. See *Swinomish Cooperative Land Use Program*, *supra* n. 61. One of these effects is deterrence of investment.

90. *Id.*

91. See *infra* n. 92 & accompanying text.

understanding, memoranda of agreement], or other written documents . . . provide[s] a record of commitment and thus secure[s] institutional buy-in that endures beyond the initial involvement of good-hearted individuals.”⁹²

- “[I]nstitutionalization is . . . a primary reason why [such programs] can be expected to have sustained effectiveness.”⁹³

VI. THE PROCESS OF DEVELOPING INTER-GOVERNMENTAL AGREEMENTS

- “[P]ositive intergovernmental relationships” can be achieved “by pursuing a five-pronged strategy of communication, education, cooperation, contributions and presence.”⁹⁴
- Transparency in the negotiation process and sustained efforts to educate and inform partners, tribal members, and the public will promote effective government-to-government negotiation and better agreements.⁹⁵
- Sincere consultation helps build confidence in government.⁹⁶
- Successful agreements require patience, planning, diligent negotiation, and time.⁹⁷
- Good individual relationships can form the basis for “productive institutional relationships that are grounded in mutual respect and a willingness to cooperate.”⁹⁸
- “[C]areful enunciation and enforcement of [tribal] rights can serve both [tribal] members and non-members well.”⁹⁹
- “Intergovernmental partnerships can seek out and take advantage of the unique resources available to their individual governments. Tribes, for example, may leverage their ability to attract federal grants, designate special historical site status,

92. *Honoring Our Ancestors*, *supra* n. 56; see e.g. *Swinomish Cooperative Land Use Program*, *supra* n. 61 (including “advisory boards and jointly administered comprehensive plans” among the “formal institutional vehicles” that can “serve as the foundation for productive government-to-government relations); cf. *Zuni Eagle Sanctuary*, *supra* n. 63.

93. *Swinomish Cooperative Land Use Program*, *supra* n. 61 (regarding the Swinomish-Skagit County cooperative land use plan); see also *Umatilla Basin Salmon Recovery Project*, *supra* n. 41 (noting that cooperative management agreements, as opposed to litigation, “can often solve contentious problems, and in the process, forge productive, long-term alliances”).

94. *Intergovernmental Affairs Department*, *supra* n. 78 (describing the Intergovernmental Affairs Department established by the Confederated Tribes of Grand Ronde).

95. See e.g. *Idaho Gray Wolf Recovery*, *supra* n. 54 (reporting that “in its work with the general public, the [Nez Perce] Tribe’s goal has been to educate”); *Intergovernmental Affairs Department*, *supra* n. 78; *Minnesota 1837 Ceded Territory Conservation Code*, *supra* n. 64; *Zuni Eagle Sanctuary*, *supra* n. 63.

96. See *Zuni Eagle Sanctuary*, *supra* n. 63. According to the Honoring Nations description of the Zuni eagle sanctuary, Zunis are “not afraid to speak up anymore.” *Id.*

97. See e.g. *Honoring Our Ancestors*, *supra* n. 56 (reporting that the Chippewa Flowage Agreement required twelve years of negotiations); *Minnesota 1837 Ceded Territory Conservation Code*, *supra* n. 64 (describing Chippewa Band’s meticulous efforts to develop a conservation code, and reporting that this “diligence paid off”); *Zuni Eagle Sanctuary*, *supra* n. 63 (reporting that “several years of negotiation . . . culminated in a historic Statement of Relationship” between Zuni and the Fish and Wildlife Service).

98. *Zuni Eagle Sanctuary*, *supra* n. 63; see also *Swinomish Cooperative Land Use Program*, *supra* n. 61 (“Before jurisdictional disputes can be mediated, meaningful relationships should be formed. Early investments in relationship building can prevent misunderstandings that would otherwise hamper intergovernmental progress.”).

