

## Polycentricity: A Simple Rule for Governing Indian Country

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**Abstract:** Champions of capitalism and right-wing theorists of culture typically blame American Indian reservations' economic woes on tribes' historical aversion to market principles and on present-day federal policies that impose socialism on them. These arguments suggest capitalism as a simple rule to improve prospects for economic development in Indian country. We argue that the simple rule is not capitalism but polycentricity: greater tribal autonomy to choose the rules to govern tribal economies. One of the legacies of imperialism is that the primary governance challenge in Indian country today is that relations among the tribal and federal governments are monocentric, with Congress asserting nearly unlimited authority over tribes. This reduces the ability of tribal governments to experiment with rules to improve tribal economies and tribal governance more generally. Thus, debates about capitalism or socialism in Indian country miss the mark. Progress toward a more meaningful polycentric governance regime is especially critical because of the complicated nature of the economic challenges on many Indian reservations.

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Hence the Prince that acquires new Territory, if he finds it vacant, or removes the Natives to give his own People Room; the Legislator that makes effectual Laws for promoting of Trade, increasing Employment, improving Land by more or better Tillage; providing more Food by Fisheries; securing Property, etc. and the Man that invents new Trades, Arts or Manufactures, or new Improvements in Husbandry, may be properly called Fathers of their Nation, as they are the Cause of the Generation of Multitudes, by the Encouragement they afford to Marriage.

—Benjamin Franklin, *Observations concerning the Increase of Mankind, Peopling of Countries, Etc.*

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility.

—Chief Justice John Marshall, *Cherokee Nation v. State of Georgia*

## I. INTRODUCTION

Seventeen seventy-six is generally accepted as the birth year of the American nation. While acknowledging the problems with the era's "peculiar institution" of slavery, many prominent historians have looked favorably on the nation's birth. Perhaps most notably, Gordon Wood (2011) depicts the American Revolution as an unprecedented step in the quest for equality and democracy. Historians such as Wood are not alone in praising the founding era. Liberals such as F. A. Hayek and Ludwig von Mises considered the institutions established by the framers of the American Constitution as a political framework to emulate in the hopes of realizing the vision of a liberal society. And Vincent Ostrom perceived that the intellectual tradition of polycentrism in America's first century was a means of realizing self-government that could be revived and end the imperialist tradition of centuries past.

The founding of the American republic was anything but a watershed moment for liberty and equality for American Indians. Long before 1776, Europeans killed and enslaved Indians. In fact, the first slaves in Virginia were American Indians (Miller 2019). Diseases carried by Europeans and spread both intentionally and unintentionally eradicated up to 90 percent of the indigenous population.<sup>1</sup> Not much changed in 1776. The Declaration of Independence proclaimed that all men possess inalienable rights to life and liberty but also described the Americas' indigenous inhabitants as "merciless Indian savages." The Constitution excluded Indians from citizenship, as did the Fourteenth Amendment,<sup>2</sup> and it was not until 1879 that individual Indians were legally recognized as persons.<sup>3</sup> By the conclusion of the Indian Wars in the second half of the nineteenth century, Indians were forced onto reservations, where they were subjected to a succession of federal policies designed to eradicate tribal culture and institutions. Motivated by the ideology of Manifest Destiny, the government dispossessed Indians of their land through removal legislation, coerced renegotiation of treaties, and warfare.

For critics of capitalism, exploitation and oppression are necessary for a capitalist economy (see, for example, Baptist 2016). This claim has at least *prima facie* appeal when considering how the federal government treated Indians during the nineteenth century. Several federal policies appear to have been motivated by capitalist considerations, such as the policies of relocating tribes to create additional opportunities for white settlers, attempting to "civilize" reservation Indians through forced land privatization, destroying buffalo to make way for railroads, creating tribal governments to "legitimate" extraction of tribal natural resources by the federal government and capitalists, and persistently failing to honor treaty obligations when they conflicted with the demands of settlers and industrialists.

Nor does an account of Indian country focused on socialism correctly diagnose the challenge. More recent policies governing reservations may be characterized as socialist. Though the General Allotment Act of 1887, known as the Dawes Act, was designed to end Indian communism by privatizing Indian land,<sup>4</sup> the Indian Reorganization Act (IRA) of 1934 ended allotment but greatly restricted tribal property rights and economic liberty. Hence, critics allege that the IRA was nothing but New Deal-era socialism. Agencies established during the nineteenth century, such as the Bureau of Indian Affairs, were no better, as they had incentives to keep Indians perpetually dependent on the government (McChesney 1990). Ronald Reagan's secretary of the interior, James Watt, expressed the view bluntly: "If you want an example of the failure of socialism, don't go to Russia, come to America and go to the Indian reservations."

