Indian Gaming:
Players and Stakes

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Gambling enjoys a long history in the traditional life and culture of many Native American societies.[1] Games of chance frequently originated in connection with spiritual beliefs and practices, although some people object to casino gambling precisely on the grounds that it bears little connection to these traditional origins.[2] Among the Native Americans now living in Montana, the Hand Game is probably the most popular, although other activities attended by traditional betting include horse racing, running, arrow-throwing, soccerlike games that go on for days, and "numbers" games like the Crow plum pit game. Unlike religion, or issues of language, education, health care, and crime control, gambling is also one of the few areas of Native American cultural practice that, until 1988, the federal government had not intruded on. The 1988 Indian Gaming Regulatory Act 25 USC 2701 (IGRA) acknowledges this fact by designating as "Class I" gaming that falls entirely within the jurisdiction of tribal governments. These are "social games [played] solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."

Gambling revenues for operations on Indian reservations reached an estimated $1.5 billion last year and are expected to continue to grow by about 25 percent a year.[3] Gaming is therefore an economic activity that is both potentially enormously prosperous for and consistent with the traditions of many Native American societies.[4] Indian

gaming has also recently become the battleground for new challenges to Indian sovereignty and jurisdictional disputes involving the federal, tribal, state, and local governments.

THE GENESIS OF INDIAN GAMING

In the 1970s the first bingo halls opened on reservations. Within a decade Native people and their governments found themselves embroiled in legal and political conflicts with state governments, members of Congress, powerful gambling lobbies, and, in the case of some of the Iroquois, pro- and anti-gambling interests within their own communities.[5] While the experience of violence among the Mohawks at Akwesasne traumatized that community, the conflict was only partly about gambling. A more serious set of underlying issues pertains to conditions more or less present in most Native communities. These issues turn on the question of the legitimacy of tribal governments as perceived by the people in Native communities, and the perception that tribal governments serve the interests of those who favor assimilation in the sense of displacing traditional Native values with the materialistic values of the dominant non-Native society. These conflicts will not be resolved in courts or in Congress but must be raised as part of a much needed public discussion of these and other concerns related to identity, culture, and survival in most Native communities.

Legal Issues

The first legal battle was fought between 1981 and 1983 in Florida by the Seminoles, who were operating high-stakes bingo.[6] Three important points were made by the *Seminole* case that would open the door to the present era of conflict over the nature of Indian sovereignty in the context of federal-tribal-state jurisdiction. Additionally, the case would precipitate inevitable clashes between Indian sovereignty and established non-Indian-owned gambling interests, including the casino industry and virtually the entire pari-mutuel gambling industry.

According to the *Seminole* case, states could treat gaming as a subject for either criminal prohibitory regulation or as a civil-regulatory matter of public policy. According to a decision rendered three years earlier, states could have criminal or civil jurisdiction over Indian tribes but not regulatory.[7] If it was criminally prohibited, then the conduct of gaming on Indian reservations would be in conflict with the state criminal law. (The *Cabazon* case in 1987 would further build on the concept of this distinction.) Since gaming was not prohibited in Florida as a matter of public policy, the Seminoles had a right to operate gaming enterprises.

The second important point made by the case was that even

though gaming was a regulatory issue as a matter of state public policy, the state had no jurisdiction to regulate gaming on reservations due to the fact that Indian governments retain all powers to regulate activities taking place within their boundaries unless expressly forbidden to do so by Congress. This "reserved rights" principle of Indian sovereignty was articulated in several cases decided early in the twentieth century.[8]

Finally, the *Seminole* case addressed the very important and controversial issue of whether Public Law 280 could be invoked as a source of state regulatory power over Indian gaming activities. Public Law 280, passed by Congress in 1953, granted various degrees of criminal jurisdiction over Indian reservations to Florida as well as to five other states.[9] Provisions and subsequent amendments to Public Law 280 gave eleven other states, including Montana,[10] some civil or criminal jurisdiction over reservations. The law was also amended in 1968 so that any further application would require the consent of the Native Americans to whom it would be applied. The court's reasoning was restrictive. Under Public Law 280, Florida had the right to regulate criminal activities on reservations. Because Florida regulated but did not criminally prohibit gambling, as evidenced by the state's allowing charitable games but banning lotteries, the criminal jurisdiction of Public Law 280 could not be applied. Indians could open bingo halls in any state where bingo was allowed but regulated. Indian gambling operations, patronized primarily by non-Indian customers, are attractive because, among other things, they offer higher stakes and are open longer hours since they are not regulated by state law.

