

## Enhancing the Business Climate and Incentivizing Business Development on North Dakota Indian Reservations

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### Introduction

American Indian economies have not always been in economic stagnation. Before American Indian contact with European settlers and before federal regulations over the past 150 years, indigenous economies thrived. The presence of entrepreneurship and trade in Indian America can be traced back centuries ago. For example, in 850AD, ancestral Puebloan culture in New Mexico achieved unprecedented development as they constituted Chaco Canyon, a regional trade and administrative center.[i] By 1,100 AD, natives constructed architectural buildings, built infrastructure, and migrated to other nearby locations.[ii] Three centuries after contact with Europeans, in the 19th century, native blacksmiths in the Mandan Villages, situated in North Dakota, produced and traded axes that a short while later were found near the North Pacific coast, indicating exchange and trade.[iii]

The respect for property rights in earlier indigenous societies accomplished many Natives' economic success (Anderson 1992). Establishing institutions that minimized transaction costs and created wealth was possible by enforcing these property rights.

Prior to contact with non-Natives, Indian

economies thrived. They were grounded in well-defined ownership norms and governance rules that rewarded individual initiative. An economic and legal framework generated extensive trade networks where goods from north of the Arctic Circle were traded for metals from South America.

Since colonization, however, American Indians have been wrapped in “white tape,” as the late Coughatta Tribal chairman Ernest Sickey calls their bureaucratic quagmire.[iv] In 1831, the U.S. Supreme Court declared Indians to be “wards” of the federal government, leading to aggressive suppression of Native American cultural and religious practices that were part of the heritage we should celebrate.[v]

Federal laws and regulations among many other factors, have resulted in a decline of American native economies and have undermined traditional forms of exchange and trade. Despite having vast natural resources, Indian reservations face challenges such as high poverty rates and limited economic opportunities. For example, one in four reservation Indians live in poverty and many survive on federal grants.[vi]

Indian reservations operate within multiple

institutional influences, encompassing both externally imposed regulatory frameworks emanating from federal and state jurisdictions and self-determined governance structures that bestow tribal communities with increased autonomy. Studies about federal land policy (Crepelle, 2022)[vii], centralized oversight of legal and political institutions on reservations as overlapping jurisdictions (Anderson & Parker, 2008)[viii], and conflicts between states and tribes over who can collect tax revenues (Cowan 2021[ix]; Lozar et al., 2022[x]) describe the economic challenges faced by tribes.

The involvement of the federal government in Indian country resulted in land policies that created a complex legal framework of diverse land tenure arrangements on reservations. This complexity can be partly attributed to the Dawes Act of 1887, whose effects persist to the present day. The Dawes Act mandated a division of tribal land into individual allotments of 160 acres. The goal was to break up tribal lands, and to make individual Indians owners of private property. The private property was land, and the goal of the privatization of tribal lands was to encourage farming, as to assimilate Indians into the majority culture. The allotments were granted as trust lands, making alienation impossible. Only after 25 years the federal government could grant legal title to the beneficial owners. This transfer would only happen from trust land where Indian beneficial owners were deemed “competent and capable,” words that remain a central part of federal Indian

law to this day.

The cost of land measurement and governmental bureaucracy delayed the allotment process. Subsequently, the Burke Act of 1906 gave the BIA greater authority to handle the allotment process and shorten the trust-land period.

However, on average, the Dawes Act and the subsequent Burke Act did not result in “assimilation” and Indians adopting farming. Instead, the social and economic conditions on reservations worsened and motivated the passage of the Indian Reorganization Act (IRA) in 1934. That legislation ended the allotment process and returned unallotted lands to tribal authorities. Further, previously allotted lands that were in federal trust were locked in that legal status perpetually.

These land policies have harmed economic development on reservations. Because land cannot be used as collateral for investment by American Indian businesspeople it cannot finance the economic infrastructure. Moreover, economic activity on allotted lands requires the approval of the BIA.

Trusteeship also makes it difficult for tribes to capitalize on their resource wealth. In one case, tribes on the Ford Berthold reservation missed out on millions of dollars from the fracking boom because trust lands required 49 regulatory steps before it could be leased, compared to four steps off reservations.[xi]

This paper documents some of the causes of poor economic performance on reservations. Analyzing these causes is one of the first steps to understanding what path forward will improve the business incentive climate to foster the economic growth and prosperity that natives enjoyed long ago.

This paper offers a glimpse into how laws, regulations, and tribal, federal, and state institutions impact the economic well-being of tribal members on North Dakota's reservations. We emphasize issues of tribal government structure and governance, property rights, federal requirements, legal jurisdiction, impartiality of the judiciary, openness and transparency.

## Indian Reservations in North Dakota: Overview and Descriptive Data

There are five federally recognized Indian reservations in North Dakota. These reservations, along with their respective tribal affiliations[xii], are:

### Fort Berthold Reservation

- Three Affiliated Tribes:  
Mandan, Hidatsa, and Arikara Nation
- 10,400 enrolled members.

### Spirit Lake Reservation

- Spirit Lake Tribe, formerly Devils Lake Sioux Tribe
- 7,256 enrolled members.

### Standing Rock Reservation

- Standing Rock Sioux Tribe: a reservation between North Dakota and South Dakota,
- 15,568 enrolled members.

### Turtle Mountain Reservation

- Turtle Mountain Band of Chippewa Indians
- Approximately 30,000 enrolled members.

### Lake Traverse Reservation

- Sisseton Wahpeton Oyate Nation
- 13,177 enrolled members.

Additionally, there is the Trenton Indian Service Area, which consists of a smaller community affiliated with the Turtle Mountain Band of Chippewa Indians. This Area does not have an independent government.

