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**FROM THE PAST TO THE FUTURE:  
IDEAS AND ACTIONS FOR A FREE SOCIETY**

CHAPTER THIRTY-TWO

### RESTORING LIBERTY FOR AMERICAN INDIANS

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## **Restoring Liberty for American Indians**

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In their book, *The Narrow Corridor: States, Societies, and the State of Liberty*, Daron Acemoglu and James Robinson (2019) describe the delicate balance between the despotic state and anarchy as a narrow corridor in which liberty exists. Too much of either and liberty is threatened. Using numerous examples from ancient history to the present, they demonstrated that the institutions necessary for maintaining that balance are difficult to build and fragile.

As modern states have grown in size and scope, they have usurped individual freedoms sometimes for the benefit of the collective and sometimes for the benefit of those with power. Moreover, because modern states often operate within larger collectives—the United States, the European Union, NATO, WTO, to mention a few—states themselves sacrifice their sovereignty and the liberty of their citizens.

Though Acemoglu and Robinson do not examine Native American institutions, the narrow corridor of liberty provides a useful lens for understanding the history of this most impoverished sub-set of the U.S. population. That history can be fitted into three periods: pre-contact indigenous economies mostly within the corridor; colonial indigenous economies in which the federal government has forced American Indians out of the corridor; and some modern indigenous economies that are fighting their way back into the corridor. Returning to the corridor ultimately requires that Native Americans break out of the bondage created in 1832 when U.S. Supreme Court Chief Justice John Marshall referred to Indians' relationship to the U.S.

government as that of “a ward to his guardian.” Such a relationship is inimical to liberty and holds American Indians hostage to a despotic state by depriving them of jurisdiction over their own lives.

### **Between Anarchy and Leviathan**

American Indians and the tribes to which they belong can teach us much about life inside and outside the narrow corridor. Indeed, the quest for all freedom-loving people is the same as that of Chief Joseph in 1879: “Let me be a free man, free to travel, free to stop, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to talk, think, and act for myself.”

On anarchy side of the corridor, life is, as Hobbes put it, “solitary, poore, nasty, brutish and short.” That negative-sum world is further exacerbated when an invader, in Hobbes words,

hath no more to fear, than an other mans single power; if one plant, sow, build, or possesse a convenient Seat, others may probably be expected to come prepared with forces united, to dispossess and deprive him, not only of the fruit of his labour, but also of his life, or liberty” (quoted at 9, Acemoglu and Robinson (2019)).

The negative-sum nature of human interaction in a state of anarchy provides an incentive for individuals and groups to seek institutions that move them out of anarchy and into the narrow corridor. In Nobel laureate Douglass North’s words, the “major role of institutions in a society is to reduce uncertainty by establishing a stable structure to human interaction” (North 1990, 6). Similarly Richard Posner (1980, 53) suggested that, “It is actually easier to explain why

efficiency would have great social survival value in the primitive world than to explain this for our world. . . . Archaic societies sufficiently durable to have left substantial literary or archaeological remains and primitive societies sufficiently durable to have survived into the nineteenth century . . . are likely, therefore to be societies whose customs are efficient.” To “efficient,” we can add “free” on all the dimensions sought by Chief Joseph.

As Acemoglu and Robinson articulate, the institutions that enable a movement from anarchy into the narrow corridor are not necessarily dependent on the state as we know it today.

Norms determine what is right and wrong in the eyes of others, what types of behavior are shunned and discouraged, and when individuals and families will be ostracized and cut off from the support of others. Norms also play a vital role in bonding people and coordinating their actions so that they can exercise force against other communities and those committing serious crimes in their own community. . . . they are critical when the Leviathan [state] is absent because they provide the only way for society to avoid Warre [anarchy] (19).

American Indian institutions depended much more on customs and norms than on formal compacts that we think of as the state, though the latter were often important for encouraging peace on geographic and cultural margins between indigenous groups.

