Proceedings of the 5th International Conference on International Law and Legal Policy
DOI: 10.54254/2753-7048/2026.38936

"Freedom to Organize, Subject to Approval"—The Structural Limits on Tribal Autonomy under the IRA

Wengyongcuo Ze

Department of Social Work, Hong Kong Baptist University, Hong Kong, China
26432986@life.hkbu.edu.hk

Abstract. The paper discussed the advocacy of tribal self-government of Indian Reorganization Act in 1934, while keeping the feature of federal tutelage. Unlike the limitations of previous scholars' focus on implementation gap or theoretical motivation criticism, this paper adopts the comparative analysis methods of the original text of the bill and the offical legal interpretation of the bill and the offical legal interpretation of the same period to fill in the research gap at the level of the connection between legislation and legal interpretation. The anaalysis of primary sources illustrates that the text of the bill requires the retention of control through the approval of Secretary of the Interior, while the legal opinion "Powers of Indian Tribes"establishes a legal barrier for it while recognizing the principle of autonomy both prove that the structural limits of tribal autonomy are not subsequent implementation deviations, but a set of systematic institutional arrangements established from the begining.

Keywords: Indian Reorganization Act(IRA), Tribal Self - Goverment, Tribal Autonomy

1. Introduction

As the name of the Indian Reorganization Act (1934) showed, it carries an intriguing contradiction in two aspects. On one hand, it marked a shift in federal policy from decades of assimilation, promising to let tribes "reorganize" and manage their own affairs; but at the same time, the administrative language surrounding this Act never fully moved away from "tutelage," the federal government's long-standing framing of its relationship with Native affairs. How an Act intended to grant tribal self-government still retain such a strong federal tutelary character in its institutional design? This is not a narrow question about administrative procedure — it is a question about who holds the authority to define a political community's own government, and the same tension over federal oversight of tribal governance structures persists in federal-tribal relations today. This surface-level contradiction is exactly what this paper seeks to explore.

To answer this question, it is not enough to just evaluate whether the IRA "fulfilled its promise of self-government", more, deeply, this paper is concerned with a more specific question: through what concrete mechanisms did New Deal policymakers limit the substantive content of this self-government, while at the same time committing in principle to respecting tribal autonomy? Here, self-government refers specifically to a tribe's authority over its own governing structure, that is the form of government it adopts, how its officials are chosen and removed, and the ratification of its

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.38936

constitution, not to fiscal or criminal jurisdiction, which lie outside the documents this paper examines.

In my opinion, although the 1934 Indian Reorganization Act loudly proclaimed tribal self-government at the rhetorical level, New Deal policymakers still retained the ultimate power to define the substantive content of "tribal self-government" through a series of concrete structural mechanisms, including legislative approval requirements and federal legal interpretations—thereby allowing the federal government to determine what "self-government" could actually mean in practice.

2. Background

To see this contradiction, it would help to start with the policy the IRA was reacting against. Before the Indian Reorganization Act, federal Indian policy was guided by assimilation. The General Allotment Act of 1887, or the Dawes Act, was the clearest example of this logic. Its idea was simple: break up collectively held reservation land into individual allotments for families, and open the remaining land—called "surplus"—to white settlement. The assumption was that if Native people owned private property like white farmers, they would gradually leave tribal ways of life and be absorbed into mainstream American society [1].

By the late 1920s, forty years into allotment, it was clear that the policy had failed. A Brookings Institution study found that more than half of all Native people lived on less than two hundred dollars a year, and most of that income came from land rents, not wages. In other words, allotment had not turned Native people into self-sufficient farmers or wage earners as promised. A later study found that nearly half of Native people on allotted reservations had already lost all their land [1]. In fact, allotment undermined assimilation rather than helping it. Without access to credit, without nearby markets, and without meaningful support from the Bureau of Indian Affairs for adapting to a wage economy, Native landowners had little real chance to benefit from the system [1].

