

## **Property rights, selective enforcement, and the destruction of wealth on Indian lands**

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**Abstract** This paper reconceptualizes the nature of property institutions in the United States. Conventional economic analysis suggests that the U.S. established private property rights protection as a public good by the end of the nineteenth century. The experience of Indians suggests otherwise. During the mid-nineteenth century, the economic fortunes of settlers on public lands owned by the United States government and Indians diverged. Settlers secured legal property rights and self-governance, while members of Indian nations were forced into an inequitable property system in which the federal government established an institutionalized system to discriminate against reservation Indians. The property system is most appropriately described as a selective enforcement regime in which some groups enjoy credible and effective property rights at the expense of others who confront a predatory state and institutionalized property insecurity. The persistence of the selective enforcement regime explains the persistence of poverty among reservation Indians.

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## Introduction

The United States is often used as an example to illustrate the beneficial consequences of private property rights for economic growth and development. Sokoloff and Engerman (2000) use differences in land policy to explain the reversal of economic fortunes of the U.S. and Spanish America, which started with a similar per capita GDP around 1800 but diverged substantially by the twentieth century. Colonial governments, which in all contexts in the New World initially owned land, confronted important choices about the rules governing availability, price, minimum or maximum acreages, and tax systems to govern disposal of public land. In Spanish America, the governments typically established land oligopolies and very large landholding, obstructing the development of smallholder agriculture. In the U.S., there were few obstacles to acquiring land, which was allocated in small units to encourage transfer of public land into fee simple ownership – the most secure and complete private property right. The greater equality of landholding contributed to more inclusive political institutions, including with the elimination of restrictions on political participation based on wealth and literacy much earlier than in the countries of Spanish America. Compared to other countries, the U.S. exemplifies a rapid transfer of land for private use (Alston, Libecap, and Mueller 1999; de Soto 2000). The combination of private secure private property and inclusive politics explains the economic rise of the U.S., especially in comparison to neighboring countries to its south with lower-quality institutions (Acemoglu and Robinson 2012).

This comparison suggests the continued insight of Adam Smith, who emphasized that an appropriate constitutional framework and limited government is necessary for wealth creation (Brennan and Buchanan 1985; Weingast 2017). It also points to the role of Hayekian rule of law, which is defined by abstract rules that encourage exchange among strangers in the Great Society (Boettke and Candela 2017; Hayek 1988). The U.S. government did its part to enable the creation of markets on a grand scale by creating an empire of private property.

The comparison above also conceptualizes of private property rights protection as a public good. According to a public goods perspective, once the government establishes private property rights institutions, anyone can purchase assets and everyone's rights are enforced by the government, which is the ultimate third-party enforcer (Alchian and Demsetz 1973; Barzel 2002; Coase 1960; Demsetz 1967). Yet property protection can be provided selectively. In analyzing Mexican economic history, Haber, Razo and Maurer (2003) find that selective expropriation of assets was a dominant feature of property institutions, one in which powerful coalitions secured property protection at the expense of others. The emergence of these coalitions enabled the government to overcome the sovereign's dilemma and commit to private property rights for some in society.

This paper clarifies that the U.S. is best understood as a selective enforcement property regime, in particular when we consider property rights to Indian lands. The U.S. government used coercion and diplomacy to increase its landholding from 1787 to 1853 (Frymer 2017). The

government planned to allocate this land through competitive auctions, but settlers did not want to wait for the government to settle treaties with Indian tribes, and more importantly, they did not want to pay for land. To deal with uncertainties and to provide for governance, squatters established land clubs to govern their affairs in the absence of legal recognition. They were numerous and persistent, which led the government to reliably acknowledge their land claims once they occupied land. Eventually, the government began to give the empire of land away in 160 acre sections, in part to flood the new lands with settlers to reduce the cost of policing borderlands (Allen 1991, 2019). In the second half of the nineteenth century, the U.S. army continually opened up opportunities for white settlers to acquire land (Anderson and McChesney 1994). By the end of the nineteenth century, millions of individuals acquired fee simple property rights to land, frequently with substantial benefits.

Rather than recognize the autonomy of tribal nations to govern their affairs, the federal government forced Indians onto reservations. The Supreme Court defined the relationship of tribes to the U.S. government as one of dependence. Federal policy hoped to establish fee simple property rights with the Dawes Act in 1887, but the U.S. government eventually reversed course in 1934, choosing instead to keep land in trusts without rights of alienability (McChesney 1990). The government eventually provided for self-governance, but did not address the fact that the boundaries of tribal nations were arbitrarily drawn and hence a poor fit with preexisting institutions (Dippel 2014). The consequences are profound: per capita income of Native Americans is about a third of the average U.S. citizens (Anderson and Parker 2008, 641). Even with many attempts to provide for local self-governance, reservation Indians are the poorest minority group in the United States (Cornell and Kalt 2000).

One of the contributions of this paper is to illustrate the significance of selective enforcement perspectives on property rights, as well as the predatory theory of the state, which views the scope of government as determined by what it can capture at reasonable cost (Vahabi 2015, 2016). While property for white settlers fits a public good approach, it does not for other groups (Cai, Murtazashvili, and Murtazashvili 2019). Second, this paper reinforces a key idea of Anderson, Benson, and Flanagan (2006), which is that the institutional arrangements on reservations depart fundamentally from capitalism. The costs of socialism are well known (Boettke 2001, 2019). What is often forgotten is that the governance institutions in Indian country are closer to socialism than to capitalism. Third, Adam Smith has been called the first development economist by recognizing that it is not inherent abilities that explain wealth and poverty, but institutions (Easterly 2019). Smith's criticism was directed at those who found slaves inferior, but his ideas also foreshadow a finding in the institutional economics literature on American Indians, which is that the structure of rules, not anything inherent about indigenous societies, explains the extent to which prosperity has proven elusive. Finally, while Acemoglu and Robinson (2019) consider the U.S. as an example of the "narrow corridor" that contributes to the emergence of liberty and riches, the governance of Native Americans is generally outside of the corridor that enables wealth creation. Accordingly, a challenge for more equitable growth in the U.S. is to bring Native Americans into the narrow corridor of liberty.

Section 2 of this paper reviews the property rights literature. Section 3 considers the path for settlers on public land in the nineteenth century. Section 4 contrasts the experience of (white) settlers with Native Americans. Section 5 considers the explanation for the reversal of fortune and what might be done about it. Section 6 concludes.

## Property rights and development

Institutions are the formal and informal rules that influence the behavior of individuals and organizations (North 1990). Property rights are the rules governing ownership in society. Property rights institutions vary on the dimensions of clarity of allocation, alienability, security from trespass, and credibility of persistence (Riker and Weimer 1995). Credibility of persistence refers to the expectation that the government will respect the rights of individuals or communities in the future and so require consideration of the extent of political constraints (North and Weingast 1989; Riker and Weimer 1993). Property rights contribute to economic development by increasing investment incentives, reducing the costs of defending property rights, facilitating gains from trade, and supporting other transactions through collateral functions (Besley and Ghatak 2010). Both private and common property (co-ownership) can encourage productive use of assets as long as individuals or communities are able to exclude others from the resource (Anderson and Hill 1983; Cai et al. 2019; E. Ostrom 1990).