The boundary on the state side of the corridor is the difference between the despotic state and the shackled Leviathan, as Acemoglu and Robinson refer to it. The despotic state is a predatory state—one in which the power of Leviathan is used to take from one individual or group and give to another—and the shackled Leviathan is a productive state—one in which state



power is used to overcome free ridership for the purpose of producing public goods. The key for staying within the corridor is granting sufficient power to the state for overcoming free-ridership while preventing that power from being used for despotic purposes.

Acemoglu and Robinson argue that maintaining a shackled Leviathan depends on the Red Queen effect. That is, like the Red Queen and Alice in Wonderland who race one another but never get anywhere, the state and society run fast to maintain the balance between them. If the state can actually outrun society, despotism is the ultimate end-state; if society can keep up with the state, Leviathan can be shackled. For example, in the context of Native Americans, the institutions that determined whether they were in or out of the narrow corridor were mainly determined by culture and tradition. As such, the constraints on norms or the state had to be consistent with social constraints in order to survive. As will be discussed below in the context of the Northern Cheyenne, “government and spirituality must be together for tribal harmony and to prevent corruption” (Spotted Elk, 2012, 1).

### **In, Out, and Back into the Narrow Corridor**

The history of the Native American in and out of the corridor of liberty, falls into three periods. Prior to and shortly after European contact, Native Americans had clear ownership claims, some of which were private and some communal, all of which were well defined and enforced. They took advantage of specialization and engaged in trade, and they understood the importance of collective governance structures and adapted those structures to their changing environment. That initial period, which I refer to as old indigenous economies, was mainly inside the narrow corridor.

Even before they were relegated to reservations, however, American Indians were subject to colonial-type institutions that left them with incomplete property rights subject to the trusteeship until the federal government deemed them “competent and capable” of managing their own assets. Under the umbrella of trusteeship, capital formation has been difficult and costs of resource management have been high. Jurisdiction over territory within reservation boundaries has been attenuated and governance structures, more or less, have been delegated from Washington and not allowed to incorporate tribal customs and culture. I refer to this period as colonial indigenous economies.

To renew indigenous economies, some tribes have begun re-establishing ownership claims to their land and other resources and clarifying tribal jurisdictions and governance structures, both of which have moved them closer to the narrow corridor. These renewed indigenous economies are moving Native Americans back into the narrow corridor of liberty.

### *In the Corridor*

The history of old indigenous economies shows that both had informal and formal (though not necessarily written) institutions that promoted productivity and liberty. At the individual level, Indians used varying degrees of private ownership or control of assets for everything from household goods to horses to hunting and trapping territories. They marked territories with stones and trees, painted their horses to signify ownership, and decorated arrows to indicate who should be rewarded for providing buffalo meat. In short, they knew the difference between mine and thine.

As legal scholar James Huffman (1992, 907) concluded,

It is not entirely true that Native Americans knew nothing of ownership. The language of common law of property, like all of the English language, was unfamiliar to them. But the concepts of the tenancy in common was not foreign to bands and tribes who claimed and defended entitlement to hunting and fishing grounds. Nor was the concept of fee simple title alien to Native American individuals who possessed implements of war and peace, and even lands from which others could be excluded.

Just as old indigenous economies had property rights that governed the ownership of human and physical capital, they had governance structures for collective units formed for providing protection and production of public goods. Families, clans, and villages were the most fundamental collective institutions. Most of the order came at local levels of families and clans. Speaking of the Basin-Plateau Indian groups, Steward (1938, 246) observes that “political groups and chiefs had no interest in disputes, criminal or civil, between individuals. These were settled by relatives, usually close kin.” According to Lowie (1920, 415), “most difficulties were settled by individuals and their kindred” for offenses such as adultery, homicide, trespass, assault, and theft. Hoebel (1954, 294) summarizes the decentralized nature of social sanctions this way: “The community group, although it may be ethnologically a segment of the tribe, is autonomous and politically independent. There is no tribal state. Leadership resides in family or local group headmen who have little coercive authority and are hence lacking in both the means to exploit and the means to judge.” According to Hoebell (1954, 184), the Comanche tribe “was no more than a congeries of bands held together as a peace group by the bonds of common tongue and culture. There appears to have been no machinery for institutionalized political action on a tribal scale.” Though the “peace chiefs” had no “law-speaking or law-enforcing authority” (1954, 30),