Among the one hundred or more bingo operations that were established on Indian reservations by 1988 was a high-stakes bingo and card game operation run by the Cabazon and Morongo Bands of Mission Indians in Riverside County, California.[11] Both Riverside County and the state of California tried to apply ordinances and laws to restrict the gambling activities of the Cabazon Indians, which led to the second Indian gaming case to be litigated, this time up to the U.S. Supreme Court. The *Cabazon* case would both expand the conduct of gaming by Native Americans and lead to mounting pressure on Congress to take action on the issue of Indian gaming.

The state of California maintained that pursuant to Public Law 280 as well as the more broadly written Organized Crime Control Act of 1970, the state could assert authority over Indian gambling within the state of California. Pari-mutuel horse racing, a state-run lottery, and charity bingo were already allowed in California. Specifically, the state claimed an interest in preventing an anticipated infiltration of organized crime into the unregulated gaming conducted by Indian tribes.

Relying upon an earlier U.S. Supreme Court decision, the Cabazon Indians claimed that state laws could not be applied to their gaming operations. In the interest of protecting the autonomy and self-governing

nature of Indian Nations, the *McClanahan* decision prevented a state from applying its laws to reservations unless expressly provided for by Congress.[12] This is consistent with the exclusive constitutional power of Congress to regulate commerce with the Indian Nations,[13] as well as with the trust responsibility of the federal government to protect the autonomy of Indian Nations as distinct communities.[14]

The court upheld the *Cabazon* assertion and dismissed the state's claim under both laws. Public Law 280, the court said, did not apply to activities that were not criminally prohibited and were, in fact, regulated by the state. Writing for the *Hamline Law Review*, Eric Swanson summed up the cases this way:

> What *Seminole* did for reservation bingo, *Cabazon* did for high-stakes, casino style Indian gaming. *Seminole* allowed tribes to open bingo halls in states where bingo was allowed but regulated. *Cabazon* seemed to indicate that if a state allowed some types of gaming activities, the state's approach to "gambling in general" would be interpreted to be civil-regulatory. Under this construction, the limit to Indian gaming operations was difficult to determine.[15]

Indian gaming operations spread rapidly during the 1980s, from 6 sites in four states in 1982, to 110 locations in twenty-four states by 1992, to 177 sites as of June 1993 (see Figure 1).[16]

The Politics of the Indian Gaming Regulatory Act of 1988

The stated purposes of the Indian Gaming Regulatory Act (IGRA) are threefold:

> (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.
>
> (2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both operator and players; and
>
> (3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns

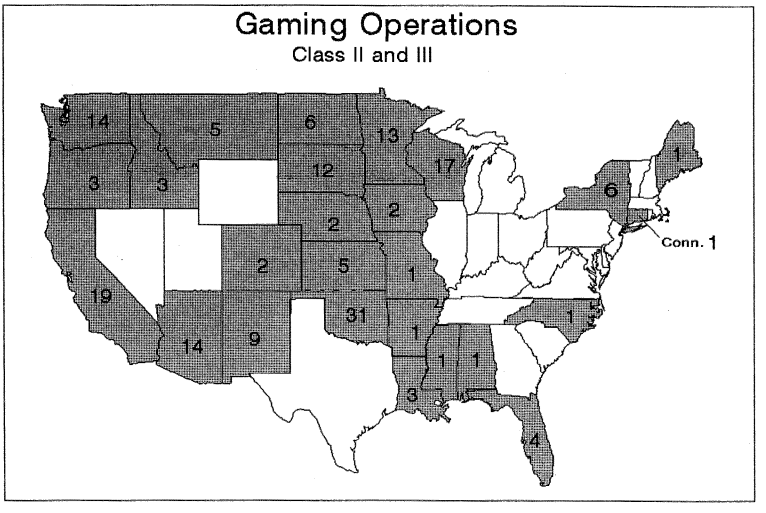

Figure 1. Indian gaming operations: Class II and III

> regarding gaming and to protect such gaming as a means of generating tribal revenue.[17]