Capitalism could be a useful corrective. Deirdre McCloskey (2019) argues that liberalism (and, by extension, we would add, capitalism) requires markets and prohibits coercion, exploitation, and slavery. Or as Peter Boettke (2021) puts it, liberalism is an emancipatory project. But the precise challenge in Indian country is not socialism. It is that federal-Indian relations remain infused with imperialistic rules that prevent Indians from choosing their own fates.

It is easy to overlook imperialism as a challenge in Indian country especially if one is concerned about socialism (or capitalism). American imperialism is usually understood to mean the United States' extension of its influence outside its territorial boundaries. But the territorial expansion of the United States and subsequent governance of Indians through the reservation system exemplify American imperialism's key

feature: coercive influence over all areas of life. The framers certainly viewed American expansion this way. George Washington referred to the United States as the infant empire in part because of its plan to seize Indians and their lands. Benjamin Franklin thought it was natural to acquire new lands—Indians' lands—and provide a framework for trade, property, industry, and manufacturers. The Supreme Court also shared this imperial sentiment in noting that Indian rights are to be determined in “the Courts of the conqueror”<sup>5</sup> and describing the relationship between tribes and the United States as “that of a ward to his guardian.”<sup>6</sup>

Thus, polycentrism—a system fundamentally at odds with imperialism—has not been practiced with respect to American Indians. Polycentrism refers to the autonomy of governance institutions to assert authority in a realm without being encumbered by higher levels of government (Eusepi and Wagner 2010). One aspect of it is libertarian interstate federalism, a vision of an international level playing field that will overcome the constraints of Westphalian sovereignty. Relations with Indian country thus emerge as perhaps the ideal case for trying libertarian interstate federalism and its foundational principle, polycentrism. Thus, from a normative and policy perspective, the challenge for Indian country is realizing the vision of a truly polycentric system to govern relations between tribes and the federal government as well as relations among sovereign tribes and to encourage self-governance within and across tribal communities.

Our Ostromian prioritization of polycentricity as a simple rule to guide federal–Indian relations contrasts with Richard Epstein’s (2009) insightful perspective on simple rules. Epstein offers a compelling defense of markets, private property, and limited government as the path to prosperity. However, these rules cannot be imposed on all tribes (Miller 2018) if one hopes for a liberal solution to the problems confronting Indian country. Rather, the lodestar must be sovereignty. Epstein’s clear and compelling articulation of simple rules presumes that people have the right to choose their rules. Despite federal policies promising tribal self-determination, the United States still denies tribes the ability to fully govern their lands. With a more meaningful sovereignty, tribes would be able to choose socialist or capitalist institutions, but until there is a more meaningful sovereignty, the most accurate description of reservation economies imperialism.

We begin our discussion by clarifying some terms—capitalism, socialism, and imperialism. Such clarification is necessary since they are used in different ways in conversations regarding governance of Indian country. We then argue that imperialism was the guiding principle in Indian country during the initial relations with Europeans and that it infused key aspects of federal policies toward Indians after 1776. After considering the empirical features of federal–Indian relations, we propose polycentricity as a simple rule for Indian country.

## II. CAPITALISM, SOCIALISM, AND IMPERIALISM

In the classical liberal tradition of Adam Smith and F. A. Hayek, capitalism requires freedom from coercion. Markets also require private property rights, which are necessary for prices to have economic meaning (Mises 1920). Government is not necessary for exchange: markets, trade relations, and property rights often arise through spontaneous processes (Anderson and Hill 2004; Benson 1989; Clay 1997; Umbeck 1977). The defining feature of a spontaneous order is that it results from the deliberate action of individuals but is not the result of a grand plan (Boettke and Coyne 2005; Leeson 2008). But classical liberals did see an important role for government. Smith, in *The Wealth of Nations*, argued that peaceful exchange among self-interested individuals—that is, relations in markets—leads to human progress and prosperity. And he recognized that an appropriate constitutional framework is needed to enable all individuals to participate in the market economy (Brennan and Buchanan 1985; Weingast 2017). Meanwhile, Hayek emphasized the importance of impartial rule of law to enable exchange (Hayek 1973). Legal institutionalists also highlighted critical role of legal institutions in a well-functioning market economy.