More than 38,000 American Indians live in North Dakota, making up five percent of the total population. This percentage is higher than the 1.1 percent American Indian population in the US. North Dakota ranks 6th among U.S. states with the highest percentage of American Indians as a share of the total population. Almost 60 percent of North Dakotans who identify as American Indians live on reservations, and more than 40 percent of American Indians are under the age of 20.[xiii]

In 2021, the per capita income of American Indians in North Dakota was about 16 percent below average American Indian per capita income nationwide. As Table 1 shows, for individuals living in North Dakota reservations, the per capita income of American Indians is 22 percent lower than the overall reservation per capita income. In addition, the per capita income in North Dakota reservations overall is 41 percent

lower than the per capita income for the entire state. Because nearly  $\frac{3}{4}$  of North Dakota American Indians live in reservations, these two differences lead to an American Indian per capita income in the state that is 48 percent below the state's overall per capita income. Larger average households for American Indians result in smaller differences in median household incomes, but the differences are still large with American Indian median household income being 41 percent below overall North Dakota median household income.

Table 1 also details the total population and the American Indian population for each of North Dakota's reservations, their respective per capita incomes, and their respective median family and household incomes. Turtle Mountain reservation has the smallest gap between per capita income for the total population and for American Indians; the latest constitute almost the totality of their residents. Spirit Lake reservation has the largest per capita income gap among these demographics (37 percent). As with per capita incomes, the median family income and median household income for American Indians are both smaller than for the total population in each of the five North Dakota reservations. Fort Berthold reservation had the highest American Indian household income at \$52,719, while the Standing Rock reservation had the lowest at \$28,867.

Additionally, 31 percent of American Indians in North Dakota are below the poverty line, almost twice the state poverty average. Table 2 provides the breakdown by all races and

American Indians for each reservation. Standing Rock reservation had the highest share among reservations, with 41 percent of American Indians under the poverty line. The reservation with the lowest American Indian poverty rate is Lake Traverse, with a share of 20.7 percent.

Regarding the educational level, Table 3 shows the percentage of high school graduates or higher and bachelor's degrees or higher for Native Americans. North Dakota's reservations have a similar high school graduate ratio to the state. For example, the Turtle Mountain reservation had 85.2 percent of Native Americans with a high school degree or higher, even higher than the state.

However, the percentage of individuals with a bachelor's degree or higher is below the state average. Fort Berthold is the only reservation above the state average, with 20.9 percent of their Native American population with a bachelor's degree or higher.

**Table 1** Population and Per Capita, Median Family and Median Household Income

Reservation	Total Population	American Indian Population	Per Capita Income	American Indian Per Capita Income	Median Family Income	American Indian Median Family Income	Median Household Income	American Indian Median Household Income
Fort Berthold	7,544	4,867	\$27,951	\$21,269	\$71,281	\$53,672	\$60,929	\$52,719
Spirit Lake	4,096	3,354	\$16,813	\$10,571	\$48,516	\$31,750	\$43,824	\$33,846
Standing Rock	7,974	6,245	\$16,711	\$11,945	\$45,000	\$32,670	\$39,516	\$28,867
Turtle Mountain	7,810	7,381	\$18,762	\$18,691	\$48,714	\$48,922	\$45,885	\$45,365
Lake Traverse	11,409	4,595	\$26,209	\$22,717	\$61,189	\$36,475	\$53,309	\$34,156
Total North Dakota Reservations	38,833	26,442	\$22,108*	\$17,242*	\$55,980*	\$41,617*	\$49,464*	\$39,413*
North Dakota (State)	773,344	35,955	\$37,343	\$19,525	\$92,066	\$46,383	\$68,131	\$40,489

Source: US Census Bureau. American Community Survey 2021 5-year estimates.

Note: \*Income variables constructed by population weigh on Reservations

**Table 2** Total Population Percent Below the Poverty Line

Reservation	2012	2021
Fort Berthold	23.1%	21.1%
Lake Traverse	22.7%	20.7%
Turtle Mountain	42.6%	30.5%
Spirit Lake	47.1%	38.9%
Standing Rock	43.2%	41.0%
North Dakota (State)	12.1%	10.7%

Source: US Census Bureau. American Community Survey 2012, 2021 5-year estimates.

**Table 3** Native American Population Percent High School Graduates or Higher and Bachelor’s Degrees or Higher

Reservation	High School Graduate or higher	Bachelor’s degree or higher
Fort Berthold	83.0%	20.9%
Lake Traverse	84.4%	6.3%
Turtle Mountain	85.2%	13.8%
Spirit Lake	79.6%	11.3%
Standing Rock	81.4%	11.9%
North Dakota (State)	84.8%	15.6%

Source: US Census Bureau. American Community Survey 2012, 2021 5-year estimates.

**Table 4** Population, Membership Enrollment, Land Area, and Density

Reservation	Total Population	Membership Enrollment	Land Area (Sq. miles)	Population Density (per Sq. Miles)
Fort Berthold	7,544	10,400	1,562	4.82
Spirit Lake	4,096	7,256	405	10.11
Standing Rock	7,974	15,568	3,625*	2.19
Turtle Mountain	7,810	30,722	113	69.11
Lake Traverse	11,409	4,595	1,450*	7.86

Sources: US Census Bureau. American Community Survey 2021 5-year estimates, North Dakota Indian Affairs Commission. Website statistics.

Note: \*Including the reservation’s land area in the state of South Dakota.

## A Description of Some Institutions on North Dakota Reservations

North Dakota reservations have varying histories and institutions. This section provides a brief description of the history of formation of these reservations, their constitutions, and their governing bodies.

### Fort Berthold Reservation

The Treaty of Fort Laramie, signed in 1851 by the Mandans, Hidatsas, and Arikaras, resulted in a land area assigned to these tribes, which stretched from the Missouri River to the headwaters of the Yellowstone River. This area was established by President U.S. Grant in 1870 as a reservation for the three tribes. However, the land area was about 10 percent of the land mass the Treaty of Fort Laramie had promised them. In 1880, it was named the Fort Berthold Reservation.[xiv]

The Mandan, Hidatsa, and Arikara Nation, known as the Three Affiliated Tribes, constitute the Fort Berthold Reservation. Their Tribal Constitution was approved in 1936, with the last amendment being introduced in 2010. It is an Indian Reorganization Act (IRA) Constitution; thus, it was approved by a majority vote of tribal members and approved by the US Secretary of the Interior under the IRA. The preamble of Ford Berthold's constitution states the constitution "eagerly embrace the opportunities for self-rule, and to enjoy the blessings of liberty and justice... to guarantee to our prosperity a more hopeful future; to

promote the general welfare of the three tribes; to make possible a more hopeful, self-sustaining and honorable living, socially and economically..."