Both Class I (traditional forms of gaming) and activities identified by the IGRA as Class II gambling, where they are legal, are entirely within the jurisdiction of the tribe. IGRA designates as Class II gaming bingo and games similar to bingo, and similar games played with electronic devices as well as card games "grandfathered" in because they were in operation in North Dakota, South Dakota, Michigan, and Washington before May 1, 1988. Tribal operation of Class II gaming is legal in any state where any other person, organization, or entity is permitted to engage in these activities and is subject to oversight by the National Indian Gaming Commission created by the act.

The most difficult controversy surrounds Class III gaming, which includes all other forms of gambling but most importantly casino gambling and pari-mutuel betting. Tribes may engage in Class III gambling if three conditions are met:

> (1) some type of Class III gaming, by any person, organization or entity, is allowed in the state where the tribe is located;
>
> (2) the activity is authorized by the tribal council and approved by the tribal chair; and
>
> (3) it is conducted in conformity with a state-tribe compact.[18]

According to its stated purposes, the IGRA was passed to protect and promote the interests of the Indian tribes. Nowhere are the inter-

ests of states or of existing non-Indian owned gaming operations mentioned in the purposes of the act. Indian economic development, Indian self-sufficiency, strong tribal governments to regulate gaming within their own lands, and protection against infiltration by organized crime and other sources of corruption are the enumerated purposes of the act. However, in response to an Indian gaming boom in the past five years, a powerful national alliance has formed to lobby for amendments to the IGRA that would effectively destroy the ability of tribal governments to regulate their own gaming activities in states where such classes of gaming are legal.

The most powerful lobby opposed to tribal regulation of gaming came from states where gambling was already legal, not from states concerned about organized crime,[19] as Arizona Representative Morris K. Udall observed:

> And who are these opponents of Indian gaming who have raised the specter of organized crime? Who are these entities who are demanding that we break our word to the Indian tribes and destroy another aspect of their right of self-government? The Indian opponents that are instructing us in the evils of organized crime are the gambling casino operators of Nevada, the Horse Track Owners Association and the American Greyhound Track Operator's Association.
>
> Mr. Speaker, let us be candid. This debate is not based upon moral high ground, crime control and a level playing field. It is, quite simply, about economics.[20]

In hearings a few months later, Representative Gerry Sikorski testified after a weekend of firsthand observation and conversations with gaming tribes in Minnesota. He asked rhetorically:

> what is the origin of this legislation undermining Indian sovereignty? Who wins and who loses under it? Where is the problem that needs correction? Finally, why do we think we can invade Indian sovereignty when it is inconvenient to respect it?[21]

And he answered:

> On the "who" issue, I have been told that the white and multibillion-dollar casino syndicates on the east and west coasts, the track owners and even states that have their own gambling operation do not like the little competition they get from reservation bingo and cards and video machines.

> We can understand this desire to shut down any competition; any business wants to do that.
>
> But does this explain why we pull the plugs on a couple of video machines hundreds of miles, in some cases thousands of miles from Donald Trump or the Vegas strip? It is piddling money to the big boys, but to most reservations it is the very small difference between survival and dependence. . . . On the reservations, this little money is the difference between a drug rehabilitation program and no program; between the successful child nutrition program and no program; between an alternative school or a senior citizen center and nothing.[22]

The situation has not changed much since 1988, except that the number of Indian gaming operations has nearly doubled, they are no longer thousands of miles from Trump's casinos and the Vegas strip, and Indian gaming revenue represents about 5 percent of total national revenue from gaming. Donald Trump has since joined the ranks of those opposed to Indian gaming. In May 1993, Trump, whose profits represent a 12 percent share of the casino market (compared to 13.75 percent for all of Indian casino profits),[23] filed suit against the federal government for allowing "unfair competition" into the gaming industry by Indian tribes. Moreover, on June 25, 1993, during hearings on the implementation of the IGRA, the following groups lined up before the House Subcommittee of Native American Affairs Oversight and offered strong support of radical amendments to the act: Pari-mutuel Wagering, Department of Business Regulation, Florida; Association of Racing Commissioners International; Greyhound Track Operators Association; American Horse Council; Maryland Jockey Club; Horseman's Benevolent and Protective Association; and Oklahoma Horse Racing Commission.[24]

