Becoming Nations Again

North America's Indigenous inhabitants operated effective governments long before European arrival. Tribes built cities, developed laws, and participated in transcontinental trade networks. European arrival, however, brought many hardships for Indians. Although tribes were guaranteed the right to self-govern on reservations, the United States imposed severe restraints on tribal autonomy, resulting in socioeconomic maladies, such as poverty and crime. Today, federal policies continue to inhibit tribal self-governance. As a result, tribes continue to suffer from these social ills. *Becoming Nations Again* argues that empowering tribal governments is the key to solving tribal problems. It moves to liberate tribes from the antiquated regulations that apply only to tribal lands and allow tribes to exercise jurisdiction over all people on their land. Once this occurs, tribes will be free to implement their own laws and participate in the federalist system. This title is also available as Open Access on Cambridge Core.

Adam Crepelle is an assistant professor at Loyola University Chicago School of Law. He received the Elinor Ostrom Prize in 2023 for his coauthored article "Community Policing on American Indian Reservations." He is the coauthor of the upcoming book *Reservation Capitalism: Economic Development in Indian Country* (2d ed. 2025).

CAMBRIDGE STUDIES IN ECONOMICS, CHOICE, AND SOCIETY

Founding Editors

Timur Kuran, *Duke University* Peter J. Boettke, *George Mason University*

This interdisciplinary series promotes original theoretical and empirical research as well as integrative syntheses involving links between individual choice, institutions, and social outcomes. Contributions are welcome from across the social sciences, particularly in the areas where economic analysis is joined with other disciplines such as comparative political economy, new institutional economics, and behavioral economics.

Books in the Series:

- PAUL DRAGOS ALIGICA, Public Entrepreneurship, Citizenship, and Self-Governance
- TERRY L. ANDERSON AND GARY D. LIBECAP, Environmental Markets: A Property Rights Approach
- SHELBY GROSSMAN, The Politics of Order in Informal Markets: How the State Shapes Private Governance
- MORRIS B. HOFFMAN, The Punisher's Brain: The Evolution of Judge and Jury

RANDALL G. HOLCOMBE, Political Capitalism: How Political Influence Is Made and Maintained

ROGER KOPPL, Expert Failure

- PETER T. LEESON, Anarchy Unbound: Why Self-Governance Works Better Than You Think
- MICHAEL C. MUNGER, Tomorrow 3.0: Transaction Costs and the Sharing Economy
- JENNIFER BRICK MURTAZASHVILI AND ILIA MURTAZASHVILI, Land, the State, and War Property Institutions and Political Order in Afghanistan
- ALEX NOWRASTEH AND BENJAMIN POWELL, Wretched Refuse?: The Political Economy of Immigration and Institutions
- BENJAMIN POWELL, Out of Poverty: Sweatshops in the Global Economy (First Edition)

- BENJAMIN POWELL, Out of Poverty: Sweatshops in the Global Economy (Second Edition)
- JEAN-PHILIPPE PLATTEAU, Islam Instrumentalized: Religion and Politics in Historical Perspective
- JARED RUBIN, Rulers, Religion, and Riches: Why the West Got Rich and the Middle East Did Not
- VERNON L. SMITH AND BART J. WILSON, Humanomics: Moral Sentiments and the Wealth of Nations for the Twenty-First Century
- CASS R. SUNSTEIN, The Ethics of Influence: Government in the Age of Behavioral Science
- ANDREAS THIEL, WILLIAM A. BLOMQUIST AND DUSTIN E. GARRICK, Governing Complexity: Analyzing and Applying Polycentricity
- CAROLYN M. WARNER, RAMAZAN KILINÇ, CHRISTOPHER W. HALE AND ADAM B. COHEN, Generating Generosity in Catholicism and Islam: Beliefs, Institutions, and Public Goods Provision
- TAIZU ZHANG, The Laws and Economics of Confucianism: Kinship and Property in Preindustrial China and England
- TAISU ZHANG, The Ideological Foundations of Qing Taxation: Belief Systems, Politics, and Institutions

Becoming Nations Again

The Journey Towards Tribal Self-Determination

ADAM CREPELLE Loyola University Chicago







Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781009540896

DOI: 10.1017/9781009540902

© Adam Crepelle 2025

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, with the exception of the Creative Commons version the link for which is provided below, no reproduction of any part may take place without the written permission of Cambridge University Press & Assessment.

An online version of this work is published at doi.org/10.1017/9781009540902 under a Creative Commons Open Access license CC-BY-NC 4.0 which permits re-use, distribution and reproduction in any medium for non-commercial purposes providing appropriate credit to the original work is given and any changes made are indicated. To view a copy of this license visit https://creativecommons.org/licenses/ by-nc/4.0

When citing this work, please include a reference to the DOI 10.1017/9781009540902

First published 2025

A catalogue record for this publication is available from the British Library

A Cataloging-in-Publication data record for this book is available from the Library of Congress

> ISBN 978-1-009-54089-6 Hardback ISBN 978-1-009-54092-6 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Dedicated to Ernest Sickey. A friend, mentor, and inspiration.