Colonialism and imperialism are related concepts. Colonialism refers to establishing settlements or claiming territory beyond a nation’s borders in order to exploit the territory, whereas imperialism is about extending political and cultural influence. Obtaining colonies to exploit is often an element of imperialism, as is internal colonization through encouraging foreigners to migrate to subjugate indigenous groups.

And in imperialism, like colonialism, governments impose formal institutions and social rules on subjugated peoples through violent cultural assimilation. Thus, the distinction between the concepts is not always clear.

In the case at hand, Europeans arrived in the New World as colonists. The US government engaged in imperialism by seizing Indian lands, which were already governed by tribes, in violation of treaties. The ideology of Manifest Destiny, an especially significant aspect of national politics in the 1840s and 1850s, exemplified imperialism. It entailed that Indians should be moved to reservations, where the government could implement policies of cultural assimilation and economic dominance. For this reason, we refer to federal-Indian relations as imperialist rather than colonialist.

The defining feature of socialism is a larger role for government in deciding what goods and services to produce and how to produce them. Many but not all socialist economies have featured command planning and totalitarianism (Gregory 2004). Hodgson (2019) distinguishes between big and small socialism. Big socialism refers to command planning and strict bureaucratic control of the economy. It describes the USSR; China before the reform era that started in 1978; and Cuba, North Korea, and Venezuela through the first two decades of the twenty-first century. Its defining features are state control of the means of production and abolition of private property. Small socialism features greater redistribution of income, a more generous welfare state, and a partially planned economy compared to socialism, without the overarching command planning aspects of big socialism. In both types of socialism, bureaucrats have an important role in managing the economy.

The challenge for socialism is that governments confront information and incentive problems (Boettke and Leeson 2004). The information problem is that a government cannot allocate resources efficiently without prices. The incentive problem is that a government has few incentives to forgo predation. These problems apply to both politicians and government bureaucrats. All governments confront them, but in socialist economies, which leave a much larger role for the state, they are much more severe.

### III. IMPERIALISM: THE GOVERNMENT POLICY IN INDIAN COUNTRY

#### A. Initial Relations with Europeans

When Europeans arrived on the Americas' shores, the land was governed by indigenous nations. Europeans and Indians traded; however, the problem of political power was always present. Terry Anderson and Fred McChesney (1994) explain that colonial powers confronting indigenous groups confront a choice between trading and raiding. Trading results in wealth creation that is mutually advantageous, but governments may choose to raid when their costs of violent conquest decline. Up through the Revolutionary War, Indians and Europeans were relatively evenly matched militarily, which is why all the major North American colonial powers and the Americans during the Revolutionary War formed alliances with Indian tribes. Even following the Revolutionary War, the American government had incentives to trade with Indians because their military capacities were comparable. As a result, the government negotiated hundreds of treaties with Indian tribes. After the Civil War, the United States had a permanent standing army with a major weapons-technology advantage and greater discipline than state militias previously had. The United States' population was also rapidly increasing while tribal populations were plummeting due to Old World diseases. This changed the costs of raiding, so the United States stopped making treaties with tribes in 1871. By the end of the nineteenth century, the US military had warred against western tribes until they submitted to life on reservations.

We conclude that the state is the problem. Indeed, Rosolino Candela and Vincent Geloso (2020) argue that, compared with their condition when subjected to the US state, Indian tribes in the Northeast fared better under statelessness, which they define as the absence of an overarching government (tribes had their own governance structures). Governments that have more power can take what they want rather than trade. After the Civil War, the United States' military capacity significantly increased thereby decreasing the

United States' incentive to trade with tribes. In the absence of a balance of power, governments have generally chosen predation over productive specialization.

## B. The Imperialistic Origins of the Reservation System

Legal institutions provided imperialists with the legitimacy needed to acquire Indian land. One of the most important jurisprudential concepts was the Doctrine of Discovery, a fifteenth-century edict that declared all land in the New World open to “discovery.” Though first possession is in some instances considered an efficient way to allocate property (Allen and Leonard 2020), the Doctrine of Discovery differed because it invalidated indigenous land-ownership rights on grounds of Christian European superiority.