The testimony of these witnesses reflected a straightforward concern for the protection of their economic interests, referring only obliquely to issues of crime or corruption among Indian gaming operations. For instance, Nevada Representative James Bilbray stated that "at least $12 million [was] diverted from tribes through theft and mismanagement," and that "in another case, a tribe stands to lose an estimated $4.5 million through gross mismanagement by the company hired to operate its casino."[25] In an industry generating between $1.5 and $5 billion[26] in net yearly revenues after only a decade or less since its inception, a monetary loss of less than 1 percent seems less than significant. By way of comparison, a subsequent witness, ironically attempting to draw a parallel between conditions in New Jersey and in Indian Country following the introduction of casino gambling, stated that

> The total crime index for Atlantic City has risen 245 percent from 1977 to 1989. By comparison, the crime index for all of New Jersey rose only 9 percent. During those same years, fraud increased by 175 percent and narcotics arrests by 160 percent in Atlantic City.[27]

A report by the Department of Justice presented to the Senate Select Committee on Indian Affairs on March 18, 1992, concluded, based on several years of investigation by the FBI, that organized crime had not succeeded in infiltrating Indian gaming operations nor had there been any substantial evidence of criminal activity in Indian gaming outside of the major organized crime families.[28] Finally, assertions of "illegal gaming" were found to be either cases where tribes engaged in Class III gaming without benefit of a state compact, or the operation of gaming activities not appropriately approved by the tribal authorities, which were subsequently shut down, including those on Crow territory. Testifying for the Department of Justice in March 1992, Paul Maloney stated that "the perception that . . . Indian gaming operations are rife with serious criminality does not stand up under close examination."[29]

But at the recent hearing there was little concern for the issue of crime control that allegedly led to the IGRA in the first place. Witness after witness cited data on the economic impact of pari-mutuel wagering and the negative impact on it as a result of competition with Indian-owned casinos. The director for Pari-mutuel Wagering gave the testimony quoted earlier regarding crime rates in Atlantic City, but he also pointed out that the pari-mutuel industry has "created an economic impact of nearly four billion dollars per year in central Florida and directly provided jobs for more than 35,000 people."[30] A resolution by the Association of Racing Commissioners International began "WHEREAS, the gaming activities currently occurring or planned on Indian lands have undermined the economic viability and threatened to destroy the positive economic impact of the pari-mutuel industry."[31] The Association's statement further claimed that "unfair and unplanned gaming on Indian lands is acting to, or has the potential to, cripple or destroy the pari-mutuel racing industry, causing job and revenue losses." The association, which recommends policies to its members, represents members in all forty-three states where pari-mutuel wagering is legal, licensing about 250,000 individuals per year.

The American Greyhound Track Operator's Association, also testifying on behalf of severe restrictions for Indian gaming, made no effort to disguise its purely economic interest in opposing Indian gaming:

> Why do states limit the number of gaming facilities within their borders? They do so in order to grow profitable facili-

ties that will create jobs and produce a stable revenue base for both the State and the gaming facility. . . . It is into this tightly controlled market that gaming on Indian lands has dropped like a bombshell. . . .

Casinos will close tracks, Mr. Chairman. If you doubt that, look at Canterbury Downs in Minnesota, or Sodrac in South Dakota.