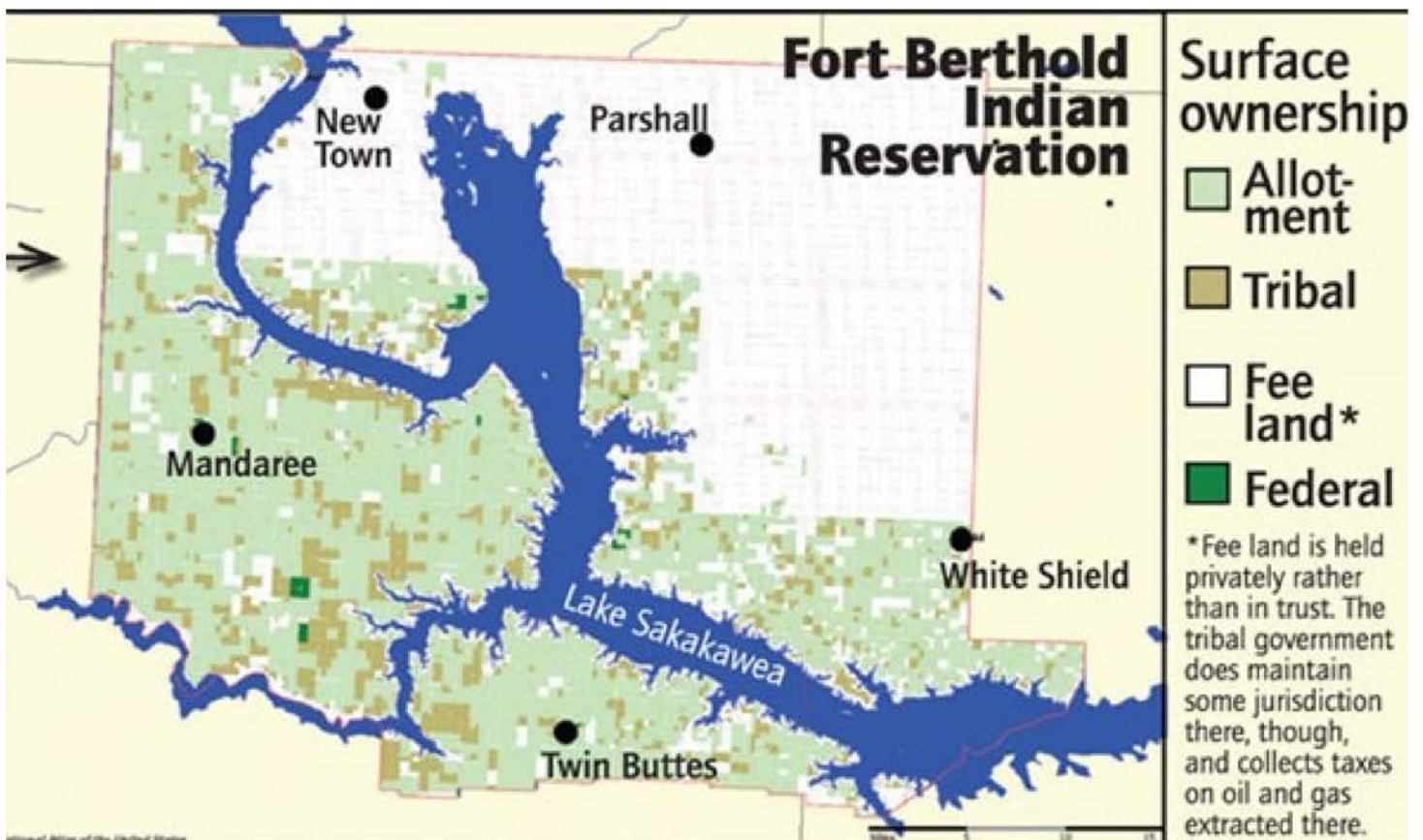
Amendments to the constitution must be ratified by a majority of qualified voters of the tribe in a special election. The constitution establishes substantial restrictions for the sale, ceding, or leasing of land, which require the approval of the tribal business council and the Secretary of the Interior. The governing body is the tribal business council. Members are the tribal chairman, elected at-large by a majority of votes, and six district (segment) representatives elected by each of the reservation's segments. The term of office for each council member is four years, with one-half of the council's seats renewed every two years. A primary election is required by law if more than two candidates seek to fill the same office. The chairman has no extraordinary powers beyond the ones established for the council.

Fort Berthold is one example of the checkered distribution of tribal land, fee simple lands, and allotted lands. Figure 1 illustrates the checkered nature of tribal lands allotted lands and fee simple lands, increasing coordination costs among the various types of landowners.

Since the initial allotment over 100 years ago, the allotted tracts have experienced increasing ownership fractionation. Heirs tend to own the land in the legal form of tenancy in common. Each heir owns a share

of the land, not a physical part of the land. With each additional generation passing, fractionation increases exponentially. This is also the case for the allotted lands on Fort Berthold. Ownership fractionation increases the cost of developing the land and utilizing it, as each owner has veto power. Fractionated land prevents even entrepreneurs who are most skilled in navigating the bureaucratic hurdles from gathering all the approvals needed, such as wind permits for wind farming or oil drilling.[xv]

**Figure 1** Ownership on the Fort Berthold Reservation



Source: MHA Nation Energy Division



## Spirit Lake Nation

The Spirit Lake Tribe reservation (previously the Devils Lake Sioux Tribe and Fort Totten reservation until 1993) was established in 1867 by a treaty between the U.S. government and the Sisseton Wahpeton Sioux Bands.[xvi] Before that, the Sisseton and the Wahpeton took possession of the land on the present-day reservation and negotiated the limits of their reservation several times with both state and federal governments.