The Doctrine of Discovery is a foundational principle of contemporary federal Indian-law jurisprudence and has given rise to anomalous legal doctrines used to undermine Indian rights. For example, *Johnson v. McIntosh*, the case that incorporated the Doctrine of Discovery into US law, held that Indians do not have ownership rights to the land they live on. Instead, Indians hold a right of occupancy that can be terminated at the United States' will. Building off *Johnson*, eight years later the Supreme Court described Indian tribes as “domestic dependent nations” rather than full sovereigns.<sup>7</sup> This classification precluded tribes from asserting rights in court.<sup>8</sup> These cases depict Indians as “fierce savages,” “heathens,” and simple hunter-gatherers who have no real rights against the “superior genius of Europe.” Relying on such depictions of Indians, the court has held, “Congress possessed a paramount power over the property of the Indians.”<sup>9</sup> The Supreme Court originally claimed that that plenary power arose not from the text of the Constitution<sup>10</sup> but from the Indians' “very weakness and helplessness.”<sup>11</sup> Curiously, the Supreme Court now claims Congress's plenary power over Indians arises from the text of the Constitution. Numerous scholars, and Justice Clarence Thomas, have lambasted the Supreme Court's attempt to legitimize an overtly imperial doctrine (Williams 2005, pp. 71–72).

Imperial jurisprudence has enabled Congress to enact imperial legislation aimed at transferring Indian land and resources to whites. In 1830 Congress passed the Indian Removal Act, which authorized the removal of Indians from their eastern homelands in order for white settlers to take their place. Manifest Destiny was a key feature of national policy in the 1840s and 1850s, especially during the presidency of Franklin Pierce. The Pierce Administration championed the Kansas-Nebraska Act of 1854 which organized the territory to facilitate the establishment of a transcontinental railroad (<https://history.nebraska.gov/publications/kansas-nebraska-act>). Part of its rationale was to enable the extension of railroads from Chicago to California. Likewise, homesteads were hailed as free land, but they were also explicitly designed to push Indians from their lands and to complete the United States' western expansion. The federal government used its leverage to coerce tribes to cede land in treaties. Under the plain text of the Constitution, treaties are “the supreme law of the land.”<sup>12</sup> However, the court has held that Congress possesses the authority to unilaterally abrogate Indian treaties.<sup>13</sup>

Imperial laws are nothing without the means to enforce them, and the United States has gone to extreme lengths to subjugate Indians. During the Revolutionary War, General George Washington ordered the total destruction of the “hostile” Haudenosaunee, declaring, “It will be essential to ruin their crops now in the ground and prevent their planting more.”<sup>14</sup> Kit Carson's 1863–64 campaign to suppress the Navajo relied on a scorched-earth policy of destroying Navajo livestock, crops, and water sources.<sup>15</sup> Infamously, US military leaders commanded soldiers to slaughter as many buffalo as possible in order to starve Plains Indians into submission. Military leaders even urged private hunters to kill bison, and an American general noted hunters “did more to defeat the Indian nations in a few years than soldiers did in 50” (Crepelle and Block 2016, pp. 320–21). Once Indians were on reservations, the United States withheld treaty-guaranteed food as a means to coerce Indians to make land concessions.<sup>16</sup>

None of these behaviors qualify as capitalist. The wealth transfers between the United States and tribes were based upon coercion. The system was no more capitalist than a bandit robbing someone and then selling the stolen goods to someone else. The rule of law did not operate as Hayek envisioned; rather, the law

was wielded by the United States as a tool to legitimate its dispossession of the Indians. When the law operates in this manner, the regime is imperial.

### C. Imperialism on the Reservation

The Indian Wars in the second half of the nineteenth century resulted in Indians being forced onto reservations. In theory, the Indians could have enjoyed a status like the states, which are quasi-sovereign entities with substantial autonomy that allows for local self-governance in the American federal system (Ostrom 1994). Indeed, this is exactly what the United States promised tribes in treaties—the right to govern themselves free from outside interference.<sup>17</sup> To quote Andrew Jackson’s first message to Congress:

As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any state or territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes.<sup>18</sup>

In reality, tribes had very little autonomy on reservations. This included no real choice of location. Indians were given worse land than surrounding areas—land with less gold and silver and with low agricultural value—which put them at a disadvantage (Carlson 1981). Good institutions can overcome bad geography and lack of resources; however, the US constitutional system gave Congress absolute control over Indian lands, power that the Supreme Court has generally upheld in cases like *Lone Wolf v. Hitchcock*. Moreover, tribes were forced onto new lands with artificial boundaries (Dippel 2014). Many groups that never lived together were now expected to do so, creating challenges for governance and economic activities (Cornell and Kalt 2000). Despite the terrible circumstances, Indians attempted to make the best of their situation (Ostler 2001).