We can fight state-authorized casinos or slot machines, or we can "join 'em" by persuading the State to allow our tracks to put in slots or casinos, too. But with Indian gaming, there is no mechanism to lobby the State legislature, no statewide referendum, no debate. A pari-mutuel facility which competes for a state license and sinks between $20–$90 million of capital into constructing a state-of-the-art facility can suddenly find itself staring at an Indian casino across the street.[32]

Joseph A. DeFrancis, testifying on behalf of the Thoroughbred Racing Associations, stated that "the gambling market, like all markets, is finite. If it is saturated, there will be tremendous economic fallout and loss.[33] He cited several cases where non-Indian casino competition in New Jersey and Illinois resulted in the closing of race tracks, and then referred to the case of Canterbury Downs, where the success of the Indian-owned Mystic Lake casino three miles away led to the closing of the track.[34]

Referring also to the Canterbury Downs case, a witness for the Horseman's Benevolent and Protective Association said that "because of the short time since the passage of the 1988 IGRA, there are few statistics to confirm what all horsemen can see happening to racetracks wherever Indian gaming comes in."[35] The president of the American Horse Council was, perhaps, the most blunt; he said, "We view it as competition for a limited wagering and entertainment dollar."[36]

THE ECONOMICS OF INDIAN GAMING

There is no doubt that the entry of new players into existing markets will take away some of the business of existing players *to the extent that the market is maximally expanded and saturated*. That is a basic rule of free-market competition. Some wagering and entertainment dollars will shift away from those existing businesses and into new businesses, presumably because customers prefer and are more satisfied with the goods, services, and prices offered by the new entrants into the market. Jobs lost in one place are created elsewhere; dollars not spent one place are spent at another. The market as a whole will be more competitive and therefore, presumably, "better" from the point of view of the consumers

served by the market. That is how capitalism is supposed to work. According to the tenets of free-market economics, governments are not supposed to intervene in these processes except insofar as they may threaten the well-being of the whole of society, and certainly not on behalf of protecting the advantage of some players threatened by new competition.

The market, of course, may expand, attracting new customers, which will mean an overall increase in the economic activity in which the market and its players are located. And this is exactly what seems to be happening. *Gaming and Wagering Business* magazine reported in July 1993 that "the biggest single story of 1992 was the tapping of unsatisfied demand for blackjack and slot machines by new market casinos."[37] Needless to say, secondary social benefits may also change depending on how profits are utilized by prosperous new players as compared to how profits have been used by the old-timers. In addition to increasing the market size, some gaming consumers are moving their gaming dollars from existing to new gaming business. Pari-mutuels appear to be the biggest losers in competition with casinos of any kind, including Indian casinos.

The argument that Indian gaming is economically destructive, which appears in the complaints of representatives of other gaming businesses, is insupportable. Indian gaming is only destructive of other, preexisting gaming business interests if the gaming consumer prefers the services offered by Indian gaming over other forms. The philosophy of the free market is that more competition in any market is better for the consumer and, in the long run, more efficient for the economy. If two entities are competing for the same dollars, then those dollars and the jobs they support are never lost; they simply move. In the case of gaming in general, and Indian gaming in particular, the overall industry trend has been one of consistent and high growth as a component of the entertainment market. The boom in Indian gaming is expected to crest and level off within the next decade. There are always problems, however, when market producers and consumers move readily across jurisdictional boundaries, whether it is U.S. and Japanese automakers or Indian and non-Indian gaming operations. These problems will be discussed in a later section.

Impact on State and Local Governments

The only study to date of the intergovernmental impacts of Indian gaming evaluated the case of the Grand Casino, operated by the Mille Lacs Band of Ojibway, and its impact on the nearby town of Hinckley and Pine County, Minnesota, and the case of the Mystic Lake Casino, operated by the Mdewakanton Dakota nation and located in the reservation town of Prior Lake, Minnesota, and its impact on Scott County.

The study concluded that "the intergovernmental impacts, formal or informal, direct or indirect seem to have been minimal on Hinckley relative to the Mille Lacs Band of Ojibway."[38]

In the case of the Mystic Lake casino, intergovernmental relations have been somewhat stressed by a history of legal battles between the tribal government and the governments of the neighboring communities. In spite of this, money from contracts pertaining to the provision of services, such as sewer lines, and from transfers of cash in lieu of taxes from the tribal government for municipal service were $60,000 in 1992 and were expected to be $160,000 in 1993. The report also noted that strained relations did not extend to all contacts between community and Indian leaders. The police chief and county attorney both indicated positive personal and professional relations with leaders in the Shakopee community. Additionally, Scott County has benefited from the additional income from the tribal government, allowing accelerated road construction and repair and more funds for the police department.