they provided a clearing house for information passed from one generation to the next. The chief in the Basin-Plateau Indian tribes was one who “was principally to keep informed about the ripening of plant foods in different localities, to impart his information to the villagers, and if all the families traveled to the same pine-nut areas, to manage the trip and help arrange where each was to harvest. . . . His authority, however, was not absolute. Any family was at liberty to pursue an independent course at any time” (Steward 1938, 247). If the chief “lost his following” (Hoebel 1954, 132), those who provided better information obtained a new position of power and influence.

During battles or hunts where scale economies called for larger collectives, Indians formed societies and other productive units to coordinate activities. More centralized authority was applied mainly “(1) to regulate the communal hunt; (2) to regulate tribal ceremonies; (3) to settle disputes, punish offenders, and preserve order in camp; and (4) to regulate war parties and restrain such at inopportune times” (Provinse 1955, 351). Driving buffalo over a pishkun or buffalo jump, for example, required the coordinated effort of many people, what economists call scale economies. Therefore, the hunt chief had considerable authority to coordinate the drive and received a larger, more desirable share of the meat. Anthropologist John Ewers (1969, 155) captures the difference between sanctions in large and small groups: “If the camp was a tribal one, the chief . . . proclaimed that the prohibition against individual hunting was in force,” but “this regulation was less common in smaller band camps.”

Among the Yurok Indians of the Pacific Coast, offenses including murder, adultery, theft, poaching, curses, and even minor insults could be prosecuted by following specific legal procedures. Economist Bruce Benson found that both the offending and defending parties in a dispute would hire “crossers,” nonrelatives from another community, who “would act as go-



betweens, ascertaining claims and defenses and gathering evidence. The crossers would render a judgement for damages after hearing all the evidence” (1992, 29). Finding the defendant guilty, crossers would require payment for damages. “Every invasion of person or property was valued in terms of property, and each required exact compensation” (Benson 1992, 30), with enforcement coming from self-help rather than through a central authority.

At whatever the level of collective activity, there are two important questions: who is included in the collective unit and how are collective decision makers held accountable for whether they increase or decrease the productivity of the collective unit. Who is included depends on many things including blood relations, language, geographic territory, and objectives of the collective unit, to mention a few. Accountability can be conditioned by familial relations where individuals share common objectives and where results for the group are more transparent or by formal rules that specify how collective decision are made and how those making collective decisions are held accountable. Centralized, hierarchical leadership may work because the process for choosing the leader evolves over a long period and selects for leadership traits such as knowledge of the natural environment and preferences of group members. Accountability is also related to the cultural constraints placed on a group leader, and traditions, rituals, and taboos constrain the power of centralized leadership.

Perhaps the most important constraint on a leader’s ability to use coercion is the ability of individuals to exit from the collective. For example, when hunting required more people to capture scale economies associated with stampeding buffalo over a cliff, the leader had more power over individuals in the group because exiting from the group meant hunting in smaller, less efficient, hunting units. With the arrival of the horse, however, scale economies in buffalo

hunting declined making smaller groups more productive and increasing the potential for exit, especially for those who owned horses and were experienced riders.

The property institutions and governance structures that generated efficiency gains in old indigenous economies were not stagnant, but rather evolved with changes in resource endowments and technology. As anthropologist Peter Frab noted, “Long before Darwin and Wallace brought biological evolution to the attention of the world in 1858, observers of the American Indian had recognized that evolution occurs in cultures” (1968, 6). Economist Martin Baily suggests the institutional evolution was driven by necessity: “In more developed societies, departures from optimality mean lower living standards and lower growth rates—luxuries these societies can afford. By contrast, in societies near the margin of subsistence, with populations under Malthusian control, such departure had harsher effects. ... Unsound rights structures generally implied lower population size and, perhaps, the disappearance of the society” (1992, 183). The mere fact that Native Americans survived and thrived for millennia tells us that their institutions were continually adapting to capture gains from evolution.