John Collier became Commissioner of Indian Affairs in 1933, coming out of the same reform climate. His path to Indian policy was somewhat unusual. Before working on Native affairs, Collier had spent years organizing communities among immigrant populations in New York and other cities. This was part of a broader movement of social workers and educators who believed that locally rooted, culturally distinct communities were the foundation for a more participatory society. When Collier later encountered Pueblo communities in the Southwest, he saw in them the same tight-knit communal structure he had long supported elsewhere. This experience shaped his belief that restoring tribal organization—rather than dissolving it—was the way to solve the problems created by allotment [1]. It was this background, as much as any specific critique of federal policy, that led him, once in office, to push for ending allotment and rebuilding tribal self-government—an effort later known as the Indian New Deal.

This shift produced the 1934 Indian Reorganization Act, a law that formally broke from assimilation and directed federal policy toward tribal reorganization. But this shift is exactly what raises the question this paper takes up: how far did the Act actually go in granting tribes genuine self-government, and how much of the older logic of federal guardianship did it end up preserving? Scholars who have taken up this question tend to split into two camps.

DOI: 10.54254/2753-7048/2026.38936

3. Secondary sources discussion

3.1. Secondary source 1

Graham Taylor's The New Deal and American Indian Tribalism approaches the IRA mainly from the standpoint of implementation, tracing in detail how the policy actually unfolded on individual reservations. His central argument is that there was a real gap between how the policy was designed and how it worked in practice: federal officials pushing tribal constitutions and councils tended to rely on standardized organizational templates, and those templates frequently didn't line up with the social structures and decision-making patterns tribes already had. The result, in many cases, was that these newly "self-governing" bodies looked more like something imposed from outside than something tribes had chosen for themselves [1].

Taylor backs this up with specific comparative cases. Among the Teton Sioux, he points out, the basic political unit had historically been the band, or "tiospaye" — there was nothing like the tribal-level organization found among groups such as the Cheyenne. When tribal councils were set up on Sioux reservations in the 1920s, representation was based on administrative farm districts rather than on the "tiospaye", and most full-blood Sioux simply ignored these councils in favor of a separate body made up of traditional band leaders [1]. Taylor traces this same mismatch back even further, noting that during the 1920s, most Plains reservations had already been directed by Washington to set up "business committees" to handle things like leasing tribal land — but there was no consistent method for choosing members. Some were simply hand-picked by the reservation superintendent; others were nominally elected through administrative districts that, again, rarely matched actual Indian communities. These committees' functions were loosely defined and depended largely on the superintendent's discretion [1].

Taylor shows that this pattern didn't disappear once the IRA passed — if anything, individual agents sometimes acted on it quite openly. He cites the superintendent of the Cheyenne River Agency, who announced in 1934 that he intended to hand-pick the committee responsible for drafting the tribal constitution rather than let it be elected, on the grounds that an election would produce candidates he considered incompetent [1]. More broadly, Taylor argues that the amount of authority tribal councils actually ended up exercising was, in practice, determined by administrative decisions rather than by the statute itself — day-to-day control over reservation staff stayed with the superintendent, and superintendents were rarely removed except in cases of clear, investigated abuse of power [1]. Taylor draws this argument from a comparative reading of individual reservation cases, using federal administrative records alongside material produced by tribal governments themselves.

3.2. Secondary source 2

Kelly, in a 1975 paper published in the Pacific Historical Review, raised a similar set of concerns earlier than Taylor did. He defined the IRA as a gap between "ideal" and "reality", that the Act itself carried Collier and other reformers' idealized vision of tribal self-government, but this ideal was constantly diluted and compromised during congressional deliberation and later implementation. Kelly's analysis focused more on the legislative process itself, examining how political bargaining within Congress shaped the final text of the Act. This provided an early theoretical foundation for later scholars like Taylor who discussed the "gap between design and execution." [2]

DOI: 10.54254/2753-7048/2026.38936

3.3. Secondary source 3

Biolsi, on the other hand, took a more theoretical approach and questioned the very concept of "self-government." In his article published in American Indian Quarterly, he argued that "tribal self-government" could actually be understood as a technique of domination, rather than a simple mechanism of empowerment. His argument centered on the specific operation of tribal constitution ratification votes, pointing out that federal field officers often influenced the process by exerting pressure and hinting at consequences, thereby effectively manipulating the voting outcomes. This made the "tribal consent" stage itself manipulated. This pushed his argument further than Taylor and Kelly—not just pointing out that self-government was incompletely realized, but fundamentally questioning whether the concept of "self-government" could even hold up under the IRA framework [3].