States may fear losing some revenues since Indian employees on Indian lands do not generally pay state income taxes, although there are other taxes that Indians do pay. Employment opportunities created by Indian gaming, however, often extend off the reservation to non-Indians as well. Of the several thousand jobs created by the Turning Stone Casino opened by the New York Oneidas in the spring of 1993, for example, about half have gone to non-Indians, after unemployment was virtually eliminated among the Oneidas. The Pequots' Foxwoods Casino generates enough income not only to eliminate poverty and unemployment among the Pequots and to guarantee college tuition for all children and international travel for all elders but also to build a second casino, creating an additional 7,000 jobs, which will go primarily to non-Indians.[39] As of March 1993, gaming in Minnesota had employed not only 3,164 American Indians but 7,189 non-Indians.[40]

State and local governments might also be concerned about a loss of revenue. Contrary to the popular misconception that Indian enterprises are run tax free, Indian gaming is an important source of revenue for federal, state, and local governments through taxes paid on behalf of non-Indian employees as well as special allocations made in accordance with the terms of compacts and agreements between Indian, state, and local governments. Minnesota casinos are paying $2 million in Social Security and Medicare, $4.7 million in federal unemployment compensation and withholding taxes, $1.7 million in state withholding, and approximately $700,000 in various agreed-upon payments to the state and local governments.[41] These special allocations included $80,000 paid by Grand Casinos, Inc., to Pine County, Minnesota, to cover the expenses associated with hiring two additional police officers, and $160,000 paid by the Mystic Lake Casino for in-

creased police and fire protection in the Prior Lake community. It may be worth noting that in both cases these amounts were paid even though there was no indication of increased demand on these local government services associated with the Indian gaming operations.[42] States also gain when state-funded social service programs are replaced by tribally financed programs, when former welfare recipients earn wages, confirmed by the case of the Mille Lacs, when these wages are spent in the state, and when profits from Indian gaming are invested in new businesses.

While there are discrepancies in the figures reported in the media stemming from confusion over use of the terms describing gaming transactions (wager, handle, wins, drop, and revenues), experts estimate gross revenues from gaming operated by Indian tribes in the United States to be about $1.5 billion.[43] Indian gaming activities measured by revenues more than doubled in 1992 compared to 1991 and were expected to continue to grow at that rate in 1993.

Although the 240 percent increase in Class III wagering in 1992 was probably largely due to the increase in Indian casinos, revenue from Indian gaming on a national scale is still less than half the amount generated by Atlantic City alone.[44] Indian gaming represents about 5 percent of the total gross revenues from gaming and 13 percent of total casino revenues on a national scale (see Table 1).[45]

Impact on Indian Nations

What benefits have Indian Nations derived from gaming? Even as early as 1986 it was obvious that gaming had a tremendous potential to become a source for revenue and economic development seed money on reservations often plagued by unemployment figures of 50 percent and higher. Some refer to gambling as the "New Buffalo" for Indian economies. One gambling consultant explains the Indian gaming boom this way: "To some extent the Indian experience with IGRA is paralleling the Nevada experience with the Nevada Gaming Act of 1931. In both cases gaming is creating a commercial economy in regions that prior to legalization had none."[46]

Hartley White of Leech Lake testified before the Senate that 20 percent of the employees involved in gambling had previously been on some kind of public assistance, and that 50 percent of the profits from gambling were going into a general community fund, 30 percent to constituent services, and 20 percent to social services.[47] William Hole of the Fond du Lac Chippewa said that in one year unemployment had been reduced 10 percent, and that profits were used to build health clinics and roads and to offer scholarships to Chippewa college-bound students.[48] Gordon Dicke of the Menominee in Wisconsin stated that his tribe used bingo profits to subsidize sixteen different programs that

had been cut, including energy and emergency assistance.[49] The Iowa Tribe bingo operation was said to have provided funding for a farm operation, a cow/calf operation, an annual rodeo, a senior citizen nutrition program, and land acquisition for economic development.[50] On the Seneca reservation, gaming had created a total of 647 jobs and on the Papago 856 jobs by 1986.[51]