The General Allotment Act (GAA) of 1887, or Dawes Act, provided an overarching policy of converting Indians into private landowning farmers.<sup>19</sup> The Dawes Act gave treaty-guaranteed Indian lands to whites, but this was supposed to benefit Indians by expediting their assimilation into white culture. Though nominally based on a plan for economic development, the policies did little to provide opportunities for development. Indians were forced into the role of yeoman farmer. Many Indians did not want to farm—and individuals in a society that prides itself on economic freedom should have the choice not to farm—but that was not the primary obstacle facing Indians. Rather, the issue was that Indian land allocations were small, poorly located, and of poor quality. To boot, Indians were not provided with farm tools or seeds—a bureaucratic failure that was a consequence of an imperial structure (McChesney 1990).

Although ostensibly designed for the Indians’ benefit, the GAA was imperial at its core. A House of Representatives report on allotment unveils the GAA’s imperial intent:

“The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indians are but the pretext to get at the lands and occupy them ... If this were done in the name of greed it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian’s welfare by making him like ourselves whether he will or not is infinitely worse.”

Allotment ultimately gave ninety million acres of treaty-guaranteed Indian lands to whites. Of the forty-eight million acres remaining in Indian control, most was “waste or desert” and unsuited for farming—the avowed purpose of the GAA.<sup>20</sup>

The GAA was designed to turn Indians into American citizens as one of its benefits to them. To attain citizenship, Indians would take the following oath: “You have shot your last arrow. That means that you are no longer to live the life of an Indian. You are from this day forward to live the life of the white man” (Hoxie 2001). Despite acquiring US citizenship by 1924, Indians were denied basic rights of citizenship such as the right to vote and attend public schools well into the 1960s. When the federal government commissioned Lewis Meriam to study the economic situation on reservations, he found that the Dawes Act had failed to promote economic development—reservation Indians were exceedingly poor four decades after its enactment (Meriam 1928).

Meriam’s report contributed to reform, which came with the IRA of 1934. According to the Supreme Court, the IRA was designed “to rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.”<sup>21</sup> The IRA ended allotment. It also contained provisions intended to promote tribal self-government and economic development. Nonetheless, the IRA was imperial in nature. Although it prevented tribes from losing additional land, it locked tribal lands in trusts and named the federal government as the trustee. Thus, the United States owns and has ultimate control over tribal land. Nor did the provisions of the IRA provide for self-governance as the BIA compelled tribes to adopt western governance structures. (Cornell and Kalt 1995). Only decades later would many tribes adopt institutions that they wanted. Another challenge was that under the IRA, the secretary of the interior had nearly unrestrained authority over tribal activities (Crepelle 2019).

By the late 1940s, federal policy had swung back to assimilation. The era starting in the 1940s is known as the Termination Era because the federal government thought that eliminating tribal government was the only way to promote economic development and social order in Indian communities. Without the reservation governments, Indians would be more fully integrated into American institutions and culture.

The federal government implemented this vision through a series of policies, each based to an extent on the view that reservation institutions were not working and full assimilation was the only way to improve prospects for Indian development. Accordingly, the federal government legislatively terminated over one hundred tribes. Efforts to exterminate tribal cultures led the federal government to relocate Indians from their rural reservations to major urban areas under the Indian Relocation Act of 1956.<sup>22</sup> In 1953, the federal government allowed states to assert criminal and civil adjudicatory jurisdiction over Indians remaining on reservations to accelerate the absorption of tribes into the surrounding state with Public Law 280. Furthermore, the Supreme Court held in 1955 that tribes were not owed just compensation, as required by the Fifth Amendment, when stripped of their resources.<sup>23</sup>

#### IV. THE ONGOING CHALLENGE OF IMPERIALISM

President Nixon began the process of ending termination policies when he signed an executive order in 1970 that recognized tribal self-determination. While Congress embraced tribal self-determination in 1975 and has enacted a myriad of laws aimed at empowering tribes, antiquated imperial ideology pervades twenty-first-century federal Indian law and policy. Tribal autonomy remains extremely limited compared with state governments’ autonomy.