The Spirit Lake Nation tribal constitution was approved by the Bureau of Indian Affairs in 1946. It has since been revisited nine times, the last being in 1996.[xvii] The preamble states that establishing their organizational text seeks to "promote justice, ensure tranquility, encourage the general welfare, safeguard our interest and secure the blessings of freedom and liberty for ourselves and our posterity." The constitution was adopted under the IRA statutes.

The governing body for this reservation is the tribal council, elected by tribal members. The tribe elects the chairman and the secretary-treasurer of the council. Each of the four districts also elects its representative to the council. The term of office for each officer and each district representative is four years, with one-half of the council's seats being rotated every two years. The chairman has no extraordinary powers beyond the ones established for the council.

The powers invested in the governing body

are, among others, the issue of ordinances that regulate and license all business and professional activities conducted upon the reservation. Any assessment of tribe members that trade or reside within the tribe's jurisdiction must be subject to review and approval by the US Secretary of the Interior.

Reform of the law-and-order code requires a double reading and a majority vote from the Council. Ordinances are subject to review by the Secretary of the Interior.

The judicial system is composed of a tribal court and an appellate court. Tribal law and order codes are published and available online.

## Standing Rock Sioux Tribe

The Standing Rock Sioux reservation was originally part of the Great Sioux Reservation established by the Treaty of Fort Laramie in 1868. As a result of an act of Congress, the division into six separate reservations gave birth to the current Standing Rock Sioux reservation limits in 1889.[xviii]

The constitution of the Standing Rock Sioux reservation was approved in 1959, with the last amendments introduced in 2008.[xix] It is not an IRA Constitution; thus, it was not reviewed by the US Department of the Interior nor voted by the tribal members following US federal regulations. The constitution's preamble states it seeks to "promote the general welfare, establish justice, ensure tranquility..., secure to

ourselves and our posterity the blessing of liberty and freedom..." Amendments to the constitution must be ratified by a majority of qualified tribe voters in a special election.

The governing body is the tribal council. Members of this council are the chairman, vice-chairman, secretary, six councilmen elected at-large by the tribe members, and eight additional council members elected as representatives in each of the reservation's districts. The term of office for each council member is four years, with half of the council elected every two years. The constitution requires a primary election if more than two candidates run for the same office. The chairman has no extraordinary powers beyond the ones established for the council. The Standing Rock Sioux constitution establishes a Bill of Rights. That Bill protects private property from being taken without compensation, provides equal protection, and recognizes "individual employment opportunities and economic development".[xx]

The Supreme Court and lower courts constitute the judiciary system. Judges are appointed by a two-thirds majority vote of the council and are ratified by the voters in the next general election for a four-year term. Judges cannot be removed from office without a misconduct justification motion and a two-thirds majority vote from the council. Codes are published and of open access on the tribe's webpage.

## **Turtle Mountain Band of Chippewa Indians**

The Sweet Corn Treaty was the first one to define boundaries for the Chippewa Indians and was signed between the Dakota territory and the tribe in 1858, with the assistance of the US government. After much back and forth in the tribe-federal relation, it was not until 1882 that Congress recognized the Turtle Mountain reservation.[xxi]

The Turtle Mountain Band of Chippewa Indians adopted their constitution and bylaws in 1932. Since then, the text has been amended eleven times, the last being in 2015.[xxii] The tribe's members rejected the Indian Reorganization Act through a special election and chose to keep their independent constitution. However, the U.S. Secretary of the Interior approved a revised constitution in 1959.[xxiii] The constitution's preamble states that its constitution seeks to "develop and enjoy the advantages of democratic processes and opportunities to promote the general welfare, education, and prosperity and to promote good and law-abiding citizens." The constitution can be amended by a majority vote of qualified voters at a special election together with the approval of the US Secretary of the Interior.

The tribal council constitutes the governing body. Members of the council are the chairman, elected by the tribe, and eighth district representatives, two for each of the four tribal districts. Votes for candidates for district representatives are cast at large, and each voter is eligible to vote for two representatives from each of the four districts. The constitution establishes secret ballots and primaries for each office, Powers

of the Tribal Council include the regulation and licensing of all business and professional activities conducted on the reservation and the enactment of ordinances to provide rules and regulations governing fishing and hunting.

The Council can also manage, lease, or permit Tribal Land and engage in any business. The tribe's chairman has veto power, which a special majority of the tribal Council can override. The separation of powers is established explicitly in the Constitution. The tribe has an independent judicial branch that an appellate court, tribal court, and a judicial board integrate.

## **Lake Traverse Reservation (Sisseton Wahpeton Oyate Nation)**

The area covering the Lake Traverse Reservation was first subscribed under the Treaty of the Traverse de Sioux signed in 1851 between the U.S. government and the Sioux of the Minnesota Territory. Dissatisfaction with the land distribution that this treaty settled among coexisting bands in the region led to the Dakota War of 1862. The resolution of the conflict ended with the appointment of a head-chief of the Sisseton Wahpeton bands by the U.S. War Department in 1866.[xxiv]

In 1867, the Lake Traverse Treaty established the Lake Traverse Reservation and its actual boundaries. It was not until 1913 that an advisory committee was set up and took the governmental authority. The current system of by-laws and tribal government was later

established in 1946 according to the Indian Reorganization Act provisions.[xxv]

The Sisseton Wahpeton Oyate Nation in the Lake Traverse Reservation is organized by a tribal constitution last revised and amended in 2006.[xxvi] According to its preamble, the constitution aims "to form a better tribal government, exercise tribal rights and responsibilities and promote the welfare of the people." The jurisdiction of the tribe extends to lands lying in the territory within the original confines of the Lake Traverse Reservation. A majority vote can amend the constitution, provided that at least thirty percent of the registered voters vote in a special election.