Though it is impossible to definitively measure the wealth effects of institutions in pre-contact societies, the historical record does include the height of many Plains Indians, and height is a good proxy for health and prosperity. Steckel and Prince (2001) use data on the height of Native American males to measure health and prosperity.

In a sample of 51 Native American groups, involving about 9,000 individuals who lived in North, Central, or South America over the past several millennia, two equestrian Plains tribes (northern Cheyenne and Crow) were among the three tallest to have lived in the hemisphere. . . . Average heights in both tribes exceeded that of nineteenth century U.S.

soldiers. As expected based on diet and likely exposure to disease, the equestrian Crow and Cheyenne were somewhat taller than Plains village tribes and considerably taller than tribes who lived near the edge of subsistence—pre-Columbian tribes of the southwest and the collapsing Mayans. (290)

Their conclusion: “Plains nomads were the tallest in the world during the mid-nineteenth century,” because they “were remarkably ingenious, adaptive, and successful in the face of exceptional demographic stress” (Steckel and Prince 2001, 287).

Sheldon Spotted Elk (2012) provides an excellent example that highlights the fine line between norms and the state and eloquently describes the Northern Cheyenne traditional constitution. Several points are worth emphasizing. First, under traditional Cheyenne constitution, as opposed to the constitution virtually forced on the tribe by the Indian Reorganization Act of 1934, “government and spirituality must be together for tribal harmony and to prevent corruption” (1). The glue was provided mainly by ceremonies such as the Arrow Renewal, Sun Dance, and Animal Dance. In this sense, norms were crucial for keeping the tribe in the narrow corridor. On the other hand, the informal governance structure had all of the trappings of a state. The Council of Forty-Four was the primary governing body, made up of “a variety of representative political and person interests” (7). There was separation of powers. For example, to become a chief in the Council of Forty-Four, a Chief of a Military Society had to relinquish his military post in order “to prevent any conflicts of interest that might arise with a Chief fulfilling his foremost duty of peace while leading a military expedition” (8). “Even though political power was shared between the two governmental entities, the Military Society and Chief Society, the Military Society, had limited power” (8).

Traditional Cheyenne government is not a central government led by a strong executive leader; rather it is spread out among the Chiefs, society leaders and the tribally-oriented. Before the Northern and southern branches divided in the mid-nineteenth century, all the bands would gather together every summer to appoint new political leaders and to perform renewal ceremonies for the tribe. (8)

Even after being relegated to a reservation, the Chiefs “determined where villages were to be set up, when to move, and how to deal with deviants among the tribe. Their function was parliamentary in nature—establishing the traditions and law of the people—and as a judiciary—interpreting the law” (3). In sum, traditional Cheyenne law protected the tribe from anarchy on one side of the corridor and despotism on the other.

Perhaps the best example of Native American institutions that existed both inside and outside the narrow corridor comes from the Sioux tribes that inhabited a region from the Great Lakes to the northern Great Plains. In his book, *Lakota American: A New History of Indigenous Power*, Pekka Hämäläinen (2019) documents how this collection of Native Americans organized themselves into a formidable force to be reckoned with by other tribes and by the European invaders. The Sioux tribes “were numerous and united. Their numbers were estimated around thirty thousand at mid-seventeenth century, and their many villages possessed a strong sense of common identity as the *Ochethi* Sakowin, the Seven Council Fires” (Hämäläinen, 15). This collection was “not a formal state or confederacy,” but rather “was constructed from the bottom up, with language and kinship as the main cohesive” (Hämäläinen, 16). These bottom up institutions kept the Sioux tribes out of the Hobbesian jungle and created a fluid society “that stitched it together by creating a thick lattice of kinship ties that transcended local and regional identities” (Hämäläinen, 17).

