

# INDIGENOUS COMMUNITIES IN THE U.S. AND CANADA: AN EXAMINATION OF THE IMPACT OF TRIBAL SOVEREIGNTY AND FEDERAL TAX POLICIES ON ECONOMIC DEVELOPMENT AND INFRASTRUCTURE

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## ABSTRACT

*This review examines the intersections of federal tax policies and tribal sovereignty and how it shapes the growth of infrastructure and economic development across Native American communities in both the United States and Canada. This study examines the effect of federal tax policies on economic and infrastructure growth in various tribal governments. The effect federal tax policies have on tribal sovereignty is also explored. The key themes identified in this literature review include land and resource management, property rights, collaborative governance, and the comparison of Indigenous Canadian and American contexts. The findings reveal that tribal sovereignty is threatened by federal interference hindering economic and infrastructure development.*

**Keywords:** *Federal tax policies, tribal sovereignty, infrastructure development, economic development, Indigenous, land management, resource management, property rights, collaborative governance*

## INTRODUCTION

Federal tax policies significantly influence tribal sovereignty and the economic and infrastructure development of Indigenous communities. Jurisdictional overlaps between tribal and federal governments often result in unintended and adverse outcomes (Simon, 2024). The overlapping jurisdictions of tribal and federal governments can ultimately influence the economic and infrastructure growth of Indigenous communities. Understanding these overlapping jurisdictions is essential to grasp their effects on the development of Indigenous nations.

This study explores how the intersection of tribal sovereignty and federal tax policy influences economic outcomes and infrastructure development in Indigenous communities. Building on Guedel et al. (2016), who examined the establishment of financial systems tailored to tribal governance, this research emphasizes the importance of developing institutional tools that enhance both financial autonomy and self-governance. Through a balanced analysis of case

studies and theoretical frameworks, the study identifies key structural barriers and proposes pathways to greater tribal control over economic development.

The literature reviewed in this study was selected to provide a comprehensive overview and tribal sovereignty and tax policy, and their combined impact on economic and infrastructure development in Native American communities. Sources of distinct types consisting of law reviews, scholarly articles, government reports, and case studies are utilized in this review. The variety of sources aids in providing a diverse range of perspectives and knowledge on the topic of tribal sovereignty and federal tax policies and the influence both have on the economic outcomes and infrastructure. By integrating findings from the various sources, the review provides a nuanced understanding of how the intersectionality of tribal sovereignty and federal tax policies influences the economic development and infrastructure in Indigenous communities.

## CONCEPTUAL FRAMEWORK

To provide a clear analysis of how federal tax policies and tribal sovereignty influence economic and infrastructure development in Indigenous nations, this article separates literature from the United States and Canada. Given that the two federal governments operate under distinct legal and regulatory frameworks that impact Indigenous governance differently, each context is examined independently. This division allows for a more nuanced understanding of how tax policy and tribal sovereignty shape development outcomes within each national framework. The discussion begins with literature on tribal governments in the United States, followed by an analysis of the Canadian context.

### **United States Tribal Sovereignty and Economic Development**

The United States is home to a diverse population, including numerous Indigenous nations. According to the U.S. Census Bureau (n.d.), approximately 3.7 million people identify as American Indian, comprising about 1.12% of the total U.S. population of 331 million. While numerically small, this population maintains a unique political and legal relationship with the federal government, particularly in matters of sovereignty and economic development.

Tribal sovereignty, the legal right of federally recognized tribes to govern their own affairs within their territories, is central to Indigenous economic advancement (National Congress of American Indians, n.d.). However, its effectiveness is often undermined by federal oversight and jurisdictional limitations. For example, the Supreme Court case *Cherokee Nation v. Georgia* characterized tribes as “domestic dependent nations,” granting them limited sovereignty subject to federal authority (Anderson & Parker, 2008). While tribes retain some autonomy, their self-governance is frequently constrained by external legal frameworks.