3.4. Secondary source 4

Rusco's paper was also published in the same issue of American Indian Quarterly, but his perspective turned to Collier as a specific figure. He raised a direct question: was Collier sincerely promoting the restoration of tribal sovereignty, or was he using the language of "self-government" to package a new form of assimilation policy? Rusco examined Collier's own political positions, administrative style, and his interactions with tribal communities, trying to determine whether this structural control was a product of Collier's personal choices or an institutional logic that went beyond individual will. His analysis offered a complementary perspective for understanding the motives behind the IRA, different from Biolsi's approach [4].

4. Methodology

These four scholars sketch two different ways of interrogating the IRA's promise together — one asking whether it was implemented as designed, the other asking whether the design itself was sincere. What neither line of scholarship does is compare the statute's own language against the federal government's contemporaneous legal interpretation of that language. Despite the rich perspectives these scholars have offered for understanding the nature of "self-government" under the IRA framework, there remains a gap in the existing research that has not been fully discussed. Taylor and Kelly focused mainly on the implementation level, that is, the gap between policy ideals and actual outcomes; Biolsi and Rusco, on the other hand, questioned whether the concept of "self-government" itself was genuine, from theoretical and motivational angles. However, few studies have directly compared the text of the Act itself with the official interpretations issued by federal legal departments within months of its passage, to examine exactly at which stage and through what means the boundaries of "self-government" were drawn.

Biolsi and Rusco have already made strong arguments that "self-government" under the IRA framework carried a dominating or assimilationist substance in practice. This paper does not intend to re-prove that conclusion, but rather to trace one step further back: at which specific stage was this limitation institutionalized? In other words, this paper is not concerned with the question of "whether self-government was limited", but with how this limitation was originally designed and established within the legal documents themselves.

Based on this gap, the novelty of this paper lies in: combining the original text of the IRA and its legislative records, with the legal opinion Powers of Indian Tribes issued by Nathan Margold, legal advisor to the Department of the Interior, later that same year after the Act's passage, to specifically

DOI: 10.54254/2753-7048/2026.38936

trace how the power to define "self-government" was structurally retained by the federal government during the legislative stage and the legal interpretation stage. These two documents are closely linked in time—the Act itself established the basic framework for tribal organization and self-government, while Margold's legal opinion provided an authoritative official interpretation of that framework within a few months, placing them side by side can clearly show how the boundaries of "self-government" were gradually narrowed and clarified at the very initial stage of institutional design.

The analysis in this section will proceed in the following order: first, it will examine the text of the IRA and its legislative records, looking at how the Act's wording, while granting powers to tribal organizations, also embedded restrictive clauses such as the Secretary of the Interior's approval requirements; second, it will analyze Margold's legal opinion, examining how this document further translated the relatively vague authorizing language in the Act into specific, enforceable legal boundaries; finally, this paper will discuss the connecting logic between these two documents, showing that together they formed a coherent chain from legislation to legal interpretation, thereby demonstrating that the federal retention of the power to define "self-government" was not an accidental implementation oversight, but a systematic institutional arrangement.

5. Primary sources discussion

5.1. Source 1: the IRA text and legislative record

This is where the primary sources come in. Source 1--The IRA Text and Legislative Record. The clearest place to see how "self-government" was authorized and hedged at the same time is right at the start of the bill. Section 1 of the original H.R. 7902 draft opens by declaring it "the policy of Congress" to grant tribes "the freedom to organize for purposes of local self-government and economic enterprise." [5] On its face, this reads as a clean grant of authority. But the same section immediately qualifies that grant: federal functions currently exercised by the Department of the Interior would only be "gradually relinquished and transferred" to tribes "as the ability of such Indians to administer the institutions and functions of representative government shall be demonstrated." [5] In other words, autonomy isn't handed over outright — it's staged, and the federal government reserves the right to decide when a tribe has "demonstrated" enough capacity to receive it. The bill never says who makes that judgment or by what standard, which is itself worth noting: the vagueness leaves the evaluation entirely in federal hands.