Property rights require both definition and enforcement of rights (Anderson and Leonard 2016). The definition of rights determines physical characteristics to which property rights apply. Enforcement determines the ability to exclude others from rights and depends on both individual investment to secure property and the willingness and ability of the government to do so. Institutions, including property rights, emerge and change in response to costs (Allen 2015; Leeson 2019). Accordingly, the extent to which property rights are enforced depends on the benefits and costs of enforcement, with changes in property rights resulting from changes in those benefits and costs (Barzel 1997; Demsetz 1967).

Property rights can be divided into economic and legal rights, each of which can contribute to wealth creation (Barzel 2002). Economic rights emerge spontaneously, which refers to order that results without conscious design or enforcement under conditions of anarchy (Hayek 1973, chap. 2). According to the anarcho-capitalist perspective, institutions governing trade and ownership emerge in response to the demands of contracting parties even when the state is unable or unwilling to enforce contracts (Anderson and Hill 2004; Benson 1989). For example, Umbeck (1977) argued that private property rights emerged spontaneously during the gold rush that commenced in California in 1848-1849 in an environment in which the government was unable or unwilling to establish a legal framework for free mining. These rights among miners were weak property rights at best, as claim jumping was a way to reallocate property (Clay and Wright 2005; Hadfield 2016), yet they were effective enough to govern a dramatic increase in gold production.

Spontaneously arising property rights are an important feature of all societies (Ellickson 1991). In many cases, self-governance works well (Leeson 2014). That being said, legal

representation of ownership and property is the key to a functional capitalist economy (Bromley 2006; Hodgson 2015). Even de Soto (2000, chap. 4), the libertarian champion of legal titling, emphasized the importance of law (hence, the state) as a source of social order, viewing legal title as the key way to represent the socially useful aspects about assets and to preserve information in a recording system, as well as the important of detailed legal rules to govern the entire process of rights creation. In other words, there wasn't much of a role for self-governance in de Soto's masterful defense of legal titling (Murtazashvili and Murtazashvili 2015).

The process of rights creation depends on the extent to which the government is able to overcome the sovereign's dilemma: any government that can provide property rights can destroy wealth (Weingast 1995). Legal rights emerge when increases in government capacity are accompanied by political constraints. Contracting for rights is likely to depend on political priorities and bureaucratic priorities (Libecap 1989).

Much of the literature describes the emergence of property rights as a public good: once the government establishes a property system, Hayekian rule of law prevails, and the exchange of property rights is governed by market prices. This was what Coase (1960) envisioned, as well as what Alchian, Barzel, and Demsetz focused on (Boettke and Candela 2014). However, property protection is often provided selectively to some at the expense of others (Haber, Razo, and Maurer 2003). Governments often reallocate rights in response to changes in political priorities. They can also establish institutionalized inequities in property rights institutions whereby some are privileged in the property rights regime.

Besides Mexico historically, China is an important example of a selective enforcement regime. The property regime is built around institutionalized discrimination against rural land. Chinese villagers own land collectively under the hukou system. Hukou, which existed long before 1949 and persists in the reform era that started in 1978, is an equitable common property regime whereby individuals have a right to land but are tied to their collective, with limited rights of alienability (Andreas and Zhan 2016). Under socialist collectivization, the state captured the surplus of agricultural production from hukou rights holders, ultimately destroying production (Dikötter 2010). After the reform era began under Deng Xiaoping's leadership, land use rights are more common, though local governments have the authority to acquire land for sale in urban land markets, capturing the arbitrage as a source of revenue (Ho 2017; Rithmire 2015). The institutionalized discrimination has been a source of widespread protests, resulting to some extent in efforts by China's autocratic government to sugarcoat the bitter bill of expropriation by paying villagers more for their land and offering more opportunities to participate in the process of land governance. The government has also pursued decentralization to commit to capitalist development, with some success (Liu and Weingast 2018).

The selective enforcement perspective is based on a predatory theory of the state. In both the cases of Mexico and China, there is no presumption that the government provides public goods, nor that political decision-makers can contract to limit the scope of the state, as is suggested in a long tradition from Thomas Hobbes through modern public choice theorists (Buchanan 1975; Buchanan and Tullock 1962). Rather, what determines the scope of government is what can be appropriated (Vahabi 2016). In addition, government behavior

depends on the structure of rules. Increasing state capacity can increase the ability to provide property rights protection, but political decision-makers are unlikely to do what is in society's interests unless political institutions constrain them from expropriation of land. As Boettke and Candela (2019) explain, it is necessary to consider the historical process of increasing state capacity alongside constraints to understand whose property rights are protected.

According to the selective enforcement perspective, the government has incentives to establish property rights when it is profitable to do so, as Olson (1993) suggests. But there is no reason to rule out that the government will provide property rights protection for some at the expense of others. Selective enforcement also includes maintaining flexibility to reallocate opportunities to free up land for settlement to groups that are privileged in the political regime. In China, business enterprise is privileged; the property rights of villagers are precarious and subject to expropriation. In the U.S., several groups have been historically excluded from property protection. This includes black people who were owned under slavery and who enjoyed lesser protections through formal and informal institutions after the Civil war. Women were treated as second class citizens as far as property rights protection is considered prior to the twentieth century (Lemke 2016).

The theory of selective enforcement shares with the public goods perspective on property rights that private and common property rights, when locally tailored, will be a source of growth in the economy. They differ in that the selective enforcement theory anticipates that governments will establish property rights when they cannot keep people off land and can enforce rights at reasonable cost, as well as provide property rights protection selectively, including through intervening to redistribute or reallocate rights to favor privileged groups. Below, I use the selective enforcement perspective to interpret the evolution of property institutions in the U.S., as well as to suggest that the persistence of selective enforcement can explain the poverty of many on Indian lands compared to the rest of the country.

## Empire of property

A property rights regime requires clear definition of rights, enforcement, alienability, and credibility of persistence. By the end of the nineteenth century, the U.S. government transformed its massive stock of publicly owned land into a vast empire of private property. The resulting private property institutions fared well on each dimension: millions of individuals secured legal title to land, often in 160 acre sections (through fraud was pervasive and many secured much more than that through government programs), and those who secured property rights had few reasons to fear for the security of their land or that the government would take away those rights.<sup>1</sup>

Although the accounts mentioned in the introduction view the U.S. as an example of rapid emergence of private property rights, the extension of property rights for settlers was a

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<sup>1</sup> Not all groups secured private property rights. Ranchers had to rely more on self-governance than farmers because the federal government continued to push desert farming even though the land was best for ranching (Anderson and Hill 2002).

gradual process. The colonial governments in North America acquired land through grants from European sovereigns even though the land was used by American Indians. The colonial governments routinely gave land away to individuals in part to create a buffer between towns and Native Americans (Hibbard 1924). The fee simple property rights established this way were called “head rights” and would were more or less the system demanded by proponents of free land, a hope that was brought to fruition with the Homestead Act after the Civil War.