Despite these limitations, tribal governments continue to leverage their sovereignty to pursue culturally informed economic development. For instance, Doğan et al. (2020) highlight the Ak-Chin tribe’s creation of an ecomuseum, not solely for tourism, but to fulfill cultural and

communal goals. This demonstrates that sovereignty enables tribes to pursue development aligned with their values, not just economic gain.

Moreover, sovereignty can drive large-scale economic initiatives. Akee et al. (2015) show that Indian gaming has significantly impacted tribal economies, generating revenue and employment through tribally owned casinos. Such projects exemplify how tribal governments can channel sovereignty into practical development strategies. However, sovereignty has limits, particularly regarding jurisdiction over non-Indigenous entities on tribal land. Under current legal precedent, tribal governments can only exercise authority over non-Indigenous individuals or businesses if those parties' consent to tribal jurisdiction (Crepelle, 2022). The ambiguity surrounding "consent" weakens tribal governance and creates uncertainty for economic ventures.

Land tenure further complicates development. Indigenous property rights have been fragmented by historical and legal processes, diminishing tribes' economic autonomy. Most tribal lands are held in trust by the federal government, meaning tribes often require approval from federal or state agencies to initiate development projects (Alston et al., 2021). These bureaucratic layers can delay or derail economic activity and weaken the potential impact of tribal sovereignty.

Nevertheless, tribal governments have found ways to exercise their planning authority. According to Middleton and Kusel (2007), tribal councils play a vital role in overseeing infrastructure, employment, and business development. Although constrained, their ability to plan and implement projects fosters local growth.

Incorporating Indigenous cultural practices into governance further strengthens sovereignty. Hibbard (2016) advocates for development models that integrate traditional knowledge with modern economic strategies, what he calls a "hybrid economy." Such models ensure that economic growth reflects both the cultural identity and material needs of Indigenous communities.

Another way to enhance tribal sovereignty is through the creation of institutions tailored to Indigenous needs. Guedel and Colbert (2016) propose the establishment of Tribally Chartered Bank systems (TCBs), which would increase access to capital through loans and grants. These tools could reduce reliance on federal systems and empower tribes to finance development on their own terms, advancing the goal of economic self-determination.

While tribal sovereignty plays a foundational role in shaping Indigenous economic futures, it does not operate in isolation. Federal tax policies also significantly influence the ability of tribal governments to build infrastructure and generate wealth—an issue explored in the following section.

### **Federal Tax Policies and Indigenous Communities**

Indigenous communities in the United States are shaped by unique tax structures influenced by federal laws, treaties, and the evolving relationship between tribal and federal governments. According to the National Congress of American Indians (n.d.), one major challenge tribes face is the difficulty in accessing tax-exempt financing options, tools commonly available to state governments for funding infrastructure projects but far less accessible to tribal

governments. This disparity restricts the ability of many Indigenous communities to fund essential development initiatives on their lands.

Jurisdictional overlaps between federal, state, and tribal governments further complicate taxation. Simon (2024) explains that these overlapping authorities often lead to tax disputes, particularly when multiple governments attempt to tax the same transactions. This phenomenon of double taxation creates a disincentive for investment and significantly impedes infrastructure and economic growth in tribal areas. Additionally, confusion surrounding certain tax provisions may discourage outside entities from engaging in development partnerships with tribes.

Some federal tax laws, though seemingly beneficial, are limited by vague language or regulatory ambiguity. For example, 25 U.S.C. § 5108 exempts from state and local taxation any lands held in trust by the federal government for tribes or for permanent improvements on such lands (Blair, 2021). However, the statute does not clearly define what qualifies as a “permanent improvement,” leading to legal uncertainty that hampers tribal efforts to claim tax exemptions. Similarly, the Tribal General Welfare Exclusion Act aims to prevent federal taxation of tribal benefits, with the exception of those deemed “lavish or extravagant” (Browde, 2020). The lack of clarity around these terms makes it difficult for tribal governments to plan programs confidently without risking unintended tax consequences.