The Oneida of Wisconsin were one of the earliest success stories, achieving a decline in unemployment from 40.1 percent in 1976 to 28.8 percent in 1986, and a growth in the economy of the surrounding area from $7.2 million to $170 million during the same period.[52] Projects funded by Oneida bingo included:

- 50-bed nursing home
- day-care center
- Oneida Tribal School
- Oneida Nation Museum
- domestic abuse program
- community library
- elderly housing
- Oneida Roadway Inn (202 rooms)
- health care and pharmacy
- alcohol and drug abuse prevention and treatment center
- Head Start program
- public buildings
- grocery store and gas station
- Oneida Printing Enterprise
- 264 units of housing
- recreation center
- Oneida Senior Center

Today the Oneida generate more than $43 million annually in gaming revenues. They have added a $10.5-million Radisson Inn and the Oneida Research and Technology Center, an environmental test-

Table 1.

Gross gambling revenues by industry

Industry	*Gross revenues*
Pari-mutuels	$2,908,871,184
Lotteries	$11,456,963,000
Casinos	$10,140,649,362
Legal bookmaking	$97,401,000
Card rooms	$660,811,000
Bingo	$1,090,944,000
Charitable games	$1,298,949,000
Indian reservations	
Class II	$429,000,000
Class III	$1,069,940,000
Total Indian reservation	$1,498,940,000
Grand total	$29,930,871,438

Source: Christiansen/Cummings Associates

ing laboratory, to their tribal investments. Gaming revenues have helped to fund a total of over sixty programs.[53]

Fifteen miles north of Albuquerque, the Sandia Tribe has cut unemployment from 14.4 percent in 1980 to 3 percent since the establishment of a bingo operation in 1983, and per capita income has increased 27 percent since 1983. Sandia projects funded by gaming revenues include:

volunteer fire department	job training
educational grants	swimming pool
Head Start	senior citizen programs
repairs to community facilities	recreational facilities

The Mille Lacs Band of Ojibway in Minnesota have virtually eliminated unemployment, which was an incredible 45 percent when the Grand Casino Mille Lacs opened in the spring of 1991. Gaming revenues have contributed to the construction of a school, health care clinic, and water tower; to sewer improvements, roads, housing, and day care; and the repurchase of land lost years ago. Alcoholism and crime are also reported to have been significantly reduced over the past two years. Employment in tribal casinos in Minnesota has grown from 5,000 in 1991 to 10,000 in 1993 and was projected to create an additional 1,000 jobs in 1994.[54]

Perhaps the most publicized success story has been the Mashantucket Pequot Tribal Nation in Connecticut, which has been operating the Foxwoods Casino since February 1992. In that time they have created 3,600 jobs, becoming the second largest employer in the area after General Dynamics. The casino boasts a $20.4-million payroll with $85 million going into the state's economy in salary and benefits. Gaming revenues for 1993 were projected to be between $300 and $400 million. The unusual compact between the Pequot and the state of Connecticut promises the state a portion of the slot machine revenues in exchange for the exclusive right to operate slot machines in the state. If other slot machine locations are approved in the state, the Pequot would stop paying. This year the tribe offered the state $100 million, and the state accepted the offer.[55] Projects funded with tribal revenues include a health clinic, a tribal community center, and a child development center.

The Sycuan Gaming Center, 30 miles east of San Diego, employs more than seven hundred people from the surrounding area. Gaming revenues have been used to fund a medical clinic, police and fire departments, and twenty-nine newly constructed homes.

It is estimated that Indian gaming in Minnesota has created over 5,000 jobs in two years.[56] Detroit, Wichita, Duluth, Council Bluffs, and Salem (Oregon) are among the cities that have become interested

in inviting tribes to develop gambling centers to "rejuvenate the areas."[57] Although most non-Indian customers are attracted by the less regulated games played on Indian lands, notably higher stakes, and longer hours, the fact that cities are interested in attracting Indian-run casinos suggests that the lure is more than just the more lenient rules. Class II gambling is allowed in thirty-two of the thirty-three states where Indian reservations are located, and casino gambling is allowed in twenty. Nineteen of these states have entered into compacts for Class III Indian gambling operations. The crucial question now is how will Congress, the Indian Nations, and the states resolve the current political and economic conflicts that plague the industry?