Free land only emerged after nearly eight decades of efforts by the U.S. government trying to keep squatters off federal land. The reason why the government had to do this was because of its remarkable success in acquiring land. After the Revolutionary War, the American government entered its land acquisition period. The acquisition of land was supported by ideological and social support for Manifest Destiny, a principle which coordinated settlers and political decision-makers not only on the acceptability, but a moral justification, to acquire and settle frontier land. The American state was successful in this regard, acquiring over 1.2 billion acres of land between 1781 and 1853, including the Louisiana Purchase, which in 1803 gave the U.S. government rights to the entire middle part of the country, including its most fertile agricultural land.

The government quickly established an institutional framework to establish private property rights. The Land Ordinance of 1785 and Northwest Ordinance of 1787 established the rectangular survey system (RSS). The defining feature of the RSS was to allocate land in large, rectangular sections. Under the RSS, a section of land was 640 acres, which could then be divided into 160-acre sections for smallholder farming. In comparison to the British metes and bounds system, which established property rights based on geographic features of land, the RSS reduced the transaction costs of allocating land by its simplicity and ability to divide and subdivide the grants into smaller sections for agriculture (Libecap and Lueck 2011). The Northwest Ordinance also established the principle of self-governance in the territories, allowing them to choose their form of government (North and Rutten 1987). The Constitution established federalism, separation of powers, and robust authority for the federal government to promote commerce, while at the same time reserving authority of health, welfare, and crime to the state governments (Mittal, Rakove, and Weingast 2011; Weingast 1997).

The Land Ordinance and Northwest Ordinance also established auctions to allocate public land competitively to the highest bidder. The government during this time had almost no power to tax. Indeed, the Articles of Confederation lasted less than a decade because the voluntary contribution system institutionalized a collective action problem that resulted in a perpetually underfunded Continental Congress (Dougherty 2001).<sup>2</sup> Initially, the U.S. government sold land in large amounts, such as several sections. The idea was that it could then be subdivided in secondary land markets into sections and quarter-sections. The allocation of land in large sections also reduces the government’s transaction costs of transferring land for private use. Nonetheless, opposition to the system emerged because of a fear it was not responsive to the demands of smallholders. By the early 1800s, there were already modifications that allowed land

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<sup>2</sup> The voluntary contribution system also kept down the size of the government, and so it was not without benefits (Sobel 1999).



for sale in smaller sections more in line with the emergence of small-scale agriculture, as well as provisions for credit for those who did not have the money to pay for the land up front.

Even with these modifications, the auction system came into conflict with the demands of many settlers who preferred to secure land more cheaply. One possibility was collective action to change the law, including giving to anyone a small amount of land, such as 160 acres. Such changes would be time consuming and so rather than pay the market prices, individuals routinely occupied land prospectively. Land speculators who purchased land lobbied Congress to keep squatters off land because they believed illegal occupation reduced the value of their land (Swierenga 1977). However, the distinction between a squatter and a speculator was not always clear. Many individuals who squatted on government land were small small-scale speculators. As a result, these political conflicts often involved disputes between big-time and small-scale speculators (Bogue and Bogue 1957).

Regardless of whether they were interested in becoming yeoman farmers or making a quick profit, what is clear is that the government soon had a squatter “problem.” But the squatters themselves proved quite capable of self-governance. To provide for defense in the anarchy of the frontier, settlers often established claim clubs after they migrated. Claim clubs were self-governance associations that provided for a system of governance, including rules for claiming land, a process to resolve disputes over land, and rules specifying appropriate behavior for members. These claim clubs generally allowed people to claim land in amounts of 160 to 320 acres. These frontier governments emerged spontaneously, but these land clubs had a definitive organizational structure and members collectively enforced property rights (Murtazashvili 2013).

The members of these land clubs were remarkably successful in securing legal rights fairly quickly. They did so in one of two ways. The first was to collude at auctions. Once the government opened up a territory for settlement, federal bureaucrats were to auction off land. Individuals would jump the gun, settling land and forming a pact that nobody would bid against a member of a club. They typically wrote down as much in their constitutions. They enforced these rules through coercion and intimidation when anyone who was not a member of a club showed up to bid competitively on land. The preambles of these clubs often specified bidding against the members of a club as “anti-social” behavior (Dick 1970). In Iowa, for example, dozens of these clubs occupied land before the federal government auctioned off land, allowing the members to secure land for the government-mandated minimum price (Bogue 1958). The auction was in name only; the bargaining power of these groups shifted the balance of power toward society.

Another way to secure land once they occupied it was through a preemption law, which were colloquially known as squatters’ rights. Through preemption, Congress could recognize the rights of individuals who occupied land before authorization. To acquire a preemption law, one had to prospectively occupy land. Settlers could fill out a claim for 160 acres of land for a price of \$1.25 an acre once they proved they occupied land. Individuals had several years to pay, with generous interest rates, but there was not really much enforcement for non-payment, as evictions due to non-payment were essentially non-existent (Stephenson 1917).

From 1800 to 1854, Congress enacted dozens of preemption laws. The most important was a general preemption law in 1830, which reflected the increasing costs of keeping squatters off public land. Rather than sweep them away, the government eventually saw the benefits of simply allowing them to take land (Kanazawa 1996). After 1830, preemption was a fait accompli: squatters occupied land as soon as they knew land would become available, and Congress followed with a preemption bill. For example, Kansas was occupied in a few months prior to becoming a state, and Congress followed with a preemption bill soon after. In 1830, the government also approved the Indian Removal Act, which provided a land swap for Indians to get them to relocate west of the Mississippi, which had the effect of disposing them of traditional and more valuable lands in the east.

Preemption required people to pay for land, and to occupy it prospectively. Others agitated for free land. The Free Land political party formed, and the Republican Party's platform included a commitment to free land and free men before the Civil War (Foner 1971). Homestead laws were passed by the House several times in the 1850s but failed in the Senate. In 1859 it was vetoed by President James Buchanan. According to Buchanan's veto message, free land would devalue the property rights of pre-emptioners who paid for their land.<sup>3</sup> Once the Civil War started, the wartime Congress passed, and President Lincoln signed the Homestead Act of 1862. Unlike preemption, anyone who fit certain categories could claim 160 acres for free; there was no requirement of preemption. Theoretically, homesteads eliminated the need to occupy land, though as Allen (1991) notes, people did so anyway to stake out the best land.

There were other changes that contributed to frontier development, as well as hiccups along the way. For example, barbed wire which increased land values and production in some areas with its near-universal adoption from 1880 to 1900 (Hornbeck 2010), as well as reduced the demand for cowboys keeping track of cattle (Anderson and Hill 2004). In some states, property was allocated by racing, with some costs arising from the competition to get the "best" land (Allen and Leonard 2019). Another problem was the incongruity between policies to encourage agriculture and the geography of the Western U.S., which contributed to farm busts (Hansen and Libecap 2004; Libecap and Hansen 2002). Today, there also remains high amounts of state ownership of land even though there is no real rationale for it (Libecap 2007). Nonetheless, by the end of the nineteenth century, the U.S. government did its part to create an empire of private property rights.