Though this fluid amalgam may not have been a formal state or confederacy, it united the Sioux into a formidable nation with power in the eighteenth century that was unsurpassed by other Indian tribes. If the despotic state created by this power did not exploit members of the Seven Council Fires, it afforded the Sioux with war powers used “to protect their lands, to exact revenge, to secure hunting and trading privileges, to enhance their power and prestige by taking slaves, [and] to preempt threats” (Hämäläinen, 17). In the context of Acemoglu and Robinson, Lakota America was a “shackled Leviathan” for tribal members but a despotic state for outsiders.

### *Out of the Corridor*

Duane Champagne (2006) notes that “colonization has come to mean any kind of external control, and it is used as an expression for the subordination of Indian peoples and their rights since early contact with Europeans.” As the history of *Lakota America* documents, however, it was not until the nineteenth century that colonization of American Indians took its full force. Once relegated to reservations following the Indian Wars, Native Americans struggled to find ways to adapt. Though some tribes shifted to producing for markets—for example the Blackfeet shifted from hunting buffalo to raising cattle for sale to the railroad passing through their territory (Carlson 1992)—most found themselves at the mercy of the federal government. That mercy included the imposition of institutions ill-suited for their lands or their cultures.

In particular, the Dawes Act of 1887, also known as the General Allotment Act, required that reservations be surveyed and parceled to individual Indians—mostly in 160 acre parcels, but in some cases up to 360 acre parcels. During the allotment era, the Indian land base shrank considerably. By 1933, reservations contained 29,481,685 acres held in trust for tribes,

17,829,414 acres held in trust for individual Indians, and 22,277,342 acres owned in fee simple (Flanagan et al. 2010).

Though most studies of the effect of allotment focus on transfers out of Indian ownership, whether tribal or individual, the institutional legacy of the Dawes Act has been to force Indians out of the narrow corridor. This is particularly evident in the 1906 Burke Act, which amended the Dawes Act, in an effort to prevent lands from being transferred out of Indian ownership. It did this by requiring the Secretary of the Interior to assess whether Indians were “**competent and capable**” (emphasis added) before they could be granted fee-simple title to their allotments.

Many studies have documented the efficiency effects of allotment. Allotted trust lands cannot be used as collateral on loans, cannot be leased or transferred without approval from the BIA, and cannot be willed to a single heir (Carlson 1981). The first two restrictions increase the cost to allottees of leasing or changing land use and the third has increased the costs over time by increasing the number of owners for each parcel as trust lands were passed in equal shares to heirs (Shoemaker 2003 and Russ and Stratmann 2016).

Economists who have estimated the effects of allotment generally find that allotment increased the gap between trust land and fee simple land productivity. Carlson (1981) finds a gap in farming activity between Indians and non-Indians, which increased over the allotment period, particularly after 1915, arguing that trusteeship undermined pre-existing systems of informal property rights. Anderson and Lueck (1992) find evidence that agricultural productivity on 39 reservations was highest on fee simple lands during the 1980s. Akee (2009) finds that allowing long-term leasing of trust lands to non-Indians increased the value of trust lands on the Aqua Caliente reservation, because such leasing provides a way around the constraint on alienation. Russ and Stratmann (2015) analyze 12 reservations and find that fractionation correlates with



lower per capita incomes at the reservation level, and with reduced lease income from farming at the parcel level. Russ and Stratmann (2016) also find that efforts to reduce fractionation have been unsuccessful.

BIA trusteeship goes beyond land management alone to include other natural resources such as coal, oil and gas, and timber. Just as it has thwarted more productive use of land, trusteeship has limited the ability of tribes to manage and profit from other resources. Though federal paternalism has been described as a responsibility “to protect Indians and their resources from Indians” (American Indian Policy Review Commission on Reservation and Resource Development, quoted in Morishima 1997, 8), there is ample evidence that the BIA has failed to be a good guardian, not the least of which was the 2009 settlement of the long running class-action lawsuit in *Cobell vs. Salazar*. The plaintiffs claimed the U.S. government mismanaged Indian trust assets, including money deposited in trust accounts, and therefore owed the beneficiaries billions of dollars. Eventually the government settled for \$3.4 billion, likely a small fraction of what was actually lost.