Despite these limitations, some federal and tribal initiatives have created opportunities to strengthen tax sovereignty. The Healthy Diné Nation Act, for instance, empowered the Navajo Nation to impose taxes on certain foods and beverages, using the revenue to fund community health programs (Yazzie et al., 2022). This demonstrates how tribal taxation authority can be used not only for economic growth but also to promote community well-being and self-determination.

Research institutions have begun to support expanded tribal fiscal autonomy. Feir and Wellhausen (2024) note that the Center for Indian Country Development—housed within the U.S. Federal Reserve Bank, recognizes tribal governments’ right to collect, manage, and apply their own financial data. This institutional backing reinforces the legal argument for expanding tribal tax jurisdiction, giving tribes greater authority to administer taxes and fund infrastructure projects independently.

However, some legal loopholes involving tribal sovereignty have been exploited by outside actors. Beardall (2022) details a case in which a non-tribal company transferred patent ownership to a tribal government to invoke sovereign immunity and avoid federal regulatory oversight. While this illustrates the strength of tribal legal status, it also highlights the complexities and unintended consequences that can arise when sovereignty is used strategically by non-tribal entities. While tax policy plays a critical role in the development of Indigenous communities, it operates alongside other significant factors, including land management and property rights, issues that will be explored in the following section.

## **Canada Tribal Sovereignty and Economic Development**

Canada, like the United States, is a nation of diverse peoples and cultures, including many Indigenous populations. According to Statistics Canada (2022), approximately 1,048,405 individuals identify as Indigenous, representing about 5% of Canada's total population. This population includes many distinct sovereign tribes rather than a single unified group, highlighting the complexity of relationships between Indigenous nations and the Canadian government.

Although many Indigenous nations in Canada have yet to achieve full sovereignty, incremental gains in self-governance empower communities to pursue economic self-determination and infrastructure development. Young (2023) explores the Indigenous concept of *Etuaptmunk*, or "Two-Eyed Seeing," a Mi'kmaq term emphasizing the integration of Indigenous and Western perspectives. This framework supports creating tribal economic policies that honor Indigenous values while engaging external partners aligned with those principles, fostering stronger economic partnerships and sustainable development.

## **Federal Tax Policies and Indigenous Communities**

Canada's federal tax framework directly influences Indigenous economic growth. The First Nations Fiscal Management Act (FMA) grants First Nations governments authority over certain taxation powers on their lands. This includes the ability to levy taxes and enhance financial governance through bodies like the First Nations Tax Commission and Financial Management Board (Boissonneault, 2021). However, most First Nations reserves are still held under the Indian Act, which restricts land sales and transactions in ways that inhibit the creation of traditional property tax systems. These limitations reduce Indigenous governments' ability to generate property tax revenue critical for infrastructure development and economic expansion.

## **THEMATIC ANALYSIS**

### **United States Land Management and Property Rights**

Land management and property rights remain complex and contested within Indigenous communities in the United States. The federal government maintains significant authority over many aspects of Indigenous economies, including property institutions (Alston et al., 2021). This federal oversight introduces uncertainty regarding Indigenous ownership and control over tribal lands, rooted in shifting political landscapes and historical patterns.

Secured transaction laws further complicate tribal land control. Efforts to establish uniform transaction laws that integrate tribal and state regulations create tension by undermining tribal sovereignty and disregarding the diverse cultural contexts of different tribes (Dippel et al., 2021). While many federal laws restrict tribal control over lands, some legislation offers tribes

greater authority. For example, the Indian Tribal Energy Development and Self-Determination Act authorizes tribes to develop energy projects on their lands without federal approval, representing a significant step toward sovereignty (Royster, 2008).