## The destruction of Indian property rights

The U.S. government gave settlers what they wanted—private property rights and self-governance. American Indians, in contrast, were given increasing rules and regulations that eliminated their ability to govern their economic fortunes. This process began as raiding began to dominate a strategy of trading with Indian nations, in particular after the Civil War. Federal policy from 1887 to 1934 consisted of a failed attempt to establish fee simple property rights on

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<sup>3</sup> As Perry Ferrell (2019) explains, such opposition to land titling can be understood with public choice theories of rent-seeking: those with land oppose create of rights because it devalues their own claims.

reservations. Rather than free up private property, the “solution” after 1934 was to double down on bureaucratic management in the trusteeship system. Tribes were eventually given the ability to establish their own governance institutions, but they were constrained by economically devastating historical events (e.g., the near-extinction of bison contributed to long-run poverty of bison-dependent tribes), as well as the arbitrariness of the process of forcing Indians into reservations.

### From trading to raiding

John Locke, in his *Second Treatise on Government*, expressed the view that private property rights and civilization are one and the same. Indian policy in the second half of the nineteenth and early twentieth century was based on a similar presumption that indigenous groups did not have property and that its creation was necessary to civilize them and to assimilate them into Western “culture.”

The solution—the creation legal rights—was based on a presumption that Indians did not have property rights. In truth, property rights emerged spontaneously among Native American tribes prior to the arrival of European settlers. In the eastern part of North America, Indians were relatively sedentary and more dependent on agriculture, resulting in the emergence of clearly defined and enforced property rights demarcated with recording system such as marking corners of fields with stones bearing the names of the owning clan (Anderson and Leonard 2016). Indian nations in the southeast (Cherokee, Choctaw, Chickasaw, and Creek) had similar agricultural economies, integrated to such an extent with British settlers that many became yeoman farmers cultivating five to seven acres. A wealthier slaveholding and property owning class emerged, which persisted even after the tribes were deported to Oklahoma in the 1830s (Flanagan, Alcantara, and Le Dressay 2010).

In the west, nomadic tribes established property rights to capital assets, such as bison, by marking hunting arrows. The property rights for buffalo created incentives to participate in the buffalo hunts by coordinating hunters on ownership (Benson 2006). These rules also included rules for horseman marking arrows so that more proficient hunters were rewarded for their effort with choice cuts of meat on buffalo hunts. .

The Indians’ property rights arrangements evolved in response to local economic conditions in response to the demands of contracting parties, as anticipated by the early theories of property rights (Anderson and Hill 1975). These property rights institutions also created the value that enabled the emergence of markets. For example, the vibrant trade in buffalo hides depended in part on institutions to govern buffalo hunts. The absence of clearly defined property rights institutions, along with increase in prices of goods, contributed to commons problems. Buffalo were depleted to around 100 in a ten year period where 10 to 15 million were killed because of incomplete property rights and increasing international demand for leather (Taylor 2011).

Conservation did not reflect a unique Native American environmental ethic. Rather, conservation depended on institutions—traditions, rules, laws and habits—that encouraged

Indians to conserve natural resources, as all societies must (Anderson 1997). Tribes were also required to contribute to commons problems in the presence of insecure property rights. In Hudson's Bay Trading Companies, increasing European demand depleted beaver population when Native property rights were not clearly defined and enforced, while monopsonist conditions contributed to stable beaver populations (the companies did not pay Natives more) (Carlos and Lewis 1999).

Property rights created wealth, but trade requires institutions to encourage exchange. Political decision-makers also require incentives to enable trade. As Anderson and McChesney (1994) explain, the choice confronting government in interactions with indigenous people is to trade (realizing mutual benefits) or raid (investing resources in coercion). The choice to raid or trade depends on the perceived values of territory of institutions as well as the costs of negotiating and using force. Trade creates wealth but only emerges when the sovereign gains from trade. Otherwise, the government chooses dispossession and displacement. For example, the Blackfeet in the north and Comanche in the south used raiding because of superior military force. The mobility of the horse created more opportunity for conflict as tribes competed for larger hunting territories and more raids to steal horses, resulting in more centralized governance.

In interactions with whites, the Indian Nations and U.S. government vacillated between trading and raiding. In the East, tribes had clearly defined boundaries, a comparative advantage in weapons (bows and arrows), which were superior to single shot guns. As the raid and trade theory anticipates, governments negotiated over disputes territory even as settlers began to occupy land, recognizing the Indian claims to territory to an extent. As Umbeck's (1977) theory of property rights suggests, what drives the emergence of respect for ownership and incentives to trade is relative equality of fighting skill. Once local militias were replaced by the U.S. Army after the Civil war, the costs of raiding declined, and tribes were subjugated at the conclusion of the Indian Wars of the last half of the nineteenth century.

The government had to establish a political relationship with tribes. The foundational political institution governing the relationship between the U.S. government and reservation Indians is trusteeship. In *Cherokee Nation v. Georgia* (1831), Chief Justice John Marshall wrote that tribes are distinct political societies but not a foreign state. Reservations are "domestic dependent nations" and the federal government's relationship to tribes one of a "ward to his guardian." The dissent did not even think the Indians were a nation as they were so low a grade of organized society. The tribes were technically sovereign, but Congress could redefine institutions governing Indian lands based on political and bureaucratic priorities. Eight decades later, the Burke Act 1906 explained that land would be held in trust until "competent and capable" by the federal government, as well as linked land ownership to citizenship. This affirmed trusteeship, but also continued to deny the tribal nations self-sufficiency. Thus, while the federal government recognized the land claims and autonomy of (white) settlers, the political institution governing Indian lands was one that presumed they could not govern themselves.

## Homesteads for Indians? The failure of Allotment, 1887 – 1934

The policies on American Indian reservations are an example of how colonial land policy stunted development (Leonard, Parker, and Anderson 2018). One challenge Indians were given land that was not worth as much, such as with less gold and silver (Dippel 2014). But the problems were much deeper. Good institutions can overcome poor endowments. The more fundamental challenge for Indian lands was that the government reallocated land from Indians for white settlers and continually disempowered their ability to govern their own affairs.

The Indian Allotment Act of 1887 (commonly known as the Dawes Act) promised Indian nations would become yeoman farmers. The Dawes Act nominally meant to create 160 acre sections of land, much akin to an Indian homestead law. Yet bureaucracy was much more of a constraint. Under the Act, lands were first placed in a trust managed by BIA superintendents – the Indian agents.

It failed, as few became farmers. As Carlson (1981b, 128) notes, the problem was not with the Indians but their rules: “the allotment system itself discouraged Indian farmers; given the appropriate incentives some Indians did make progress as farmers.” When land was in trust status, individuals had limited property rights and were prevented from selling or collateralizing allotments. In de Soto’s (2000) terminology, it was dead capital. For individuals to secure fee simple property rights, BIA agents had to declare allottees “competent,” in which case they secured a legal title and right of alienability. The land institutions under trusteeship establish what could be described as land use rights. Indian land issue is regulated by the Bureau of Indian Affairs. Indians do not hold legal title and so they cannot use the land to acquire additional collateral.

The main consequence of the Indian homestead policy was in fact dispossession of tribal land. Leonard, Parker and Anderson (2018) and Carlson (1981a) explain that the U.S. government prioritized allotting reservations with more attractive land because “surplus” tribal lands after allotment could be opened for white settlement. According to Banner (2005), the result of these policies was a transfer of millions of acres of productive farmland to non-Indians even though the Dawes Act was meant to improve prospects for Indian development. By the time of the Indian Reorganization Act in 1934 (also known as the Howard-Wheeler Act), around 30 million acres were retained by tribes as trust land, 17 million as allotted trust land, and 22 million acres of fee simple—most owned by non-Indians.