Section 4 goes even further. It authorizes the Secretary of the Interior to grant tribal communities the powers listed later in the bill, but explicitly allows the Secretary to attach "the definition, qualification, or limitation of any powers which may be granted, in any manner deemed necessary or desirable." [5] This is a striking piece of language — it doesn't just create an approval step, it gives the Secretary open-ended authority to reshape or narrow whatever powers a tribal charter would otherwise confer, with no real limit on how far that reshaping can go.

The final version of the Act, in Section 16, narrows this down to a more specific procedure: tribes may adopt a constitution, but it only takes effect once ratified at a special election "authorized by the Secretary of the Interior" and then formally "approved" by him [6]. Read next to Sections 1 and 4, this isn't really a new idea — it's the same logic (federal discretion over what counts as legitimate self-government) narrowed into a concrete administrative checkpoint.

What's especially useful is that this logic wasn't just baked into the statutory language — Collier himself said as much out loud during the hearings. Responding to a question from Rep. Stubbs about whether tribes with very different levels of traditional governance would actually want to organize

DOI: 10.54254/2753-7048/2026.38936

the same way, Collier argued against a one-size-fits-all approach, insisting that any tribe should be free to design a governing charter suited to its own circumstances [7]. But he immediately qualified that flexibility: the process, he said, should always begin "upon the initiative of the tribe," but the resulting proposal would then go "up to Congress in its own way for correction or validation or rejection [7]. Coming from the bill's chief architect, this is about as direct a confirmation as you could ask for — even the person designing this system to expand tribal self-government openly acknowledged that whatever a tribe proposed still had to clear a federal checkpoint before it meant anything.

Taken together, these four pieces of the legislative record, the conditional language of Section 1, the broad discretionary power in Section 4, the two-step approval mechanism in Section 16, and Collier's own account of how the process was supposed to work — show that federal control over the substance of tribal autonomy wasn't an accident of implementation. It was written into the bill from its very first draft, restated at the level of specific administrative mechanics, and openly acknowledged by the person most responsible for the law's design.

5.2. Source 2: the Margold opinion

If the IRA text shows how the "authorize but retain control" logic was written into the statute, Margold's opinion shows how that same logic was worked out at the level of legal doctrine, just a few months later.

The first thing worth noting is how Margold frames the relationship between tribal power and federal authority. Drawing on "Cherokee Nation v. Kansas Railway Co.", he affirms that tribes retain real powers of local self-government — but immediately subordinates those powers to what he calls the "supreme legislative authority of the United States." [8] What's interesting here isn't just the conclusion (tribes are ultimately subject to Congress), but how he gets there: rather than treating tribal authority as something granted by federal law, he treats it as pre-constitutional — something tribes already possessed before the United States existed. In a sense, this makes the acknowledgment of tribal sovereignty sound more generous, even as it reaches the same practical result: whatever the historical pedigree of tribal power, Congress still sits above it.

This tension becomes even sharper in the section of the opinion titled "The Power of an Indian Tribe to Define Its Form of Government." Here Margold goes further than simply affirming that tribes have some residual authority — he argues that the power to determine and define one's own form of government is the most basic element of sovereignty, one that persists even after successive statutory limits have stripped away almost everything else [8]. He includes in this the tribe's right to decide how its officials are chosen, how they're removed, and what procedures count as legitimate tribal action. Read on its own, this passage sounds like a strong defense of tribal self-determination — arguably stronger than anything in the statute itself.

But that's exactly what makes it useful for this paper's argument. The more forcefully Margold insists, in principle, that defining one's own governing structure is the core of tribal sovereignty, the more striking it is that the very same year's statute conditions the actual exercise of that power — adopting an actual constitution — on approval from the Secretary of the Interior. Margold's opinion doesn't resolve this tension; if anything, it makes the tension more visible. He affirms the "principle" of self-definition in sweeping terms while leaving the "procedural" reality — that any tribe's chosen form of government still has to clear a federal approval process before it means anything — completely intact. That combination is worth sitting with: a legal opinion can affirm tribal autonomy in the most generous terms available and still leave the actual approval mechanism untouched,

DOI: 10.54254/2753-7048/2026.38936

because the opinion is explaining what tribes possess in principle, not overriding what the statute requires in practice.