In addition, tribal ordinances such as those demonstrated in *Chilkat Indian Village IRA v. Johnson* affirm tribal governments' rights to protect cultural resources on their lands (Riley, 2022). These legal victories help reinforce tribal authority over land use, laying groundwork for future infrastructure development aligned with Indigenous values.

## **Resource Management and Infrastructure Development**

Incorporating Indigenous cultural principles enhances sovereignty in resource management and infrastructure planning. The Seven Generations Rule, for example, encourages sustainable decision-making that considers impacts on future generations, balancing long-term community wellbeing with economic development (Brookshire & Kaza, 2013).

Federal policies have often undermined Indigenous sovereignty in resource management. The Dawes Act, which promoted privatization of formerly communal lands, fragmented tribal territories and diminished tribal control (Raimi & Davicino, 2024). Additional laws, like the National Environmental Policy Act (NEPA), impose federal environmental reviews on tribal projects such as solar panel installations, creating delays and complicating tribal self-determination (Dreveskracht, 2013). The Federal Power Act further restricts tribal authority by granting federal agencies oversight over hydroelectric projects on tribal lands (Hite et al., 2024).

Federal agencies, notably the Federal Energy Regulatory Commission (FERC), have also hindered tribal sovereignty by frequently neglecting consultation with tribal governments on infrastructure projects, threatening Indigenous self-governance (Hite et al., 2024). Conversely, the Federal Communications Commission's recognition of the Standing Rock Sioux Tribe as an eligible telecommunications carrier exemplifies positive federal acknowledgment of tribal sovereignty in resource management (Kemper, 2013).

## **Economic Barriers and Innovations**

Economic growth in Indigenous communities faces several barriers. Tribally owned businesses are required by the IRS to withhold and pay employment taxes, without the exemptions often granted to state entities, increasing their financial burden (IRS, n.d.). Moreover, the legal environment around business development on tribal lands is complex and confusing to non-tribal actors due to overlapping and outdated laws (Crepelle, 2022).

Infrastructure deficiencies, including limited broadband, electricity, and telecommunications, deter private investment in Indigenous economic projects (Kemper, 2013). Remote locations and low population densities further reduce the attractiveness of tribal lands for investment, particularly from private broadband providers (McMahon, 2011). Although federal programs exist to support Indigenous broadband expansion, bureaucratic delays impede timely funding, slowing infrastructure development (McMahon, 2011).

The presence of extractive industries on tribal lands, such as oil extraction in the Bakken region, poses additional challenges. Land leases and compensation agreements often fall under federal agencies like the Department of the Interior, limiting tribal control and potentially resulting in inadequate compensation for resource use (Chase & Johnson, 2024). Additionally, alliances formed between Indigenous groups and external environmental activists, driven by broad anti-pipeline agendas, can sideline sovereignty concerns amid shared land narratives (Bosworth, 2021).

Energy sovereignty remains elusive due to barriers including land dispossession, bureaucratic hurdles, and inadequate government consultation, all of which directly impact economic independence and growth potential (Raimi & Davicino, 2024). Innovative solutions offer hope for overcoming these barriers. Crepelle (2022) proposes the integration of blockchain technology and smart contracts within tribal legal systems to automate and enforce agreements efficiently, reducing transaction costs and speeding up business operations. Renewable energy projects, such as solar power developments, also provide opportunities for economic self-sufficiency by leveraging tribal lands and cultural values (Dreveskracht, 2013). Such innovations, paired with improved collaboration between tribal and federal governments, could foster stronger economic and infrastructure development.

### **Collaborative Governance and Policy Solutions**

Effective collaboration between federal agencies and tribal governments is essential for fostering economic growth and infrastructure development in Indigenous communities. Charles (2024) highlights that while collaboration between tribal and state governments is necessary for managing protected lands, significant power imbalances exist. State governments often dominate decision-making, undermining effective co-management. Establishing a more equitable partnership could improve management outcomes and ease tensions.