### From allotment to trusteeship

The Dawes Act was another in a long line of policies that benefitted settlers who had since the Revolutionary War proven adept at manipulating land laws to serve their interests. Eventually, the government recognized that allotments were not creating many Indian homesteads. As a result, the IRA froze land into trusts with no new allotments in 1934. It was hoped that the trusteeship would stop the transfer of fee simple ownership to non-Indians.

There were many flaws with trusteeship as far as private property rights are concerned. Under trusteeship, individuals possess land, but their ownership rights are severely restricted in the following ways: trust land cannot be used as collateral (trust land is dead capital perpetually); changes in trust land require BIA approval, which is time consuming; and the IRA requires that heirs divide up ownership once inherited. The division of land into small parcels undermines economies of scale. Constraints such as this were not unique to Indian lands. Size constraints also destroyed production by black farmers under the 40 acres program, which was far too small an allotment to compete with the 160- or 320- acre sections of white farmers (Miller 2011). Such divisions are also common in Islamic institutions and contributed to the divergence of Europe from the Middle East (Kuran 2011; Rubin 2017).

Trusteeship reduced agricultural productivity. According to Anderson and Lueck (1992), agricultural productivity on 39 western reservations was highest on fee simple lands, with individual trust land 30 to 40 percent less productive and tribal trust lands being 80 to 90 percent less productive. Land was divided up into small sections, with restrictions on alienability. The fractionalization was largely a result of a complex bureaucratic rules (Russ and Stratmann 2016). After controlling for fractionalization, effects of private land on reservations are positive, implying poor institutions and poor land both contribute to poverty (Leonard, Parker, and Anderson 2018).

There were also important ways that institutions reduced the ability of communities to respond to economic challenges and crises. Bison is an example where property was important and worked, but then world prices contributed to commons problems. This had a massive impact on Indians. According to Feir et al (2019) , the slaughter of bison reduced income in bison-reliant societies by 20 to 40 percent per capita. The reason why societies could not adjust was because of federal Indian policy that limited out-migration from reservations and restricted employment opportunities to crop-based agriculture.

### Tribal governance and underdevelopment

Since the 1970s, tribes have had more opportunities for self-governance. Yet as Cornell and Kalt (2000) emphasize, tribal fortunes have diverged even with self-governance. They consider several possibilities: poor land, lack of education, lack of access to capital, and institutional and tribal governance. Tribal governance provides an especially important explanation for the wealth and poverty on Indian country, as does the initial boundaries.

The boundaries problem creates a structural challenge for development. The underlying challenge is a familiar one to colonial and socialist governance, each of which routinely defined arbitrary boundaries. Africa and the Soviet Union are two of the most obvious examples of establishing rules on paper that do not correspond to empirical states. According to Alesina, Easterly, and Matuszesk (2011) find that “artificial states”—those with borders created arbitrarily that divide nationalities, as in much of colonialism—perform less well than empirical states. The problem with artificiality is that such arbitrariness gives territories to groups when others claim it (thereby creating land grievances), splitting ethnicities (frustrating national

ambitions of groups) and combining into a single country groups that wanted independence. Borders can be rearranged, often improving governance (Alesina and Spolaore 1997). Another challenge is that the extent to which new institutions encourage development depends on their fit with preexisting institutions and culture, including administrative capacity (Berkowitz, Pistor, and Richard 2001; Boettke, Coyne, and Leeson 2008).

The initial starting point created a challenge for tribes. Many tribes have governance institutions that were not of their own design. The federal government presented them with constitutions (mostly in the 1930s). With increasing tribal sovereignty, the tribes might find that their rules are not a fit with their culture. But the government also brought diverse groups together, many of whom did not have a shared history of culture. Dippel (2014) considers the consequences of forced integration of historically autonomous tribal bands undermines economic development. Forced integration of groups into shared governance undermined economic development. Reservations that combined multiple sub-tribal bands when they were formed are 30 percent poorer. These social divisions reduce the quality of governance and then undermine local economic development.

Cornell and Kalt (1998, 2000) provide additional insight into the challenge of tribal development, considering the design of tribal governance institutions. They focus more on the details of Indian constitutions in the tradition of constitutional political economy (e.g., Persson and Tabellini 2005). They find that separation of powers is as important in Indian country as anywhere else, including to limit corruption. The range of tribal solutions to limiting government are fairly broad. Sometimes a tribal council elects a chairperson, not the government. The power of the chair is dispersed, but there may be “fiefdoms” around individual council members. Some tribes form a strong and fairly independent judiciary. Tribes may also allow disputes to be resolved by outside parties through limits on adjudication Tribes may also delineate authority based on strict constitutional or customary norms. Through rich studies of governance on tribes, they find that self-governance is necessary for development; that constitutional design is important as well; and that the extent to which the formal institutions fit with cultural institutions, including whether tribes include many nations or a few, contribute to economic development.

If afforded good institutions, Native Americans prosper. Anderson and Parker (2008) evaluate the relationship between legal institutions and economic growth. Tribal governments face two challenges to committing credibly to property rights: they can change contract terms ex post by claiming sovereign immunity, and they can selectively enforce contracts biasing the contracts. Such “lawlessness” provided a justification for Public Law 280, which was passed in 1953 and implemented in the 1950s and 1960s and forces reservations to turn jurisdiction over states in which they reside under the theory that state courts. They find that ceding authority to a more credible sovereign—the state governments and their courts—improves security of property rights institutions.

## Who is left out of the narrow corridor?



Daron Acemoglu and James Robinson (2019) emphasize that the balance between state and society determines when liberties emerge. They use the U.S. as an example of a country that falls in the narrow corridor characterized by political and economic liberties. Concerns about falling out of the narrow corridor have to do with things like whether there might be democratic backsliding with the Trump Administration (Acemoglu 2017; Levitsky and Ziblatt 2018).

Although there is much to praise about U.S. institutions, Indians have for the most part been outside the narrow corridor. The narrow corridor thesis can explain this: the state—in this case, the U.S. government—dominates Indian society and cultural institutions.

The notion of the narrow corridor also provides insight into the disparities within Indian reservations. The best-designed Indian institutions of governance promoted wealth creation, in particular because they were within the narrow corridor. Cornell and Kalt (2000) explain that the Crow is traditionally a clan and warrior society but was a constitutional general council with thousands of voting-age tribal members participating. There is a formal constitution but no separation of powers. The Cochiti Pueblo of New Mexico do not have a written constitution and are governed by a religious theocracy: a religious leader selects a governor, who then selects a council and other positions, but the people who fill the positions come from different groups, and so there are substantial checks and balances. The Crow institutions, to return to the example, are dominated by society. The Cochiti are in the corridor, and wealth results.