Contents

Acknowledgments	<i>page</i> xiii
Introduction o.1 Division of the Book o.2 A Note on Terminology	1 3 3
PART I FROM SOVEREIGNS TO WARDS: THE HISTORY OF TRIBAL NATIONS AND THE LAW	
 The Original American Governments 1.1 The First Americans 1.2 Early North American Civilizations 1.3 Indigenous Institutions 	7 7 9 17
 2 "Discovering" and "Founding" America 2.1 Voyaging to America and the Law of Discovery 2.2 Spain and Indigenous People 2.3 Britain's American Colonies 2.4 The Pequot War 2.5 King Philip's War 	23 23 26 30 34 35
 Commerce and Culture 3.1 Indians and Guns 3.2 The Birth of Indian Horse Cultures 3.3 A New Way of Life 	38 39 43 47
 World War and American Revolution 4.1 Enter George Washington 4.2 The French and Indian War 4.3 The Seeds of Rebellion 4.4 The Revolution Begins 	52 53 54 55 57
5 Governing the United States and Tribal Rights 5.1 Tribal Resistance	61 62

х	Contents	
	 5.2 Indian Tribes and the United States Constitution 5.3 The Creek Treaty 5.4 From Treaties to Trading Posts 	66 69 71
	5.5 Title to Indian Lands	74
6	Indian Removal and the Cherokee Cases 6.1 The Cherokee and Georgia	79 80
	6.2 Andrew Jackson and Indian Removal6.3 Removal in Motion	83 88
	6.4 Is the Cherokee Nation a "Nation"?6.5 The Laws of Georgia Can Have No Force	89 94
7	Reservations and Federal Power 7.1 Fading Treaties 7.2 The Last of the Indian Wars 7.3 Reservation Life	98 98 100 103
	7.4 Indian Blood and Tribal Citizenship	105
	7.5 Spotted Tail, Crow Dog, and Tribal Law7.6 Criminal Law, Assimilation, and Plenary Power	108 112
8	Allotment and Assimilation	112
Ū	8.1 The General Allotment Act	118
	8.2 Tribal Consent Not Needed	120
	8.3 Accelerating Allotment8.4 The Last Arrow but Still an Indian	123
	8.5 Indian Boarding Schools	125 127
9	The Indian New Deal to Tribal Termination	131
	9.1 Jim Thorpe	131
	9.2 Indian Citizenship and the Great War9.3 The Indian New Deal	133 136
	9.4 World War II	139
	9.5 The Tribal Termination Era	141
	9.6 "Every American School Boy Knows"	144
10	Tribal Self-Determination	146
	10.1 Sheep and Sovereignty	146
	10.2 Buffalo Tiger and Fidel Castro10.3 Indians in the Great Society	149 152
	10.4 Tribal Self-Determination	154
	PART II SELF-DETERMINATION MEETS PATERNALISM	
II	An Unfit Guardian: Ongoing Federal Paternalism	161
	11.1 The Federal Government and <i>Peabody Coal</i> v. <i>Navajo Nation</i>	162
	11.2 The Largest Class Action in United States' History11.3 The Supreme Court Shields the Federal Government Again	166
	11.3The Supreme Court Shields the Federal Government Again11.4Double Standard for Tribal Governments	169 170
12	Excessive Federal Bureaucracy	174
	12.1 Trust Land	175
	12.2 Land Fractionation	177

Contents			
	12.5 12.6	The HEARTH Act Rights-of-Way Indian Trader Regulations Natural Resource Development Gaming	179 180 181 185 187
13	Crim 13.1 13.2 13.3 13.4	inal Justice Crisis Indian Country's Peculiar Jurisdictional Regime Oliphant v. Suquamish Indian Tribe: Facts and Consequences Don't Matter Duro v. Reina: Stretching Oliphant Further Minor Public Safety Improvements	190 191 192 200 201
14	Civil 14.1 14.2 14.3 14.4	The Jurisdictional Quagmire al Economic Development and Uncertain Jurisdiction <i>Montana</i> v. <i>United States</i> : A New Path The Path Is Not Clear: <i>Dollar General</i> v. <i>Mississippi Band of</i> <i>Choctaw Indians</i> Taxation or Theft? What Is Legal? Tribal Sovereignty and the Digital Frontier	204 210 212 216 221 223 225
		PART III BECOMING NATIONS AGAIN	
15	15.1 15.2 15.3 15.4	ral Recognition Recognized Tribes Achieving Federal Recognition Problems with the Federal Acknowledgment Process The Coushatta Journey The Houma's Ongoing Quest	231 231 233 235 237 241
16	16.1 16.2 16.3 16.4	torial Jurisdiction Sovereignty and Land Replacing Trust Land with Tribal Land Tribal Land and Jurisdiction Jurisdiction over Noncitizens Why Tribes Should Have Criminal Jurisdiction over Non-Indians	249 249 251 256 259 262
17	17.1	ll Legal Institutions Tribal Law Tribal Courts Tribal Legal Bureaucracy Strengthening Tribal Law Strengthening Tribal Institutions Tribal Institutions and Economic Development	266 267 271 274 277 278 279
18	· .	es as Nations State Opposition Tribal Self-Governance and the Federalist System	282 283 287

xii	Contents	
	18.3 Tribal Sovereignty Can Benefit States18.4 Tribes as Shields from State Protectionism	288 289
	18.5 Tribal Self-Governance and a Mississippi Miracle	291
19	Education, Ethics, and the Law	295
	19.1 The Education System	295
	19.2 Recognizing a Civil Rights Trailblazer	297
	19.3 Legal Education and Tribal Sovereignty	300
	19.4 Legal Ethics	305
	Conclusion	309
Ind	lex	311

Acknowledgments

I would like to thank the Institute for Humane Studies for awarding me a Sabbatical Research Fellowship (grant no. IHS008852), hosting a manuscript workshop, and awarding publication expenses (grant no. IHS018256). I would like to thank those who participated in the manuscript workshop: Richard Monette, N. Bruce Duthu, Ezra Rosser, Melissa Tatum, Terry Anderson, Carrie Stallings, and Dominic Parker. I would like to thank Jeremy Rabkin for his thoughtful comments. And a special thanks to Alison Geisler, my former research assistant, for her invaluable assistance in completing the manuscript.