5.3. Connection

Placed side by side, the IRA text and the Margold's opinion form a two-side sequences. The statute establishes the basic mechanics: tribes may organize, but their constitutions only take effect once the Secretary of the Interior authorizes the ratification vote and then formally approves the result. What the statute didn't do is explaining why this arrangement is legitimate, as it just sets up the procedure. That's the gap Margold's opinion fills. Issued only months after the Act passed, it supplies the legal reasoning that justifies the very structure the statute already put in place: tribes possess real, historically-rooted powers of self-government, but those powers have always operated subject to federal legislative supremacy.

The statute shows what federal officials retained, which is approval authority over tribal constitutions, and broad discretion to define or limit granted powers. The opinion shows how that retention was made to look consistent with recognizing tribal autonomy in the first place, that is by drawing a line between the principle of self-government, which Margold affirms in strong terms, and the federal government's supreme authority over how that principle gets exercised, which he treats as settled law. Once that distinction is in place, there's no contradiction, at least on paper, between saying a tribe has the sovereign power to define its own government and saying that its constitution still needs the Secretary's sign-off.

That's really the mechanism this paper is trying to trace. It's not that federal officials quietly ignored the principle of tribal autonomy while claiming to honor it, and not a particularly interesting one. It's that the legal and legislative apparatus built in 1934 provide space for both things to be true at once: a well-documented affirmation of tribal self-government as a matter of principle, and a fully intact federal approval process governing what that self-government could actually produce. The statute built the checkpoint, while the opinion explained why having a checkpoint was compatible with respecting sovereignty. Together, they show that the limits on tribal autonomy weren't an implementation problem that showed up later, that they were part of the legal architecture from the very beginning, constructed in two matching pieces within the same year.

6. Conclusion

The core argument of this paper is that although the IRA rhetorically promised tribal self-government, federal policymakers retained the power to define it through two closely linked mechanisms. The first was the Act itself, which embedded approval requirements and discretionary authority for the Secretary of the Interior, which is a logic confirmed by Collier himself in hearings. The second was Margold's legal opinion, which generously affirmed tribal autonomy in principle but left those approval procedures untouched, making their controlling function more visible. By comparing these documents, this paper shows that the federal retention of interpretive power over self-government was not an implementation flaw but a systematic arrangement that spanned legislation and legal interpretation with the text set up hurdles, while the opinion explained why. The practical weight of this retained power is visible, a reminder that federal approval authority was not a paper formality but could override the governing structures tribes would otherwise have chosen for themselves.

This case reveals a broader logic in federal Indian policy: formally granting self-government while retaining ultimate control at key institutional junctures. This pattern did not end in 1934; it has

DOI: 10.54254/2753-7048/2026.38936

been a recurring source of tension in federal-tribal relations, as the question of who defines the boundaries of self-government was never settled by the IRA. It helps reassess the Act's place in Native policy history and offers a concrete starting for analyzing similar tensions in nowadays.

References

[1] Taylor, G. D. (1980). *The new deal and American Indian tribalism*. University of Nebraska Press. [P4]. Lincoln.
[2] Kelly, L. C. (1975). The Indian Reorganization Act: The dream and the reality. *Pacific Historical Review, 44*(3), [P297].
[3] Biolsi, T. (1991). "Indian self-government" as a technique of domination. *American Indian Quarterly, 15*(1), [P26-27].
[4] Rusco, E. R. (1991). John Collier: Architect of sovereignty or assimilation? *American Indian Quarterly, 15*(1), [P52].
[5] H.R. 7902, Title I, Sec. 1, 73rd Cong., 2nd sess. (1934), [P1].
[6] Indian Reorganization Act, 48 Stat. 987, Sec. 16 (1934), [P5-6].
[7] Readjustment of Indian Affairs: Hearings before the Committee on Indian Affairs, House of Representatives, on H.R. 7902, 73rd Cong., 2nd sess. (1934), [P43-44], testimony of John Collier.
[8] Margold, N. (1934, October 25). Powers of Indian tribes. Opinions of the Solicitor, U.S. Department of the Interior, [P451], citing "Cherokee Nation v. Kansas Railway Co.", 135 U.S. 641.