## Getting into the corridor

What can be done to improve development prospects on Indian lands? One possibility is to create a polycentric system of governance. According to Vincent Ostrom (1994, 2008), the defining feature of polycentricity is autonomy of communities to make decisions on their collective futures. The relationship between federal governments and tribes have never been polycentric. Trusteeship provides for decentralized governance, but there is not meaningful autonomy, including to establish property rights institutions.

There also remains a massive gap in institutional quality on and off Indian reservations. Opportunities to participate in quality institutions is important. The best available evidence suggests that assimilation can have benefits. Gregg (2018) finds that reservations that sent a larger share of students to off-reservation boarding schools have higher graduation rates, higher per capita income, and lower poverty rates. These schools provide an opportunity, much as does moving disputes into state courts.

There should also be a choice. One of the most essential aspects of self-determination is the right of a community to choose assimilation, rather than to have it forced upon its members. More ability to move off reservation would seem to be a promising way to improve prospects for wealth creation of Indians.

It is also possible to reconsider the past. It is certainly the case that institutions, once in place, are persistent (Liebowitz and Margolis 1995). Yet it is also a fact that artificial states are



socially constructed and under the right conditions, their boundaries can change. It seems clear that redefining boundaries of Indian tribes is a less formidable challenge than such changes involving international boundaries. In addition, any such changes should be the result of a deliberative process.

Beyond these changes, it may make sense to simply allow Indians to decide what they want with their land, free of bureaucratic constraints. Self-governance requires not only the writing of constitutions, but the rights to develop economic institutions in response to local conditions and local demands. Establishing an empire by giving away land eventually made sense for the U.S. government. On Indian lands, what may be necessary is to give away political and economic control.

## Conclusion

The U.S. is often described as a private property regime, but we should ask in any regime whose property rights are protected? For Indians, property security is elusive. The governance institutions established a selective enforcement regime that discriminates against reservation Indians.

These findings suggest that a more robust capitalism is necessary for Indian country. This view contrasts with the criticism of capitalism, some of which view possessive individualism as contributing to a crisis of capitalism (Bromley 2019; Piketty 2014). Yet a crisis of capitalism seems a much better situation than to be given socialistic institutions that the U.S. government established on Indian lands starting with the Supreme Court's decisions establishing trusteeship and which continued with the Dawes Act, Indian Removal Act, and Indian Reorganization Act.

There is also a major challenge that does not apply to most socialist economies. It is clear now that socialism is not robust (Boettke and Leeson 2004). The underlying reason why it fails has to do with information and incentive problems facing the government (Leeson and Subrick 2006; Pennington 2011). But failures of socialism focus on its breakdown as an economy-wide economic system. They do not consider enclaves of socialism in an overall capitalist economy. The socialism on Indian lands is never going to destroy the American economy. That's part of the reason why it persists: Indians are easy enough for most of the country to forget about, and the U.S. economy is strong enough to afford socialist enclaves. The entire area of reservations is about 55 million acres – compared to 640 million acres owned by the federal government – and the four largest tribes—Navajo, Cherokee, Sioux, and Chippewas—have around 800,000 members. Thus, a key challenge to addressing the situation will be to overcome political indifference that arises from the small size of the economic on reservation lands that allows one of the most capitalistic countries in the world to “afford” its socialism.

## References

- Acemoglu, Daron. 2017. "We Are the Last Defense Against Trump." *Foreign Policy*.
- Acemoglu, Daron, and James Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. New York: Crown Business.
- Acemoglu, Daron, and James A. Robinson. 2019. *The Narrow Corridor: States, Societies, and the Fate of Liberty*. New York: Penguin Press.
- Alchian, Armen A., and Harold Demsetz. 1973. "The Property Right Paradigm." *Journal of Economic History* 33(1): 16–27.
- Alesina, Alberto, William Easterly, and Janina Matuszeski. 2011. "Artificial States." *Journal of the European Economic Association* 9(2): 246–77.
- Alesina, Alberto, and Enrico Spolaore. 1997. "On the Number and Size of Nations." *The Quarterly Journal of Economics* 112(4): 1027–56.
- Allen, Douglas W. 1991. "Homesteading and Property Rights; Or, How the West Was Really Won." *Journal of Law and Economics* 34(1): 1–23.
- . 2015. "The Coase Theorem: Coherent, Logical, and Not Disproved." *Journal of Institutional Economics* 11(2): 379–90.
- . 2019. "Establishing Economic Property Rights by Giving Away an Empire." *The Journal of Law and Economics* 62(2): 251–80.
- Allen, Douglas W., and Bryan Leonard. 2019. "Rationing by Racing and the Oklahoma Land Rushes." *Journal of Institutional Economics*.
- Alston, Lee J., Gary D. Libecap, and Bernardo Mueller. 1999. *Titles, Conflict, and Land Use: The Development of Property Rights and Land Reform on the Brazilian Amazon Frontier*. Ann Arbor, MI: University of Michigan Press.
- Anderson, Terry L. 1997. "Conservation-Native American Style." *The Quarterly Review of Economics and Finance* 37(4).
- Anderson, Terry L., Bruce L. Benson, and Thomas Flanagan. 2006. *Self-Determination: The Other Path for Native Americans*. Stanford University Press.
- Anderson, Terry L., and Peter J. Hill. 1975. "The Evolution of Property Rights: A Study of the American West." *The Journal of Law and Economics* 18(1): 163–79.
- . 1983. "Privatizing the Commons: An Improvement?" *Southern Economic Journal* 50(2): 438–50.

- . 2002. “Cowboys and Contracts.” *The Journal of Legal Studies* 31(S2): S489–514.
- . 2004. *The Not so Wild, Wild West: Property Rights on the Frontier*. Palo Alto, CA: Stanford University Press.
- Anderson, Terry L., and Bryan Leonard. 2016. “Institutions and the Wealth of Indian Nations.” In *Unlocking the Wealth of Indian Nations*, ed. Terry L. Anderson. , 3–17.
- Anderson, Terry L., and Dean Lueck. 1992. “Land Tenure and Agricultural Productivity on Indian Reservations.” *The Journal of Law and Economics* 35(2): 427–54.
- Anderson, Terry L., and Fred S. McChesney. 1994. “Raid or Trade? An Economic Model of Indian-White Relations.” *Journal of Law and Economics* 37(1): 39–74.
- Anderson, Terry L., and Dominic P. Parker. 2008. “Sovereignty, Credible Commitments, and Economic Prosperity on American Indian Reservations.” *The Journal of Law and Economics* 51(4): 641–66.
- Andreas, Joel, and Shaohua Zhan. 2016. “Hukou and Land: Market Reform and Rural Displacement in China.” *The Journal of Peasant Studies* 43(4): 798–827.
- Banner, Stuart. 2005. *How the Indians Lost Their Land: Law and Power on the Frontier*. Harvard University Press.
- Barzel, Yoram. 1997. *Economic Analysis of Property Rights*. New York: Cambridge University Press.
- . 2002. *A Theory of the State: Economic Rights, Legal Rights, and the Scope of the State*. New York: Cambridge University Press.
- Benson, Bruce L. 1989. “The Spontaneous Evolution of Commercial Law.” *Southern economic journal*: 644–61.
- . 2006. “Property Rights and the Buffalo Economy of the Great Plains.” *Self-determination: The other path for Native Americans*: 29–67.
- Berkowitz, Daniel, Katharina Pistor, and Jean-Francois Richard. 2001. “Economic Development, Legality, and the Transplant Effect.” *European Economic Review* 47(1): 165–95.
- Besley, Timothy, and Maitreesh Ghatak. 2010. “Property Rights and Economic Development.” In *Handbook of Development Economics*, Elsevier, 4525–95.
- Boettke, Peter J. 2001. “Calculation and Coordination.” *Essays on socialism and transitional political economy*. London & New York: Routledge.
- . 2019. “Property, Predation and Socialist Reality.” *Journal of Institutional Economics*: 1–13.