Beyond land management, collaboration is equally critical in resource governance. Dolan and Middleton (2015) note that California's Integrated Regional Water Management Program insufficiently incorporates tribal perspectives, leading to conflicts over water governance. Enhanced collaboration that respects all viewpoints, especially tribal ones, could prevent such conflicts and promote equitable resource sharing.

Recognition of tribal judicial authority by federal, state, and local governments further strengthens tribal sovereignty. Martenson (2013) argues that acknowledging tribal court decisions boosts the legitimacy of tribal governments and increases investor confidence in economic initiatives on tribal lands. Respect for tribal judicial rulings reassures businesses that contracts will be honored and disputes fairly resolved. Thus, collaborative negotiations and legal recognition are foundational for successful intergovernmental relations and economic development.

## **The Role of Indigenous Financial Institutions in Economic Growth**

Indigenous financial institutions are critical drivers of economic development, providing capital and tailored financial services to tribal communities. Anderson and Parker (2008) emphasize that economic prosperity and tribal sovereignty are interconnected; tribes exercising autonomous governance can create financial systems aligned with their needs. Guedel and Colbert (2016) further argue that tribal-controlled financial institutions are vital for overcoming historic economic inequities by enabling tribes to bypass restrictive federal policies.

Significant obstacles challenge the establishment of robust tribal financial institutions. A primary barrier is limited access to capital—tribal governments cannot use their land as collateral due to legal restrictions, complicating credit acquisition and sustainable operation of financial entities (Dippel et al., 2021). Without mortgage options, funding infrastructure projects becomes difficult.

Restrictions on tax-exempt bonds limit the effective use of financing for long-term development. The IRS (n.d.) notes that while tribes may issue these bonds, federal regulations constrain how funds are deployed, undermining tribal sovereignty and financial autonomy. The lack of financial infrastructure, such as digital payment systems and banking services, also slows the growth and outreach of tribal financial institutions (Brookshire & Kaza, 2013). High implementation costs further hinder development.

External investors often perceive tribal financial institutions as high-risk due to unfamiliarity with tribal legal systems, which can be complex and opaque to outsiders. This risk aversion restricts funding opportunities critical for economic expansion (Anderson & Parker, 2008). Overcoming these challenges is necessary for tribal financial institutions to fully support economic growth.

### **Canada: Land and Resource Management**

In Canada, federal control over Indigenous property governance limits tribal sovereignty. The First Nations Fiscal Management Act (FMA) requires tribes to consult the First Nations Financial Management Board before implementing property tax laws, subjecting tribes to federal oversight and audits (Boissonneault, 2021). This reduces autonomy in land management. Moreover, secured transaction laws may further restrict tribal control over land, complicating economic activities and governance.

Regarding resource management and infrastructure, Indigenous communities in Canada face persistent challenges. Deaton et al. (2023) report that approximately one in eight Indigenous communities live under water boil advisories, with waterborne infections occurring at rates 26 times higher than the Canadian average. These infrastructure gaps threaten health and well-being. While tribal sovereignty in infrastructure is important, federal support remains critical to address urgent needs.

## **Collaborative Governance and Policy Solutions in Canada**

Negotiation plays a vital role in healthy collaboration between Indigenous, federal, and state governments. Heritz (2017) emphasizes that both formal agreements and informal relationships, including the influence of street-level bureaucrats, shape Indigenous self-governance. Positive relationships between public officials and Indigenous leaders often matter as much as treaties. Successful collaborations exist, such as between Metro Vancouver municipalities and local Indigenous communities, which improved environmental planning and disaster risk reduction (Yumagulova, 2021). Such examples can guide future efforts. However, collaboration occurs within a settler-colonial framework that often skews power toward federal and local governments, disadvantaging Indigenous nations (Do et al., 2024). Meaningful collaboration requires more balanced power dynamics; something rarely achieved in current arrangements.