Constraints on tribal autonomy abound. Consider property ownership. Tribal trust lands are still owned by the federal government, rendering them subject to federal control; hence, federal approvals are required prior to using most reservation land. Over time, this has combined with fractionation rules (governing inheritance) to create fragmented property rights that increase the costs of exchanging property rights and hence undermine wealth creation. Federal law imposes encumbrances on real estate transactions.<sup>24</sup> Furthermore, federal restraints on Indian trade, first put in place in 1790 on the grounds of Indian incompetence, remain part of the US Code.

Tribes also face challenges policing reservations. Territoriality is the baseline criminal justice rule around the world; that is, local authorities arrest people who violate laws within their jurisdiction. This is not so for tribes, because federal law prevents tribes from asserting criminal jurisdiction over non-Indians.

Consequently, much of the policing on reservations is still done by the Bureau of Indian Affairs (a federal agency) or by the state in which the reservation is located, which removes one of the most important functions of a sovereign government from the tribes. Thus, even where tribes sign contracts with the federal government to police their own reservation, federal rules mean that for many crimes, the federal government or state governments have authority over criminals (Crepelle et al. 2022).

Indian gaming further illustrates the regulatory authority imposed on tribes. States vehemently opposed tribes' attempts to offer gaming on their lands, but the Supreme Court affirmed tribes' inherent sovereign right to engage in gaming. However, the Supreme Court's opinion permits a surrounding state to prevent a tribe from operating casinos on its own land if the state categorically prohibits gaming. This means states can impose their will on tribes. This was not enough for states, so they lobbied Congress to grant them power over Indian gaming. Congress obliged with the Indian Gaming Regulatory Act of 1988. The act requires tribes to form compacts with the surrounding states in order to engage in Vegas-style gaming. States can—and do—require tribes to share casino revenues with the state even though states often provide no value to the tribes. Moreover, states have no duty to negotiate with tribes in good faith.<sup>25</sup>

These external forces reveal that Indian country's political economy is not truly capitalist or socialist but instead what one would expect in a colony: an externally established framework that shapes and constrains prospects for development. The ill deeds perpetrated against Indians by the federal government, the states, and private citizens cannot reasonably be described as capitalism, which in the classical liberal tradition is an economic system in which wealth results from the *voluntary* exchange of property rights. The coerced extraction of property from Indians was not capitalism, but an imperial policy designed to satisfy the demands of the colonies and later the American government. For a system to qualify as capitalist, individuals must control their own property, as that is the central aspect of any market economy. Tribes to this day confront severe, externally imposed constraints on their property institutions that prevent property from evolving in response to local conditions (Alston et al. 2021).

The regulations in Indian country do not represent socialism either. State ownership of the means of production characterized the USSR and explains its downfall (Boettke 2001). But historically, most tribes did not have strong centralized governments, nor did they produce Soviet-style five-year plans. Policies such as the Dawes Act were explicitly designed to force Indians to become yeoman farmers. In this regard, the policies were akin to Mao's Cultural Revolution, as they were meant to instill an ethic through coercion (Pye 1986). Like the Cultural Revolution, the Indian-assimilation policies resulted in hardship and set economies backward.

There is no big socialism in Indian country, which would require command planning. Nor does Indian country have the small socialism of modern liberal democracies. Small socialism involves bargains struck to benefit workers or create systems of universal health care or basic income, such as Sweden and Norway. Although many enterprises in Indian country are tribally owned and share revenues with tribal citizens, these tribally owned enterprises are rational responses to market incentives created by current federal Indian law.

To be sure, there are constraints on the exchange of property in Indian country, but they are holdovers of imperialism rather than evidence of socialism in Indian country. These policies are not about economic management but about reducing Indians' ability to make choices about their economic activities. Even capitalism often features constraints on exchange, with rules often resulting from rent-seeking by privileged elites. What distinguishes the rules on American Indian reservations is that they are results of an imperial strategy. While the dispossession of land was meant to create a capitalist economy for the United States, the forced aspects of privatization and boarding schools and the subsequent denial to Indians of autonomy to choose rules governing their reservation economies (encumbered as they are by federal and state regulations and restrictions) reduce the ability of Indian nations to choose how to govern their economies.