The consequences of trusteeship, however, go beyond the efficiency effects by limiting individual and collective jurisdiction for Native Americans; i.e. trusteeship has forced American Indians out of the narrow corridor. The land that has been transferred out of trust into private ownership is not under the jurisdiction of the tribe, thus complicating a tribe’s jurisdictional authority. In the context of federalism and within the constraints of the U.S. Constitution, states are able to determine their jurisdictional authority, and ideally, tribes could do the same. For some tribes, the optimal arrangement might be local definition and enforcement of criminal, family, commercial contracts, and deciding whether to opt out of trusteeship. For other tribes, the

optimal arrangement might include non-local enforcement of commercial contracts. Unfortunately, the history of tribal jurisdiction has been anything but a free choice for tribes. Moreover, tribal governance structures in colonial indigenous economies have not had an opportunity to evolve into shackled Leviathans. Under the 1934 Indian Reorganization Act “Tribal governments generally operated under boilerplate constitutions that had emanated from the federal government in the 1930s” (Cornell and Kalt 2010, 11). These constitutions do not interface well with historic tribal institutions that enabled old indigenous economies the opportunity to live within the corridor.

### *Returning to the Corridor*

The foundation for renewing indigenous economies is built on three important blocks: well-defined and enforced ownership rights; clear tribal jurisdiction; and clearly enforced and stable rules of governance. As economists Daron Acemoglu and James Robinson (2012) explain in *Why Nations Fail*, “economic institutions that enforce property rights, create a level playing field, and encourage investments in new technologies and skills that are more conducive to economic growth than extractive economic institutions that are structured to extract resources from the many by the few.” Or as [Manny Jules](#), chief commissioner of the Canadian First Nations Tax Commission, summarized, the institutional challenge is “about creating the legal, administrative and infrastructural framework necessary for markets to work on First Nation lands, creating a competitive First Nation investment climate, and using economic growth as the catalyst for greater First Nation self-reliance.”

Resurrecting and clarifying property rights on reservations must be optional at the tribal level at the option of the tribe. In Canada, for example, a proposal by First Nations to change the

Indian Act takes a step in this direction by letting bands decide if they want out of Canadian federal trusteeship so that bands can decide what the tradeoffs are between lower cost alienation and preservation of the Indian way of life. Under such self-determination, bands could decide if they want to limit alienation to non-band members (see Flanagan et al. 2010).

Clarifying tribal jurisdiction is another necessary step toward creating governance structures for renewing indigenous economies. Jurisdiction not only defines the geographic boundaries that determine what land is under the laws of the tribe, but it also defines what economic activities are governed by tribal governments. Perhaps more importantly, jurisdiction over taxation is crucial for generating revenue to support governmental operations. Doing this is virtually impossible as long as American Indians are treated as wards of the state.

As the relationships between cities, counties, states, and the federal government suggest, land and economic activities can be under many different jurisdictions. Land use planning might be at the city level while water quality can be governed by the state or federal governments. Businesses are often licensed by local municipalities while product quality regulations are likely under the control of federal regulators.

In contrast to relatively clear jurisdictions under the umbrella of federalism as it applies to municipalities, counties, states, and the federal government, tribes have virtually no jurisdiction, let alone clear jurisdiction. Of course the boundaries of reservations are well defined, but the land within those boundaries is mainly under county and state jurisdiction if it is fee simple land and under federal jurisdiction if it is trust land.

Energy resources, especially oil and gas, offer another example of tribes reasserting their property rights and sovereignty. On the Fort Berthold Reservation in North Dakota, the Three Affiliated Tribes have used special legislation to assert their control of oil and gas leases. The

motto of Missouri River Resources, a tribally owned oil company, is “Sovereignty by the barrel.” As tribal chairman Tex Hall put it, “The potential here is to obtain financial independence for our nation, education for our youth, sustenance for our elders, maintenance of our culture and above all to set the people of the Mandan, Hidatsa, and Arikara Nation on the road to independence.”