## **Comparative Insights: Canada vs. United States**

Tribal communities in Canada benefit from a centralized government-supported broadband strategy, while the U.S. adopts a decentralized, state-based approach leading to uneven infrastructure development (McMahon, 2011). A centralized model similar to Canada's might better serve U.S. tribes.

Regarding property tax governance, Canada's FMA provides a structured yet restrictive framework limiting tribal sovereignty over taxation (Boissonneault, 2021). Most tribal lands remain federally held, with legal barriers on land transactions further complicating tax policies. In contrast, U.S. tribes generally exercise greater control over property taxes, though challenges remain. Both countries could enhance tribal sovereignty by enabling greater tribal authority over land governance and taxation.

## **LITERATURE GAPS**

While the sources reviewed in this study include perspectives from tribal communities in both Canada and the United States, several gaps remain that future research could address. The first notable gap is the limited examination of post-resource economies within tribal nations. Much of the existing literature focuses on resource-based economies, such as the Navajo Nation's solar energy projects (Dreveskracht, 2019) and the Hoopa Valley Tribe's involvement in the timber industry (Brookshire, 2015). However, fewer studies explore tribal communities transitioning away from resource extraction toward diversified or knowledge-based economies. Investigating post-resource economic models could provide valuable insight into how tribal sovereignty influences infrastructure and economic development in evolving contexts.

Another underexplored area concerns the economic and legal impacts of energy sovereignty. Energy is a critical resource with significant potential for tribal control and economic benefit. Future research could include case studies of renewable energy projects on

tribal lands, analyzing how energy sovereignty affects economic development and governance. This focus would deepen understanding of the intersection between resource utilization, sovereignty, and economic outcomes for Indigenous communities.

The role of climate change in resource management presents an important gap. Even if some studies address collaborative governance between tribal, federal, and state governments, few explicitly link this collaboration to climate change impacts on Indigenous lands. Since much intergovernmental cooperation centers on protecting resources affected by climate change, exploring this nexus could enhance frameworks for effective collaboration.

A further research need is the long-term economic effects of modern treaties and agreements. For example, the First Nations Fiscal Management Act, discussed by Boissonneault (2021), warrants longitudinal study to evaluate its economic impact on Indigenous communities in Canada. Understanding how such legislation shapes tribal economies over time would inform policy improvements.

Lastly, there is limited literature addressing alternatives to the federal trust land system. Scholars like Studler (2024) identify barriers created by trust land frameworks but provide few alternatives. Research into potential models, such as transitioning trust lands into full tribal ownership, could offer solutions for increasing tribal control over land governance and economic development.

## CONCLUSION

Tribal sovereignty and federal tax policies profoundly influence the economic and infrastructure development of Indigenous nations. The complex historical relationship between tribal governments and federal authorities has produced persistent obstacles to economic advancement. Nevertheless, tribes in both the United States and Canada have pursued legal and innovative strategies to overcome these barriers, fostering economic and infrastructural growth.

Federal tax policies play a particularly pivotal role. These policies often interfere with tribal governance, complicating economic progress. Double taxation, whereby investors and developers are taxed by both tribal and federal governments, discourages investment. Additionally, insufficient communication and consultation between tribal and federal governments hinder timely permissions and approvals necessary for land use and development.

To promote infrastructure and economic growth, tribal governments require greater authority to enforce their laws and tax policies, alongside more meaningful consultation with federal agencies. Although progress has been made, research gaps remain, including studies on post-resource economies, the legal impacts of energy sovereignty, and the long-term outcomes of modern treaties. Addressing these gaps is essential for fostering sustainable economic growth.

Tribal governments must continue advocating for policy reforms that enhance sovereignty. By learning from past challenges, tribal leaders and policymakers can dismantle barriers to economic development and chart a course toward genuine economic independence. Achieving this goal depends on shifting toward frameworks that prioritize tribal sovereignty, ensuring tribal governments have sufficient authority over their lands and resources.

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