The Tribal Council is the governing body of the tribe. It consists of a chairman, vice chairman, and secretary, named as officers, elected by the tribe at large, and seven council persons elected from each of the seven districts in which the reservation is divided. Council members serve for two years and can only be reelected for one consecutive term in the same office. Primary elections are required when more than two members have filed for office.

The chairman, vice chairman, and secretary constitute the executive committee with the power to speak and act for the tribe when the council is not in session and may implement all properly enacted resolutions from the Council. The council may revise any action taken by the executive committee. The tribal council can convene a general council composed of all over-aged,

enrolled members with a 10% quorum needed. Its function is to oversee reports from the tribe's officers. The judicial branch of the tribe is composed of a tribal court and an appellate court appointed by a special majority of the vote of the Tribal Council.

The Sisseton Wahpeton Oyate Nation has a bill of rights and a code of ethics for tribal officials. The constitution allows for initiatives and referenda, recall of elected officials, or signed petitions to amend the constitution. All the districts in the reservation have District Councils and delegate all affairs not inconsistent with the Tribe's constitution, providing for a more decentralized government.

## Selected Economic Activities on Reservations

### Natural Resources

In addition to the laws, regulations, and institutional framework that are subject to tribal control, the economic prospects of North Dakota's reservations are shaped by factors that often lie beyond the direct control of tribal governments. For instance, whether a reservation has natural resources land in federal trust and associated checker-boxed land, influences the economic opportunities available to each tribe. Many of North Dakota's American Indian communities benefit from the presence of oil and gas reserves, in addition to possessing geographically advantageous lands suitable for harnessing renewable energy sources.

Not only in North Dakota but also in other states, many American Indians reside on reservations with plentiful natural resources. American Indians on reservations experience poverty despite their abundant energy resources, as they have contributed only a tiny fraction of the total U.S. energy production. Thirty percent of the nation's coal reserves, fifty percent of potential uranium, and twenty percent of oil and gas reserves, are located on reservations west of the Mississippi. Further reservations contain ten percent of the country's wind and solar energy potential and a large stock of critical minerals.[xxvii] Based on 2009 estimates, the potential energy resources on reservations amount to \$1.5 trillion.[xxviii]

The state of North Dakota occupies a prominent position in the United States' energy sector, boasting the third-largest reserves and production of crude oil. Native American tribes residing within North Dakota are part of the state's thriving crude oil industry, with their lands contributing to oil and gas extraction. For example, in 2022, tribal lands in North Dakota played a substantial role in the U.S. crude oil production landscape, accounting for approximately 7% of the nation's total barrels.[xxix] Among all North Dakota reservations, the Fort Berthold Reservation is the largest oil producer, providing around 15 percent of North Dakota's monthly oil production.

Median Income has increased in Reservations that have benefited from the oil and gas extractions, such as Fort Berthold

and Spirit Lake (Table 5). Turtle Mountain reservation, which banned oil fracking production in 2016, has also seen its median household income increase.[xxx] North Dakota’s reservations are rich in renewable energy resources and have wind and solar potential. The Turtle Mountain Band of Chippewa Indians’ reservation possesses significant wind energy potential, supplying electricity to the tribe’s casino and resort hotel.

The Standing Rock Sioux Reservation ranks among the top 10 tribal lands in the United States for favorable wind and solar resources, prompting plans to establish a 235-megawatt wind farm. [xxxi] However, this reservation’s median household income has fallen since 2010 (Table 5). The Spirit Lake Tribe has secured support from the U.S. Department of Energy to install a 1.5-megawatt wind turbine to meet a significant share of the tribe’s electricity needs.[xxxii]

**Table 5** American Indian Median Household Income (in 2021 USD)

Reservation	2010*	2021
Fort Berthold	\$43,716	\$52,719
Lake Traverse	\$35,545	\$34,156
Turtle Mountain	\$30,684	\$45,365
Spirit Lake	\$27,792	\$33,846
Standing Rock	\$32,784	\$28,867
North Dakota (State)	\$31,383	\$40,489

Source: US Census Bureau. American Community Survey 2010, 2021 5-year estimates. Note:  
\*Income adjusted using CPI deflector.

## Gaming Industry

An important source of income for Indian American reservations has been casinos and the gaming industry. In North Dakota, as in many other states, tribes, as sovereign nations, have benefited from state laws prohibiting gambling. The proximity to the U.S.-Canada border makes North Dakota’s Indian casinos well-situated for Canadian visitors.

Tribes in North Dakota do not provide specific information about how much of a tribe’s income comes from gaming operations. However, recent state laws passed in 2018 allow for online betting and charitable slots in all parts of the state. This has significantly reduced gaming income for tribes as state residents now have opportunities for gaming outside of reservations. [xxiii] Gaming in Indian country is regulated, as any other business, by tax compacts that must be settled between the tribes and the state government.

## Tax Compacts

To tax businesses or transactions of non-members that take place within American Indian reservations, tax compacts are negotiated between the tribes and the state governments. The reason for this is an existing jurisdiction overlap between the sovereign right of taxation that both the state and the tribes have, according to U.S. doctrine.[xxxiv] If not properly addressed, dual state-tribal taxation could occur, depressing on-reservation activities and economic development. “Compacts are advantageous to both parties and the business community because they provide certainty in an otherwise confusing area of the law. With a compact, the state and the tribe are assured of a predictable revenue stream, and the business community is assured that it will not be treated more harshly on the reservation than off it” (Cowan: 2021)

In the case of North Dakota, tax compacts became more relevant with oil and gas production and the gaming industry. The state and all five reservations have tax compacts signed for gaming activities. The gaming compacts in North Dakota are set to run for 10 years, with a possible renewal for terms of 10 years. By agreement, tribes must use at least ten percent of the revenue on economic development and social welfare programs. They must also provide annual reports to the state detailing the designated usage of economic development funds. Tribes in North Dakota are eligible to offer sports betting without changing their tribal

gaming compacts.[xxxv]