- Boettke, Peter J., and Rosolino Candela. 2019. “Productive Specialization, Peaceful Cooperation, and the Problem of the Predatory State: Lessons from Comparative Historical Political Economy.” *Public Choice*.
- Boettke, Peter J., and Rosolino A. Candela. 2014. “Alchian, Buchanan, and Coase: A Neglected Branch of Chicago Price Theory.” *Man and the Economy* 1(2): 189–208.
- . 2017. “The Liberty of Progress: Increasing Returns, Institutions, and Entrepreneurship.” *Social Philosophy and Policy* 34(2): 136–63.
- Boettke, Peter J., Christopher J. Coyne, and Peter T. Leeson. 2008. “Institutional Stickiness and the New Development Economics.” *American Journal of Economics and Sociology* 67(2): 331–58.
- Boettke, Peter J., and Peter T. Leeson. 2004. “Liberalism, Socialism, and Robust Political Economy.” *Journal of Markets and Morality* 7(1): 99–111.
- Bogue, Allan G. 1958. “The Iowa Claim Clubs: Symbol and Substance.” *The Mississippi Valley Historical Review* 45(2): 231–53.
- Bogue, Allan G., and Margaret Beattie Bogue. 1957. “‘Profits’ and the Frontier Land Speculator.” *The Journal of Economic History* 17(01): 1–24.
- Brennan, Geoffrey, and James M. Buchanan. 1985. *The Reason of Rules: Constitutional Political Economy*. New York: Cambridge University Press.
- Bromley, Daniel W. 2006. *Sufficient Reason: Volitional Pragmatism and the Meaning of Economic Institutions*. Princeton, NJ: Princeton University Press.
- . 2019. *Possessive Individualism: A Crisis of Capitalism*. Oxford University Press.
- Buchanan, James M. 1975. *The Limits of Liberty: Between Anarchy and Leviathan*. University of Chicago Press.
- Buchanan, James M., and Gordon Tullock. 1962. *The Calculus of Consent*. University of Michigan Press Ann Arbor.
- Cai, Meina, Ilia Murtazashvili, Jennifer Murtazashvili, and Raufhon Salahodjaev. 2019. “Individualism and Governance of the Commons.” *Public choice*.
- Cai, Meina, Jennifer Murtazashvili, and Ilia Murtazashvili. 2019. “The Politics of Land Property Rights.” *Journal of Institutional Economics*.
- Carlos, Ann M., and Frank D. Lewis. 1999. “Property Rights, Competition, and Depletion in the Eighteenth-Century Canadian Fur Trade: The Role of the European Market.” *Canadian Journal of Economics*: 705–28.

- Carlson, Leonard A. 1981a. *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming. Contributions in Economics and Economic History*. Greenwood Press.
- . 1981b. “Land Allotment and the Decline of American Indian Farming.” *Explorations in Economic History* 18(2): 128.
- Clay, Karen, and Gavin Wright. 2005. “Order without Law? Property Rights during the California Gold Rush.” *Explorations in Economic History* 42(2): 155–83.
- Coase, Ronald H. 1960. “The Problem of Social Cost.” *Journal of Law and Economics* 3: 1–44.
- Cornell, Stephen, and Joseph P. Kalt. 1998. “Sovereignty and Nation-Building: The Development Challenge in Indian Country Today.” *American Indian Culture and Research Journal* 22(3): 187–214.
- . 2000. “Where’s the Glue? Institutional and Cultural Foundations of American Indian Economic Development.” *The Journal of Socio-Economics* 29(5): 443–70.
- Demsetz, Harold. 1967. “Toward a Theory of Property Rights.” *American Economic Review* 57(2): 347–59.
- Dick, Everett. 1970. *The Lure of the Land: A Social History of the Public Lands from the Articles of Confederation to the New Deal*. University of Nebraska Press.
- Dikötter, Frank. 2010. *Mao’s Great Famine: The History of China’s Most Devastating Catastrophe, 1958-1962*. Bloomsbury Publishing USA.
- Dippel, Christian. 2014. “Forced Coexistence and Economic Development: Evidence from Native American Reservations.” *Econometrica* 82(6): 2131–65.
- Dougherty, Keith L. 2001. *Collective Action under the Articles of Confederation*. Cambridge University Press.
- Easterly, William. 2019. “Progress by Consent: Adam Smith as Development Economist.” *The Review of Austrian Economics*: 1–23.
- Ellickson, Robert C. 1991. *Order without Law: How Neighbors Settle Disputes*. Cambridge, MA: Harvard University Press.
- Feir, Donna, Rob Gillezeau, and Maggie EC Jones. 2019. *The Slaughter of the Bison and Reversal of Fortunes on the Great Plains*. Federal Reserve Bank of Minneapolis.
- Ferrell, Perry. 2019. “Titles for Me but Not for Thee: Transitional Gains Trap of Property Rights Extension in Colombia.” *Public Choice* 178(1): 95–114.
- Flanagan, Tom, Christopher Alcantara, and André Le Dressay. 2010. *Beyond the Indian Act: Restoring Aboriginal Property Rights*. McGill-Queen’s Press-MQUP.

- Foner, Eric. 1971. *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War*. Oxford University Press.
- Frymer, Paul. 2017. *Building an American Empire: The Era of Territorial and Political Expansion*. Princeton University Press.
- Gregg, Matthew T. 2018. “The Long-Term Effects of American Indian Boarding Schools.” *Journal of Development Economics* 130: 17–32.
- Haber, Stephen, Armando Razo, and Noel Maurer. 2003. *The Politics of Property Rights: Political Instability, Credible Commitments, and Economic Growth in Mexico, 1876-1929*. New York: Cambridge University Press.
- Hadfield, Gillian K. 2016. *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy*. Oxford University Press.
- Hansen, Zeynep K., and Gary D. Libecap. 2004. “The Allocation of Property Rights to Land: US Land Policy and Farm Failure in the Northern Great Plains.” *Explorations in Economic History* 41(2): 103–29.
- Hayek, F.A. 1973. *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*. University Of Chicago Press.
- . 1988. *The Fatal Conceit: The Errors of Socialism*.
- Hibbard, Benjamin Horace. 1924. *A History of the Public Land Policies*. Macmillan.
- Ho, Peter. 2017. *Unmaking China’s Development: The Function and Credibility of Institutions*. Cambridge University Press.
- Hodgson, Geoffrey M. 2015. *Conceptualizing Capitalism: Institutions, Evolution, Future*. University of Chicago Press.
- Hornbeck, Richard. 2010. “Barbed Wire: Property Rights and Agricultural Development.” *The Quarterly Journal of Economics* 125(2): 767–810.
- Kanazawa, Mark T. 1996. “Possession Is Nine Points of the Law: The Political Economy of Early Public Land Disposal.” *Explorations in Economic History* 33(2): 227–49.
- Kuran, Timur. 2011. *The Long Divergence: How Islamic Law Held Back the Middle East*. Princeton, NJ: Princeton University Press.
- Leeson, Peter T. 2014. *Anarchy Unbound: Why Self-Governance Works Better than You Think*. New York: Cambridge University Press.
- . 2019. “Logic Is a Harsh Mistress: Welfare Economics for Economists.” *Journal of Institutional Economics*.

