CHAPTER TEN

Paternalism versus Sovereignty

The Long Run Economic Effects of the Indian Reorganization Act

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Ever since U.S. Chief Justice John Marshall ruled in 1831 that American Indians are "wards" of the federal government, tribes have struggled to retain their independence and political sovereignty. The allotment era from 1887 to 1933 represents a low point in this struggle. During this era, millions of tribal acres were allotted to individuals, weakening tribal control over the land base and undermining local governance. The Indian Reorganization Act (IRA) of 1934 halted allotment, and it ostensibly provided a blueprint for tribes to regain sovereignty.

In this chapter, we argue that following the blueprint actually reduced tribal sovereignty, and it lowered average long run economic growth. To test our argument, we exploit the fact that the adoption of the IRA was voluntary and that each reservation had a limited time of 18 months to vote on whether or not to adopt the IRA. If adopted, IRA reservations had immediate access to funds through government revolving credit programs and they had government consulting resources available to them. As a consequence, the IRA adopters were subject to more administrative oversight from the Secretary of Interior and the Bureau of Indian Affairs (BIA) (Clow 1987; Philp 1999). On one hand, access to additional resources may have enabled some tribes to development economic industries not feasible in the absence of formal federal support. On the other hand, the additional constraints limited the sovereignty of tribes and tied their economic fate to federal agencies lacking local knowledge and strong incentives to maximize local resources (Legters and Lyden 1994).

The upshot of this history is that tribes who did not adopt the IRA maintained their own tribal governments and constitutions, free from BIA oversight. This created two types of tribal governments across American Indian reservations. This chapter empirically measures the impact of these two different types of governance on recent and current reservation economic conditions by comparing IRA and non-IRA reservations. In doing so, we provide one of the first empirical accounts of this landmark legislation, which remains understudied despite Scudder Mekeel's (1944, 217) appeal in 1944 for an evaluation of "the Indian Reorganization Act in terms of its social and economic effects on the various American Indian societies."[1]

The findings can be summarized as follows. First, there were higher rates of Bureau of Indian Affairs (BIA) involvement with the business affairs of IRA tribes when compared to non-IRA tribes after 1934 into the early 1990s. This finding lends quantitative support for qualitative concerns that the IRA would result in paternalism. Second, presumably as a consequence of BIA oversight, the average IRA tribe had weak economic growth through 1990, when compared to the average non-IRA tribe. The non-IRA tribes that forged their own governance path, however, experienced more volatility in long-run economic performance. This evidence suggests the IRA provided a "paternalism" blueprint that helped tribes avoid low-end outcomes, but suppressed robust success. By contrast, the "sovereignty" route was riskier, but it encouraged the kind of local entrepreneurship necessary for robust economic success.

The IRA and Federal Involvement in Indian Business

Congress passed the IRA, also known as the Howard-Wheeler Act, on June 18, 1934, for the purpose of restoring tribal self-governance, thus departing dramatically from the assimilationist policies that had dominated for nearly a century. By placing tribal resources under the trusteeship of the Secretary of the Interior and establishing a fund to help tribes restore their reservation land base, the IRA ended the allotment era.[2] It also established a revolving credit account to give tribal governments and tribal corporations better access to credit (Carlson 1981).

Within 18 months after the passing of the IRA by Congress, each tribe voted on whether to accept the provisions of the IRA and enter into that governance regime, or to reject the provisions and craft their own governance regime. Prior to these votes, the BIA sponsored regional meetings intended to increase support for IRA acceptance on reservations. These meetings were attended by tribal representatives from each reservation and were one of the primary methods for learning about IRA benefits and structure.[3] Each tribe that adopted the IRA was required to form a new tribal constitution or charter, although in practice some did not. These constitutions were reviewed and amended by the BIA, which, in many instances, resulted in the BIA imposing a model of tribal governance based on a corporate structure that differed from traditional tribal democratic systems (Rusco 2000).

The IRA voting results from 217 federally recognized reservations (see Haas 1947) indicate that 146 reservations adopted the provisions of the IRA and 71 elected to govern outside of the IRA. Figure 10.1 shows the spatial distribution of IRA and non-IRA reservations and reveals two patterns. First, the majority of reservations in the southwest and in the plains states voted in favor of the IRA. Outside those regions, the number of IRA adopting reservations was closer to the number of reservations rejecting it. Hence, IRA adoption was not strictly correlated with geographical location and often pairs of neighboring reservations voted for different governance. One such pair is the Crow Creek and Lower Brule reservations in South Dakota. Both reservations held contested elections and, despite only being separated by the Missouri River, they have been governed under two very different systems since the 1930s.

Prior to voting, tribal leaders debated the potential advantages and disadvantages to IRA adoption and raised questions about how the IRA

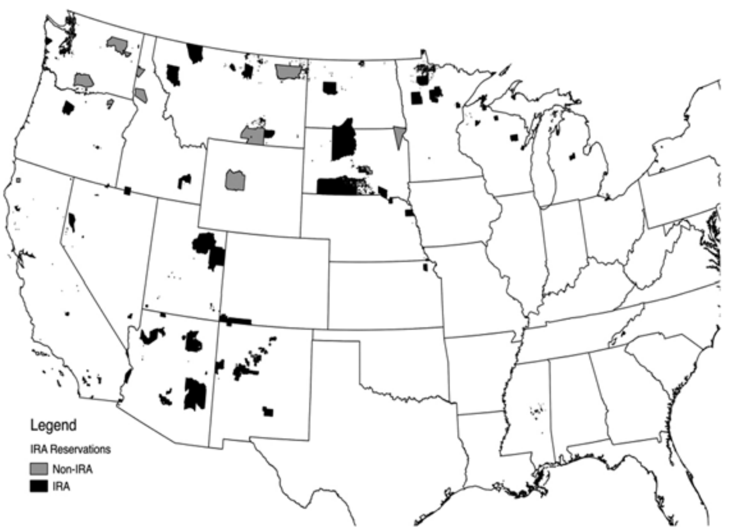

Figure 10.1. Map of Current Reservations by IRA Status