Once governments have clear jurisdiction over property rights and business transactions, they face the sovereign’s dilemma (see Haddock and Miller 2006). That dilemma is should the government take a larger share of wealth now even if it means that wealth production will decline or should it restrain such taking in order to encourage wealth production. The challenge for tribes is to create governance structures that encourage the former and discourage the latter. Meeting this challenge means having governing rules that limit a tribe’s sovereign powers as well as legal processes that enforce these limits.

## **Conclusion**

The poverty that epitomizes American Indian Reservations and the accompanying social ills is due mostly to institutions that have treated Native Americans as wards of the state since the 1830s. Tribes assert that they are sovereign nations, but, with virtually of their resources held in trust by the federal government, tribal governments have little jurisdiction over land, capital, or even tribal members. None of this is because indigenous cultures are inimical to and an obstacle to development.

In order for indigenous economies to enjoy the fruits of prosperity, tribes must find their way back into the narrow corridor of liberty. Crow tribal member, Bill Yellowtail (2006), succinctly describes what it takes to renew indigenous economies: “Indian sovereignty . . . is founded upon the collective energy of strong, self-sufficient, entrepreneurial, independent,

healthful, and therefore powerful, individual persons. . . . The proper economic role for tribal government is to facilitate private enterprise . . . with an eye toward building the capacity of individuals and families to be truly independent.” That capacity building can only take place if American Indians are, as Chief Joseph concluded, “free to talk, think, and act” for themselves.

## References

- Acemoglu Daron, and James Robinson. 2019. *The Narrow Corridor: States, Societies, and the Fate of Liberty*. Penguin Press.
- \_\_\_\_\_. 2012. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Random House Digital, Inc.
- \_\_\_\_\_. 2013. Viewed at <http://whynationsfail.com/blog/2013/6/27/resource-curse-and-institutions-getting-more-specific.html>.
- \_\_\_\_\_, Simon Johnson, and James Robinson. 2001. The Colonial Origins of Comparative Development: An Empirical Investigation. *American Economic Review* 91(5): 1369-1401.
- Akee, Randall K.Q. 2009. Checkerboards and Coase: The Effect of Property Institutions on Efficiency in Housing Markets. *Journal of Law and Economics*. 52(2): 395-410.
- Anderson, Terry L. and Fred S. McChesney. 1994. Raid or Trade: An Economic Model of Indian-White Relations. *Journal of Law and Economics*. 37(April): 39-74.
- Anderson, Terry L. and Dean Lueck. 1992. Land Tenure and Agricultural Productivity on Indian Reservations. *Journal of Law and Economics*. 35(April): 427-54.
- Anderson, Terry L. and Dominic P. Parker. 2008. Sovereignty, Credible Commitments, and Economic Prosperity on American Indian Reservations. *Journal of Law and Economics*. 51 (November): 641–66.
- Bailey, Martin J. 1992. Approximate Optimality of Aboriginal Property Rights. *Journal of Law and Economics*. 35 (April): 183-98.



- Benson, Bruce. 1992. Customary Indian Law: Two Case Studies. In Terry Anderson ed., *Property Rights and Indian Economies*. Lanham, MD: Rowman and Littlefield Publishers.
- Carlson, Leonard A. 1981. *Indians, Bureaucrats, and the Land: The Dawes Act and the Decline of Indian Farming*. Westport, Conn.: Greenwood Press.
- \_\_\_\_\_. 1992. Learning to Farm: Indian Land Tenure and Farming before the Dawes Act. In *Property Rights and Indian Economies*, Terry L. Anderson, ed. Lanham, MD: Rowman and Littlefield.
- Champagne, Duane. 2016. Assimilation, Integration and Colonization. February 7. Viewed at <https://indiancountrymedianetwork.com/history/events/assimilation-integration-andcolonization/>.
- Cornell, Stephen, and Joseph Kalt. 1998. Sovereignty and Nation-Building: The Development Challenge in Indian Country Today. *American Indian Culture and Research Journal*. 22(3): 187-214.
- \_\_\_\_\_. 2010. American Indian Self-Determination: The Political Economy of a Policy that Works. HKS Faculty Research Working Paper Series RWP10-043, John F. Kennedy School of Government, Harvard University. Viewed at [https://dash.harvard.edu/bitstream/handle/1/4553307/RWP10-043\\_Cornell\\_Kalt.pdf?sequence=1](https://dash.harvard.edu/bitstream/handle/1/4553307/RWP10-043_Cornell_Kalt.pdf?sequence=1).
- Ewers, John C. 1969. *The Horse in Blackfoot Indian Culture*. Washington, D.C.: Smithsonian Institution Press.