## V. A SIMPLE RULE FOR INDIAN COUNTRY

Richard Epstein's argument in *Simple Rules for a Complex World* is that prosperity is more likely when we have simple rules to regulate interactions in our ordinary social life. These rules concern individual autonomy, property, contract, and tort, which, along with rules regarding forced exchange and just compensation, provide a framework to criticize much government intervention. Simple rules go a long way, though they require some modification in response to specific challenges, such as low economic growth (Tarko 2020). Reservations are on average the poorest communities in the US. If the literature on economic freedom is to be believed, reservations' regulations likely contribute to that poverty (Lofthouse 2019). This suggests that some of Epstein's simple rules would make sense in Indian country.

There are many reasons for polycentrism, including freeing up public entrepreneurs to change policy within the laboratories of democracy. The reason why freeing up political talent is important is that new problems require new solutions (Aligica 2018). In the United States, public administration has become more centralized over time (Ostrom 2008). It need not be this way, as public administration has a liberal tradition that recognizes the virtues of local autonomy in public sector governance (Aligica et al. 2019).

Though there is much to be said for freeing up business on reservations (the simple rule of reducing regulation), the more basic challenge is public sector governance and barriers to meaningful self-government. The political and legal rules governing Indian country are not simply centralized; they are paternalistic legacies of an imperialistic regime that continually undermine the autonomy of American Indians to devise their own political, economic, and social rules.

The persistence of barriers to political choice and local self-governance is the reason why it would be inappropriate to recommend specific economic institutions such as capitalist or socialist ones. The primary recommendation is that tribal governments, communities, organizations, and individuals be able to decide how to govern their affairs, whether in government or in the civil society that sustains governments.

Such autonomy is a necessary simple rule for prosperity. It is not enough, as tribes still need to discern which rules will best free up Indian entrepreneurs and how to address the challenges of long-term poverty and inequality. Economic freedom is usually associated with wealth creation; however, some tribal cultures may be more open to larger government participation in the tribal economy. The key point is that each tribe should be able to choose how to govern its own land and economy. Any other system is imperialistic.

Polycentrism does not mean a confederation—a Westphalian system. It is, instead, more akin to libertarian interstate federalism, in which collections of sovereign entities interact within a political framework that acknowledges their sovereignty yet provides opportunities for the sovereign units to coordinate with each other. That is the vision of American federalism; it remains to be realized in Indian country.

We have seen some progress toward polycentrism, especially in the 1970s. But the system remains heavily centralized from the vantage point of tribes: Congress has the ultimate authority. Hence, autonomy and self-government are always precarious. Imperialism on reservations has the effect of undermining both self-government and self-governance. Since civil society is not fixed but complex and adaptive (Novak 2018), flexible rules are useful. Polycentrism provides this flexibility, as it enables governments to manage their affairs and recognizes that governments do not have a monopoly on developing rules for good order and working relations; communities and groups can do so as well and thus require autonomy too.

Despite the lack of polycentricity, reservations self-govern to an extent. Partially as a response to their inability to rely on the federal government, tribal nations often rely on themselves and their traditional customs and institutions. Cultural renewal followed efforts by the federal government to destroy tribal cultures and tribal ways of life. This renewal, and the budding development of relations among tribal governments, constitutes a foundation for polycentrism in the future.

The assertion of federal powers described above was based in part on the view that tribes could not manage themselves. But the experience of the past fifty years shows overwhelmingly that tribes are better at managing tribal affairs than the federal government is. Some tribal institutions have even outperformed their state counterparts. The United States has even endorsed the United Nations Declaration on the Rights

of Indigenous Peoples. The hallmark of that declaration is self-determination, though it may be more useful to see it as a declaration of self-government and self-governance—that is, a polycentric vision. But to realize that vision requires overcoming the ongoing legacies of imperialistic institutions, including the dominance of Congress over the tribes in federal and constitutional jurisprudence. Without such changes, polycentrism as a formal institution is an aspiration rather than a reality in Indian country.

## VI. CONCLUSION

Lenin famously proclaimed that imperialism was the highest stage of capitalism. But imperialism as a legal, political, and economic regime cannot be capitalist, and federal imperialist policy toward Indians is not capitalist. The dispossession of Indian land represented a failure to honor the sacred nation-to-nation agreements made between the United States and the Indian nations, not the inevitable flaws of capitalism. Some of the outcomes could be attributed to what Randall Holcombe (2018) calls political capitalism, or the ongoing relationship among political and economic elites that benefits certain businesses at the expense of society. But there is a reason it is called political capitalism: it is a problem with government, not markets.