99. *Minnesota 1837 Ceded Territory Conservation Code*, *supra* n. 64 (describing benefit of Mille Lacs Band’s Conservation Code); compare with *Swinomish Cooperative Land Use Program*, *supra* n. 61 (noting that the benefits of the Swinomish Cooperative Land Use Program include a clear permitting process, common land-use standards for tribal and non-tribal lands within the county, and a single bureaucracy).

and access technical expertise for the benefit of themselves and their governmental partners.”¹⁰⁰

VII. THE ROLE OF EDUCATION IN AGREEMENTS

- Education is “a key ingredient in the improved relations between” tribes and their partners.¹⁰¹
- Education and outreach can “change minds over the long term.”¹⁰²
- Education, public relations efforts, and more effective communication with other governments can put a tribe “on an equal footing with other governments operating in the region,” and help “re-establish [the tribe] as a self-governing sovereign.”¹⁰³
- Enhanced communication and increased information sharing among partners lead to improved relationships with local communities and outside organizations.¹⁰⁴

VIII. THE EDUCATIONAL VALUE OF AGREEMENTS

- Agreements, conservation codes, and land-use plans have educational value. They hold lessons for the tribe involved and serve as a model for other agreements within the tribe and for other tribes.¹⁰⁵
- Tribal successes are worth analyzing and emulating. A striking example is the remarkable accomplishment attributed to the Confederated Tribes of the Salish and Kootenai, who have created and “maintained an environment where the

100. *Honoring Our Ancestors*, *supra* n. 56; see *Swinomish Cooperative Land Use Program*, *supra* n. 61; see also *Columbia River Inter-Tribal Fish Commission*, *supra* n. 42 (describing the benefits of the Commission’s “Spirit of the Salmon Fund’s status as a subdivision of tribal government [with] a 7871 Internal Revenue Code (IRC) designation,” and reporting that CRITFC “deals directly with the Internal Revenue Service on a government-to-government basis. As a result, private donors have been receptive to this ‘packaging’ of the Fund’s tax status, and, therefore, are more willing to consider supporting the Fund and CRITFC.”). CRITFC’s success with this funding mechanism has been a model to other tribes. In addition, CRITFC has produced a brochure on IRC 7871 and hosted a conference for potential donors. *See id.*

101. *Swinomish Cooperative Land Use Program*, *supra* n. 61; see also *Umatilla Basin Salmon Recovery Project*, *supra* n. 41 (“Investments in communication are especially important for tribal governments whose programs and policies impact off-reservation constituents. Providing regular updates on tribal government activities, encouraging non-tribal citizens to visit the reservation, and educating outsiders about tribal history and culture can dispel misunderstandings and broaden support for tribal self-governance.”).

102. *Intergovernmental Affairs Department*, *supra* n. 78.

103. *Id.*

104. *See e.g. Zuni Eagle Sanctuary*, *supra* n. 63.

105. *See e.g. id.* (reporting that a federal official described the Zuni-FWS agreement as a “paradigm shift” and having “blazed a trail” for other tribes”); *id.* (noting that the process of consultation used in establishing an eagle sanctuary “has become a model for other Zuni tribal government programs, including a major wetlands project”); see also *Intergovernmental Affairs Department*, *supra* n. 78 (reporting a state commission’s view that “the Grande Ronde Intergovernmental Affairs Department has been a great benefit to all Oregon-based tribes”); *Swinomish Cooperative Land Use Program*, *supra* n. 61 (reporting that the “Swinomish Cooperative Land Use program is an educational model,” that the Swinomish-Skagit County agreement has given the Tribe a “‘seat at the table’ in other important policy discussions” with local governments, and that it has led to “more than a dozen separate agreements with federal, state, county and municipal authorities in the areas of land use, public safety, environmental protection, and utility and public health regulation”); *Wildlife and Fisheries Management Program*, *supra* n. 60 (reporting that the Jicarilla wildlife and fisheries management program is a “model for government programs both within and outside Indian Country,” and that the Tribe has “begun to share its learning” with other tribes, Canadian First Nations, and the State of New Mexico); *Yukon River Inter-Tribal Watershed Council*, *supra* n. 44 (describing the Yukon River Inter-Tribal Watershed Council as “a model of self-determination, governance, and collaboration” including among “Tribes and Native villages along the Kuskokwim River” and the Alaskan City of Nenana).