- Feir, Donna, Rob Gillezeau, and Maggie EC Jones. 2019. The Slaughter of the Bison and Reversal of Fortunes on the Great Plains. Center for Indian Country Development Working Paper, No. 1-2019. Federal Reserve Bank of Minneapolis.
- Flanagan, Thomas E., Christopher Alcantara, and André Le Dressay, eds. 2010. *Beyond the Indian Act: Restoring Aboriginal Property Rights*. Montreal, Quebec: McGill-Queen's University Press.
- Haddock, David D., and Robert Miller. 2006. Sovereignty can be a Liability: How Tribes can Mitigate the Sovereign's Paradox. In *Self-Determination: The Other Path for Native Americans*, Terry L. Anderson, Bruce L. Benson, and Thomas E. Flanagan, eds. Stanford, CA: Stanford University Press. 194-213.
- Hämäläinen, Pekka. 2019. *Lakota America: A New History of Indigenous Power*. Yale University Press.
- Hoebel, E. Adamson. 1954. *The Law of Primitive Man*. Cambridge, Mass.: Harvard University Press.
- Huffman, James L. 1992. An Exploratory Essay on Native Americans and Environmentalism. *University of Colorado Law Review*. 63 (4): 901-20.
- Jules, Manny. N.D. Viewed at <https://fntc.ca/welcome-to-fntc/>
- Lowie, Robert H. 1920. *Primitive Society*. New York: Boni and Liveright.
- Morishima, Gary S. 1997. Indian Forestry: From Paternalism to Self-Determination. *Journal of Forestry*. 95(11): 4–9.
- North, Douglass. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.

- Posner, Richard A. 1980. A Theory of Primitive Society with Special Reference to Primitive Law. *Journal of Law and Economics*. 23 (1): 1-54.
- Provinse, John H. 1955. The Underlying Sanctions of Plains Indian Culture. In *Social Anthropology of North American Tribes*, Fred Eggan, ed. Chicago: University of Chicago Press.
- Roback, Jennifer. Exchange, Sovereignty, and Indian-Anglo Relations. In *Property Rights and Indian Economies*, Terry L. Anderson ed. Savage: Rowman and Littlefield, 1992.
- Russ, Jacob W., and Thomas Stratmann. 2015. Missing Sticks: Property Institutions and Income Dissipation in Indian Country. Viewed at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2536597](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536597).
- \_\_\_\_\_. (2016). Divided Interests: The Increasing Detrimental Fractionation of Indian Land Ownership. In *Unlocking the Wealth of Indian Nations*, Terry L. Anderson, ed. Lanham, MD: Lexington Books.
- Shoemaker, Jessica A. 2003. Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem. *Wisconsin Law Review*. 4: 729-88.
- Spotted Elk, Sheldon. 2012. Northern Cheyenne Tribe: Traditional Law and Constitutional Reform. *Tribal Law Journal*. 11: 1-18.
- Steckel, R. H. and J. M. Prince. 2001. Tallest in the World: Native Americans of the Great Plains in the Nineteenth Century. *American Economic Review*. 91 (1): 287–294.
- Steward, Julian H. 1938. *Basin-Plateau Aboriginal Sociopolitical Groups*. Smithsonian Institution, Bureau of American Ethnology, Bulletin 120. Washington, D.C.: Government Printing Office.

Yellowtail, Bill. 2006. Indian Sovereignty – Dignity through Self-Sufficiency. *PERC Reports*

24(2): 10-13. Bozeman, MT. Available: <http://www.perc.org/articles/indian-sovereignty>.



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