Tax compacts have also been signed for oil and gas production reservations. In the case of Fort Berthold Reservation, which has by far the biggest oil industry within the state, the tax compact sets that the tax collection is done by the state and remits 80 percent to the tribe on trust lands and 20 percent on non-trust lands. Agreements remain in effect for the life of the wells drilled during the term of that compact, providing certainty to oil producers that the tribe won't mirror the state tax.[xxxvi]

## Reservation Economic Freedom Index

Institutions under tribal jurisdiction play a pivotal role in sculpting the economic development landscape within reservations. The organizational structures of Native American tribes relate to their sovereignty and capacity for self-governance. Economic freedom is also relevant to the development of the economies in society. The relationship between economic freedom and economic growth has been addressed by a large economic literature. A majority of the research accounts for a positive causal effect of economic freedom over economic growth and good standards of living (see, for example, Grier, 2021).[xxxvii]

The Reservations Economic Freedom Index (REFI) (Stratmann, 2023) evaluates the institutional framework in factors such as the rule of law, the establishment of secure property rights, and the presence of impartial courts. Additionally, the index is

set up of different components that describe relevant topics that existing literature ties to economic development: mechanisms that limit arbitrary decisions and limit the rent-seeking abilities of governing institutions, an executive configuration of the tribal government as opposed to direct democracy, openness, and transparency of public processes.

Table 6 describes each of the REFI's components and the data sources. The components consist of five categories: regulatory frameworks, governance, self-governance contracts with the BIA, acceptability of other cultures and transparency, and the tribal judiciary branch. The regulatory framework components of the REFI include:

- Percentage of fee-simple[xxxviii] acres (acres not in federal trust) on a reservation: if individual Indians have more control over their land, it provides better incentives for productively using and improving land than land received through allotments and held in federal trust. It also allows land to be used as collateral to pursue other economic activities.
- Uniform commercial code: it gives entrepreneurs greater certainty about what happens when one party fails on their contractual obligation. A lack of this certainty can prevent potential entrepreneurs from engaging in productive activity.
- Land use code: it protects property rights in land ownership. This affects incentives in the same way as the percentage of fee-simple acres.
- Tax code: specification of taxation parameters in the tribal code provides results in less arbitrary taxing for businesses. This certainty can affect economic activity in a similar way as a uniform commercial code.

Within the governance components category, there are:

- Government structure: strong-chief executive or strong-legislature tribes provide for better structures, such as the separation of powers, for governments to improve prosperity compared to a general council format (Cornell and Kalt; 2000).
- Procedure for selecting the highest office holder: election versus appointment by the tribal council. There is more accountability under a popular vote than by indirect elections.

On self-governance contracts with the BIA, the tribes are analyzed on:

- BIA self-governance tribe: whether the tribes are subject to laws that provide greater jurisdiction to state government. Self-governing tribes have more autonomy from the BIA and, therefore, more accountability. This may lead to better operating institutions.
- PL-638 law contract tribe: whether the tribal law enforcement operates through its police force instead of a BIA police force. Tribes operating their own police forces may have better law enforcement due to increased accountability and control (Wakeling, et. al 2001).
- PL-280 contract tribe: tribal criminal jurisdiction allows the states to assume criminal and civil jurisdiction on reservations, also known as “concurrent jurisdiction”. This may enhance the economic environment due to less crime and provide more certainty in business dealings for non-tribal businesses due to an ability of tribes to waive their immunity in business dealings (Stratmann, 2023).

The openness and transparency category includes the following components:

- Membership enrollment criteria: a lower blood quantum required for enrollment indicates more openness in the reservation.
- Tribal code is published and of open access: this accounts for transparency of the legal framework and well-defined, available rules for civil and criminal procedures, generating certainty and protecting property rights.

The rules and regulations governing the judiciary branch category includes the following:

- A law degree is required for being a tribal judge.
- Tribal judges are required to practice law or have experience in this field.
- Non-tribal members can be appointed as a judge. This provision provides openness and induces confidence in the judicial system.
- Tribal courts are composed of more than one division: appellate stances contribute to improving the rule of law as it may prevent arbitrary rulings.
- Term length of judges: longer terms will likely make judges more independent of electoral politics.



The Reservation Economic Freedom Index ranges between zero and 13, with zero being the least economically free. Components are equally weighted, except that rules and regulations governing the judiciary branch are combined into two components. Table 6 shows the scores assigned to each component.

**Table 6** Reservation Economic Freedom Index Components

Component	Coding	Data Collection	Description and Data Source Links
Percentage of Fee-Simple acres on reservation	-Fractional Percent (0-1)	Dataset provided by: Leonard, B., Parker, D. P., & Anderson, T. L. (2020). Land quality, land rights, and indigenous poverty. <i>Journal of Development Economics</i> , 143, 102,435	<a href="https://doi.org/10.1016/j.jdeveco.2019.102435">https://doi.org/10.1016/j.jdeveco.2019.102435</a>
Explicit UCC code in tribal codes or explicitly defers to state UCC	- Yes (1) - No (0)	Analysis of tribal codes.	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Explicit land-use code protecting private property rights	- Yes (1) - Minimal Provisions (0.5) - No (0)	Analysis of tribal codes.	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Taxation parameters are documented to some extent in Tribal Code	- Yes (1) - No (0)	Analysis of tribal codes.	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Government structure by the strong executive or strong legislative	- Strong Executive or Legislative (1) -General Council (0)	- BIA Indian Lands Dataset (2005) - Hand coding tribal constitutions and bylaws.	- Strong Executive: (3 or fewer people from the executive branch can also include tribal council but not the general council.) - Strong Legislative: (4 or more members on tribal council or in the executive branch) - General Council: (General Council, main legislative body, may elect a president or tribal council.) <a href="https://web.archive.org/web/20150921122156/https://catalog.data.gov/dataset/bia-indian-lands-dataset-indian-lands-of-the-united-states">https://web.archive.org/web/20150921122156/https://catalog.data.gov/dataset/bia-indian-lands-dataset-indian-lands-of-the-united-states</a>
Highest office elected by general election	- Yes (1) - No (0)	Analysis of tribal codes.	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
BIA self-governance tribe	- Yes (1) - No (0)	List of Self Governance Tribes (BIA)	<a href="https://www.bia.gov/as-ia/osg">https://www.bia.gov/as-ia/osg</a>
Tribal criminal jurisdiction under PL280	- Yes (1) - No (0)	Anderson, T. L., & Parker, D. P. (2008). "Sovereignty, credible commitments, and economic prosperity on American Indian reservations." <i>The Journal of Law and Economics</i> , 51(4), 641-666	PL280 allows reservations to "turn over civil jurisdiction over civil disputes to the states where they reside." Shown in Anderson and Parker (2008) to increase per capita income and contribute to a stable rule of law.