It is not clear that either capitalism or socialism has been attempted on reservations. Rather, every choice made by tribes since reservations were established has been made in a context in which most choices were imposed on them. It does not make sense to call the GAA a capitalist system, as the property rights were not of the tribes' choosing. Nor is it a socialist system. Even though the rules rely heavily on bureaucracy, the economy is still based on exchange, though the rules make exchange difficult, if not impossible, for many Indians. The current and historical lack of a formal private sector on reservations does not mean tribes are averse to capitalism or that Indian country is socialist. Rather, it shows that the formal rules generally present obstacles to entrepreneurship on reservations.

The simple rule we recommend for Indian country is polycentricity. One could call it an application of the libertarian interstate federal tradition since the most significant aspect of that tradition, like the polycentric tradition in general, is to advocate self-government and self-governance. Polycentrism is a system that enables people to work together. Viewing it as the solution means shifting the focus from choosing specific economic systems to reforming political institutions, both formal and informal.

Public choice scholars will remind us that autonomy does not eliminate prospects for government predation: local governments are still predatory. But we believe polycentrism may enable social movements that are necessary to reduce the risks of government predation (Novak 2021).

Classical liberals recognize that not only did Westphalian sovereignty have its limitations, but so does imposed cosmopolitanism. Polycentrism, manifested as sovereign states with meaningful autonomy and heterarchical relations among the tribes, makes more sense than an anarchic system in which tribes interact like billiard balls upon one another, and it would be an improvement over the current Leviathan system. Thus, while coming up with rules that facilitate economic renewal in Indian country is critically important, polycentrism must come first.

## NOTES

- 1 As Diamond (1998) puts it, “When the Europeans arrived, carrying germs which thrived in dense, semi-urban populations, the indigenous people of the Americas were effectively doomed. They had never experienced smallpox, measles or flu before, and the viruses tore through the continent, killing an estimated 90 percent of Native Americans.”
- 2 *Elk v. Wilkins*, 112 U.S. 94 (1884).
- 3 *U.S. ex Rel. Standing Bear v. Crook*, 25 F. Cas. 695, 5 Dill. 453 (D. Neb. 1879).
- 4 See Bobroff (2001, p. 1567).
- 5 *Johnson v. McIntosh*, 21 U.S. 543, 588 (1823).
- 6 *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831).
- 7 *Cherokee Nation v. Georgia* (1831).
- 8 *Cherokee Nation v. Georgia*.
- 9 *Lone Wolf v. Hitchcock* (1901).
- 10 *United States v. Kagama*.
- 11 *United States v. Kagama*.
- 12 U.S. Const. Art. VI, Sec. 2
- 13 *Lone Wolf and McGirt*.
- 14 <https://www.onondaganation.org/history/us-presidents-hanadagayas/>
- 15 <https://americanindian.si.edu/nk360/navajo/long-walk/long-walk.cshtml>
- 16 *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 346–47 (1998).
- 17 *McGirt v. Oklahoma*, 591 U.S.\_\_\_\_\_, 140 S. Ct. 2452, 2477 (2020) (“And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves.”); *Holden v. Joy*, 84 U.S. 211, 238 (1872) (“A permanent home for themselves and their posterity in the country selected for that purpose, without the territorial limits of the State sovereignties, where they could establish and enjoy a government of their choice, and perpetuate such a state of society as might be consonant with their views, habits, and condition”).
- 18 First Annual Message to Congress, Andrew Jackson, (Dec. 8, 1829), Presidential Speeches, University of Virginia, Miller Center.
- 19 Compare the attempted cultural destruction of Indians to China’s Great Leap Forward and Cultural Revolution, which were also cultural-assimilationist policies that ended up reducing productivity. On the consequences, see Dikötter (2010).
- 20 *Annual Report of the Secretary of the Interior for the Fiscal Year Ended June 30, 1938* (Washington, D.C. 1938): In 1887, Indians had 130 million acres remaining; by 1933, only 49 million acres remained, much of it “waste and desert.”
- 21 *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973).
- 22 Indian Relocation Act of 1956, Pub. L No. 959, 70 Stat. 986 (1956).
- 23 *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).
- 24 25 U.S.C. 177.
- 25 *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

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