- Leeson, Peter T., and J. Robert Subrick. 2006. "Robust Political Economy." *The Review of Austrian Economics* 19(2–3): 107–11.
- Lemke, Jayme S. 2016. "Interjurisdictional Competition and the Married Women's Property Acts." *Public Choice* 166(3–4): 291–313.
- Leonard, Bryan, Dominic Parker, and Terry Anderson. 2018. "Poverty from Incomplete Property Rights: Evidence from American Indian Reservations."
- Levitsky, Steven, and Daniel Ziblatt. 2018. *How Democracies Die*. Crown.
- Libecap, Gary D. 1989. *Contracting for Property Rights*. New York: Cambridge University Press.
- . 2007. "The Assignment of Property Rights on the Western Frontier: Lessons for Contemporary Environmental and Resource Policy." *The Journal of Economic History* 67(02): 257–91.
- Libecap, Gary D., and Zeynep Kocabiyik Hansen. 2002. "'Rain Follows the Plow' and Dryfarming Doctrine: The Climate Information Problem and Homestead Failure in the Upper Great Plains, 1890-1925." *Journal of Economic History* 62(1): 86–120.
- Libecap, Gary D., and Dean Lueck. 2011. "The Demarcation of Land and the Role of Coordinating Property Institutions." *Journal of Political Economy* 119(3): 426–67.
- Liebowitz, Stan J., and Stephen E. Margolis. 1995. "Path Dependence, Lock-in, and History." *Journal of Law, Economics, & Organization* 11: 205.
- Liu, Lizhi, and Barry R. Weingast. 2018. "Taobao, Federalism, and the Emergence of Law, Chinese Style." *Minnesota Law Review*.
- McChesney, Fred S. 1990. "Government as Definer of Property Rights: Indian Lands, Ethnic Externalities, and Bureaucratic Budgets." *Journal of Legal Studies*: 297–335.
- Miller, Melinda C. 2011. "Land and Racial Wealth Inequality." *The American Economic Review: P & P* 101(3): 371–76.
- Mittal, Sonia, Jack N. Rakove, and Barry R. Weingast. 2011. "The Constitutional Choices of 1787 and Their Consequences." In *Founding Choices: American Economic Policy in the 1790s*, Chicago, IL: University of Chicago Press, 25–56.
- Murtazashvili, Iliia. 2013. *The Political Economy of the American Frontier*. New York: Cambridge University Press.
- Murtazashvili, Iliia, and Jennifer Murtazashvili. 2015. "Anarchy, Self-Governance, and Legal Titling." *Public Choice* 162(3): 287–305.

- North, Douglass C. 1990. *Institutions, Institutional Change and Economic Performance*. New York: Cambridge University Press.
- North, Douglass C., and Andrew Ruten. 1987. "The Northwest Ordinance in Historical Perspective." *Essays on the Economy of the Old Northwest*: 19–31.
- North, Douglass C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *Journal of Economic History* 49(4): 803–32.
- Olson, Mancur. 1993. "Dictatorship, Democracy, and Development." *American Political Science Review* 87(3): 567–76.
- Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. New York: Cambridge University Press.
- Ostrom, Vincent. 1994. *The Meaning of American Federalism: Constituting a Self-Governing Society*. San Francisco: Institute for Contemporary Studies.
- . 2008. *The Political Theory of a Compound Republic: Designing the American Experiment*. Lexington Books.
- Pennington, Mark. 2011. *Robust Political Economy: Classic Liberalism and the Future of Public Policy*. Cheltenham, UK: Edward Elgar Publishing.
- Persson, Torsten, and Guido Tabellini. 2005. *The Economic Effects of Constitutions*. Cambridge, MA: The MIT Press.
- Piketty, Thomas. 2014. *Capital in the Twenty-First Century*. Harvard University Press.
- Riker, William H., and David L. Weimer. 1993. "The Economic and Political Liberalization of Socialism: The Fundamental Problem of Property Rights." *Social Philosophy and Policy* 10(02): 79–102.
- . 1995. "The Political Economy of Transformation: Liberalization and Property Rights." In *Modern Political Economy: Old Topics, New Directions*, New York: Cambridge University Press, 80–107.
- Rithmire, Meg Elizabeth. 2015. *Land Bargains and Chinese Capitalism: The Politics of Property Rights under Reform*. Cambridge University Press.
- Rubin, Jared. 2017. *Rulers, Religion, and Riches: Why the West Got Rich and the Middle East Did Not*. Cambridge University Press.
- Russ, Jacob, and Thomas Stratmann. 2016. "Divided Interests: The Increasing Detrimental Fractionation of Indian Land Ownership." *Unlocking the Wealth of Indian Nations*, Edited by Terry L. Anderson, Lanham: Lexington Books, Forthcoming.



- Sobel, Russell S. 1999. "In Defense of the Articles of Confederation and the Contribution Mechanism as a Means of Government Finance: A General Comment on the Literature." *Public Choice* 99(3): 347–56.
- Sokoloff, Kenneth L., and Stanley L. Engerman. 2000. "History Lessons: Institutions, Factors Endowments, and Paths of Development in the New World." *The Journal of Economic Perspectives* 14(3): 217–32.
- de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.
- Stephenson, George Malcolm. 1917. *The Political History of the Public Lands, from 1840 to 1862: From Pre-Emption to Homestead*. RG Badger.
- Swierenga, Robert P. 1977. "Land Speculation and Its Impact on American Economic Growth and Welfare: A Historiographical Review." *The Western Historical Quarterly* 8(3): 283–302.
- Taylor, M. Scott. 2011. "Buffalo Hunt: International Trade and the Virtual Extinction of the North American Bison." *American Economic Review* 101(7): 3162–95.
- Umbeck, John. 1977. "A Theory of Contract Choice and the California Gold Rush." *Journal of Law and Economics* 20: 421.
- Vahabi, Mehrdad. 2015. *The Political Economy of Predation: Manhunting and the Economics of Escape*. Cambridge University Press.
- . 2016. "A Positive Theory of the Predatory State." *Public Choice* 168(3–4): 153–75.
- Weingast, Barry R. 1995. "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development." *Journal of Law, Economics, and Organization* 11(1): 1–31.
- . 1997. "The Political Foundations of Democracy and the Rule of Law." *American Political Science Review* 91(2): 245–63.
- . 2017. "Adam Smith's Theory of Violence and the Political Economics of Development." In *Organizations, Civil Society, and the Roots of Development*, eds. Naomi R. Lamoreaux and John Joseph Wallis. Chicago: University of Chicago Press, 51–81.