**Table 6** Reservation Economic Freedom Index Components, Continued

Component	Coding	Data Collection	Description and Data Source Links
Tribal law enforcement agency operates through PL 93-638 or self-gov. contract	- Yes (1) - No (0)	- Census of Tribal Justice Agencies (2002), Table 3	<a href="https://www.ihs.gov/odsct/title1/">https://www.ihs.gov/odsct/title1/</a> Indicates a willingness to take over federal programs such as law enforcement and health administration. It also indicates knowledge and means to pursue tribal sovereignty measures in general.
Membership enrollment criteria for reservation.	-1/8 blood quantum (1) -1/4 blood quantum (0.5) -1/2 blood quantum (0)	Analysis of tribal codes, constitutions, and current online references	The higher the blood quantum required for enrollment, the less the openness to engage with others
Tribal Code is published and is of open access.	- Yes (1) - No (0)	Analysis of official tribal websites and current online references.	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
A law degree is required to be a Tribal Judge	- Yes (1) - No (0.5) - No information (0)	Analysis of tribal codes and constitutions	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Experience or practice in law is required to be a Tribal Judge	- Yes (1) - No (0.5) - No information (0)	Analysis of tribal codes and constitutions	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
No tribal membership is required to be a tribal judge.	- Yes (1) - No (0.5) - No information (0)	Analysis of tribal codes and constitutions	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Tribal Court is composed of more than one division	- Yes (1) - No (0.5) - No information (0)	Analysis of tribal codes and constitutions	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>
Term length of Tribal Judges	- 6 years to life appointment (1) - 1 to 5 years (0.5) - No information (0)	Analysis of tribal codes and constitutions	<a href="https://narf.org/nill/triballaw/index.html">https://narf.org/nill/triballaw/index.html</a>

In this way, an analysis of the governance structures employed by the five Native American tribes situated in North Dakota is presented in this section. The research provides for historical and constitutional contexts, the composition of governing bodies, the legislative processes, and the functioning of the judicial system within these tribes.

Table 7 presents the scores for each reservation within the REFI framework, providing a breakdown of each component related to the institutional layout. This analysis offers insights into how various reservations perform in the specific areas where improvements may be needed to stimulate incentives into investing and participating in economic activities within the reservation’s jurisdiction.

**Table 7** Reservation’s Economic Freedom Index (REFI) Score and Component Details

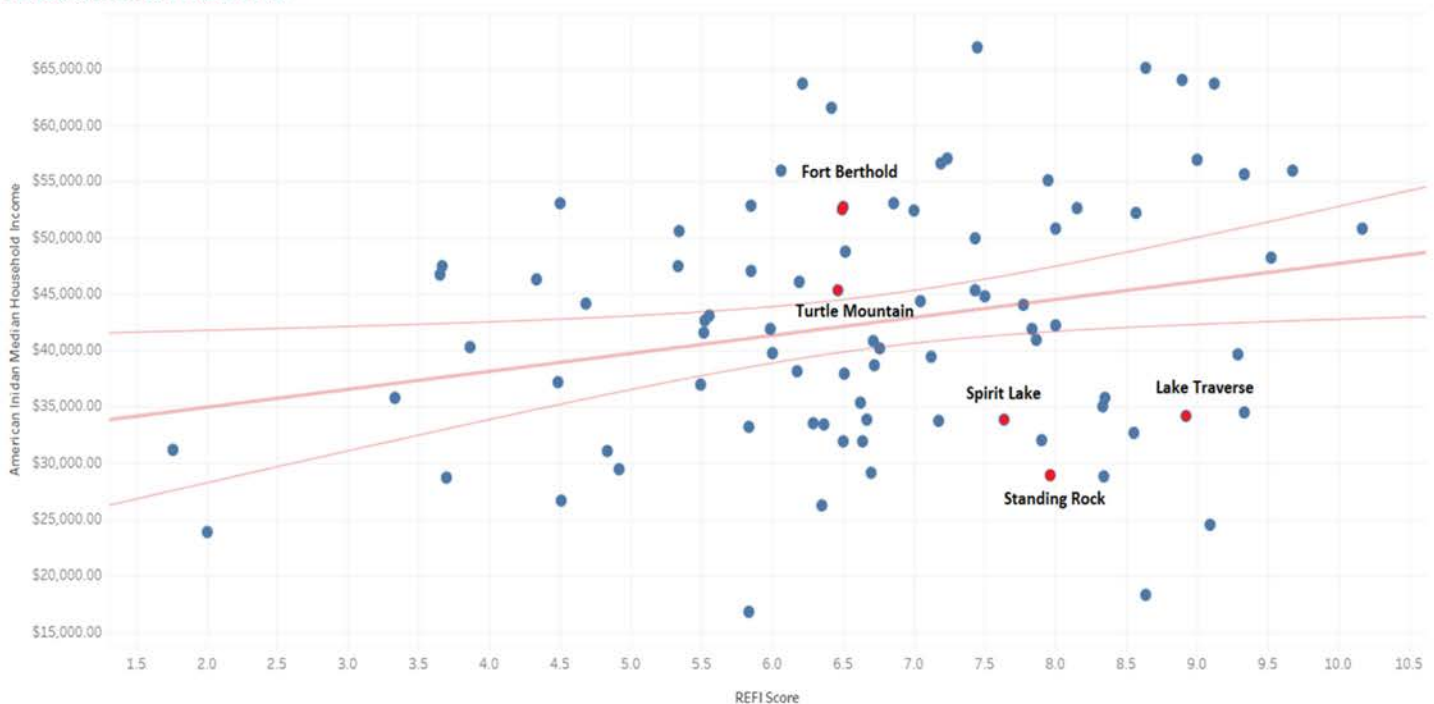
Component	Fort Berthold	Spirit Lake	Standing Rock	Turtle Mountain	Lake Traverse
REFI Score	6.498	7.640	7.965	6.465	8.884
Percentage of Fee-Simple acres on reservation	0.498	0.973	0.631	0.131	0.884
Explicit UCC code in tribal codes or explicitly defers to state UCC	Yes	Yes	Yes	No	Yes
Explicit land-use code protecting private property rights	Yes	No	Yes	Yes	Yes
Taxation parameters are documented to some extent in the tribal Code	Yes	Yes	Yes	Yes	Yes
Government structure by the strong executive or strong legislative	Yes	Yes	Yes	Yes	Yes
Highest office elected by general election	Yes	Yes	Yes	Yes	Yes
BIA self-governance tribe	No	No	No	No	No
Tribal criminal jurisdiction under PL280	No	Yes	No	No	No
Tribal law enforcement agency operates through PL 93-638 or self-gov. contract	No	No	No	Yes	Yes
Membership enrollment criteria for reservation.	½ Blood Quantum	¼ Blood Quantum	¼ Blood Quantum	¼ Blood Quantum	¼ Blood Quantum
Tribal Code is published and is of open access.	No	Yes	Yes	Yes	Yes
A law degree is required to be a Tribal Judge	No Info Available	No	Yes	No Info Available	No
Experience or practice in law is required to be a Tribal Judge	No Info Available	No	Yes	No Info Available	No
No tribal membership is required to be a tribal judge	No Info Available	Yes	Yes	No Info Available	No
Tribal Court is composed of more than one division	No Info Available	No	Yes	Yes	Yes
Term length of Tribal Judges	No Info Available	1 to 5 Years	1 to 5 Years	1 to 5 Years	1 to 5 Years