management of natural resource programs is independent of tribal government politics.”¹⁰⁶

The Joint Agency Management Plan for the Chippewa Flowage exemplifies many of these lessons. According to the “Honoring Nations” staff:

The success of the [Plan] in blocking undesirable developments [on lands surrounding the Flowage] and unifying three governments in the pursuit of individual and common goals is the result of several factors. First, and arguably most importantly, the Tribe possesses a genuine commitment to intergovernmental coordination. This is a mature expression of sovereignty By making the sovereign choice to work cooperatively with these other governments, the Tribe has been able to achieve goals that it could not have achieved alone.

A second factor that contributes to the Plan’s success is its institutionalization. . . . The Tribe refused to depend on informal “understandings” that emerged over the course of its negotiations with partnering governments. Its insistence that the governments’ shared vision be formally expressed in the Plan now allows the partnership to endure beyond the involvement of those individuals who offered critical leadership in its development. This is important . . . because the Plan serves as a tool of education for individuals who become involved with its implementation. Of course, the Plan is a dynamic document that responds to the current interests of its partnering governments, but its existence ensures that revisions to the coordinated management of the Flowage do not occur without their coordinated input. The Plan proves that, as tribes assert their sovereign rights to share management with other governments over precious natural resources, individual leadership is essential, but the institutionalization of the resulting vision is even more important.

A third factor is the astounding effectiveness of the intergovernmental partnership that implements the Plan. This partnership between [tribe, state, and federal government] truly represents the pinnacle of coordinated management. Several distinguishing features set it apart First, in the twelve years that this partnership was in development, the [three] governments not only sought to clarify their own interests, but to understand the interests of the public. . . . Further, the intergovernmental partnership benefited from the unique assets of each individual government. . . . Finally, while the Plan was being developed, the governments did not shy away from drawing upon outside expertise. . . . This willingness . . . did not imply weakness, but strength in self-governance.

Perhaps the most important lesson to emerge from the Plan’s success is that even those governments that have every historical reason not to work together may realize win-win solutions through a willingness to cooperate.¹⁰⁷

And, finally, this excerpt regarding the Nez Perce Tribe’s remarkable accomplishment recovering wolves in Idaho demonstrates the close connections between political and cultural self-determination and the land:

[T]he Gray Wolf Recovery Program has been a success in terms of tribal self-determination and tribal sovereignty. The Nez Perce were able to make a credible offer to

106. *Trust Resource Management*, *supra* n. 42.

107. *Honoring Our Ancestors*, *supra* n. 56.

implement wolf recovery because of the expertise, track record, and reputation the Tribe had earned in earlier wildlife management efforts. Just as these investments in institutional effectiveness and technical capacity enabled the Nez Perce to seize an opportunity for increased self-determination, its effective management of wolf recovery is now opening even more doors—proof that good governance and enhanced self-determination go hand-in-hand. The Tribe's entrepreneurial involvement in wildlife management has similarly increased tribal sovereignty. The Wolf Recovery Plan gives the Tribe a new measure of responsibility over off-reservation treaty lands . . . and promotes sovereign, government-to-citizen or government-to-government relationships between the Tribe and private land owners, the State of Idaho, and other governmental entities.

[I]t is not surprising that the wolf recovery is intertwined in many tribal members' minds with Nez Perce survival and resurgence. The Wolf Recovery Program is an exercise in effective tribal administration, but it is also an investment in culture, community, and nationhood.¹⁰⁸

IX. CONCLUSION

Leading by example and telling stories have long been the Native American way of perpetuating their traditions and educating their youth. The lessons of the Honoring Nations projects are so effective because they are the tribes' own stories. Law school educators can contribute to cooperative resource management, and thus to the resurgence of tribal sovereignty, by facilitating the transmission of these and similar stories, as well as by providing opportunities for tomorrow's attorneys to acquire the skills and the knowledge on which these successes are founded. Much of this will require thinking outside the box, but in the process both we and our students will learn.

108. *Idaho Gray Wolf Recovery*, *supra* n. 54.