Scoring these reservations on these 13 factors, which include private land ownership, independent judiciaries, streamlined regulations, and separation of powers, residents on reservations with higher index values had substantially higher median household incomes. On average, those living with 10 percent higher index value earn over \$2,500 more (Stratmann:2023).

Figure 2 visualizes the relationship between the American Indian American median household income and the value of the REFI for each reservation included (Stratmann:2023). This scatter plot shows that the correlation between these two variables is positive, indicating that higher index values are associated with higher median Indian household income. North Dakota's reservations are highlighted within the scatter plot.

Reservations with relatively more say over their money and resources, such as Hoopa Valley in California and Mille Lacs in Minnesota, are among the most prosperous in terms of median household income. The opposite is true in reservations with less control over their own resources, which tend to be much poorer, such as the Ute Mountain Ute and Uintah and the Ouray in Utah. Across all reservations we surveyed, this dynamic was clear enough that it cannot be deemed a coincidence.

**Figure 2** Reservation's Economic Freedom Index Score vs. American Indian Median Household Income



## Conclusion

The legacy of American Indians paints a picture of innovation, prosperity, and resilience, with wealth-generating tribal institutions at its heart. These institutions promoted specialization, trade, and a nuanced understanding of their environment, fostering prosperity often like that of European standards. However, top-down policies, notably wardship, and trusteeship by the US government, undermined these indigenous systems, curtailing their natural propensity for prosperity.

While Indians who reside on reservations are among the poorest ethnic groups in the US, economic resurgence is possible. For example, through ventures that capitalize on natural resources, entrepreneurship, and modern business practices while honoring the significance of Indian heritage. In this context, this underscores the paramount importance of robust economic institutions like the rule of law and secure property rights. Such institutions facilitate fair trade and investment and cultivate an environment where innovation thrives, and prosperity is sustainable.

Current and future policies might include provisions that strengthen bottom-up institutional arrangements instead of applying centralized one-size-fits-all legislation. While academic literature suggests that property rights and respect the rule of law are important for generating prosperity, it is up to the tribes to determine

the details of the framework that generates a higher standard of living.

Policies allowing more individual indigenous control over these individuals' own property — a worthwhile end unto itself — will incentivize productivity-enhancing investments and prosperity. Repealing antiquated laws that deny this, notably the 1934 Indian Reorganization Act, would be a start. When an impartial judiciary, armed with the right legal framework, protects property rights and supports the rule of law vital for commerce, local economic growth will follow. Reducing bureaucratic white tape will encourage on-reservation entrepreneurship by lowering costs for Native American businesses, generating more income.

Currently, far-off federal agencies administer health care, education, infrastructure and social services. With both their own resources and those directed to them, tribal self-governance holds the real promise of prosperity. Tribal authorities, accountable to their people, have the local knowledge of how and where to invest resources and generate future growth.

Further, supporting tribes in setting up their own impartial judicial systems will improve trust in local institutions, vital to incentivizing the investments needed to rise from poverty. Additionally, tribal judicial systems would be strengthened by more adequately funding native courts and law enforcement. The resulting impartial protection of property rights and

corresponding support for the rule of law is as vital for commerce in the modern world as it was when our government initially failed in its promises to Native Americans.

Uncertainty constitutes a harmful condition for business and individual incentives. Overlapping federal, state, and tribal jurisdictions contribute to this uncertainty. A better definition of these jurisdictions, recognizing that tribes are sovereign nations, will reduce this barrier to economic growth.

The federal bureaucracy looms large in preventing tribes from achieving their potential. The white tape issued by this bureaucracy, which still considers American Indians a legal “guardian,” prevents American Indian tribes from effectively governing and assuming economic sovereignty. Reducing “white tape” has the potential to provide more economic certainty on reservations, generating economic growth (Crepelle, 2021).[xxxix]

## About the Author



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