JURISDICTIONAL ISSUES: INDIAN SOVEREIGNTY, STATE SOVEREIGNTY, AND FEDERALISM

Sovereignty, as political science students know, refers to having final authority. As the world becomes more complex and more interdependent, however, sovereignty has become a slippery and difficult basis for delineating the legal scope of political authority. Nation-states are, for instance, sovereign internationally, yet the terms of peace following World War II limited the sovereignty of both Germany and Japan. Similarly, United Nations interventions in Iraq, Somalia, and the former Yugoslavia encroach on the sovereignty of those states. More to the point, according to traditional interpretations of the U.S. Constitution, both the federal and state governments are sovereign, although nowhere does the document specifically state this. It took one hundred years and a civil war killing over a half million people for the states and the federal government to come to terms with the extent of their respective sovereignties, and another one hundred years to determine the extent to which states are bound by the provisions in the Bill of Rights. We used to think of sovereign entities as "billiard balls." They could bump into each other, but the state of things "inside" each ball was not changed much by all the bumping. Perhaps it makes more sense now to think in terms of a jigsaw puzzle.

Now, we add to the mix of sovereign powers between the state and federal governments something called "Indian sovereignty," and we have a new dilemma on our hands. Unlike the champions of state sovereignty ("states' rights"), defenders of Indian sovereignty have not been, legally speaking, well armed until very recently. Even today, most tribes do not have a cadre of experienced and well-paid Indian lawyers, and they certainly cannot compete on a par with the casino industry when it comes to lobbying Congress and the state governors and legislators. A group called the "Coalition to Protect Community and States' Rights" has employed one of the largest and most expensive public re-

lations firms to lead the campaign to amend the IGRA.[58] Consider also that most non-Indians never encounter the idea of tribal sovereignty or even tribal governments in their social studies education. Add to this the fact that the very concept of sovereignty is Euro-American in origin, and it is not difficult to understand how the Supreme Court in 1973 could get away with referring to Indian sovereignty as a "legal fiction" that might still serve as a "backdrop" against which the meaning of treaties and agreements could be discerned.[59] The number of Supreme Court cases acknowledging the legal reality of Indian sovereignty, of course, still far outweighs the anomalous *McClanahan* assertion. Nevertheless, the majority of Native American people today, correctly, I believe, perceive that the issue of Indian gambling is the most recent and most relevant battleground to emerge requiring yet another defense of Indian sovereignty.

The fact of the matter is that there are three kinds of governments in the United States possessed of some kind of sovereignty. Of the three, the federal government has established itself as the overriding sovereign in contests with the other two.[60] What has not been adequately worked out is the relationship between states and tribes, both possessed of sovereignty.[61] For example, one textbook on federal Indian law sums up the issue of criminal jurisdiction this way:

> Law enforcement in Indian Country is a complicated matter. On most Indian reservations federal, state and tribal governments all have a certain amount of authority to prosecute and try criminal offenses. This jurisdictional maze results from a combination of Congressional enactment, judge-made law, and the principle of inherent tribal sovereignty. Thus a determination of who has authority to try a particular offense depends upon a multitude of factors: the magnitude of the crime, whether the perpetrator or the victim is an Indian or nonIndian, and whether there are any statutes ceding jurisdiction over certain portions of Indian Country from one sovereign to another.[62]

The jurisdictional issues leading to the passage of the IGRA centered on two ideas: that states have a legitimate interest in wanting to prevent the introduction of new enterprises that could increase criminal activity in the state, and that states may determine in general terms what kinds of gambling will take place within their borders. The IGRA addresses these concerns in four ways:

1. It distinguishes between the three classes of gaming, allowing only those classes on reservations that are already allowed in the state (traditional, bingo, and all others).

2. It requires that states and tribes enter into compacts before allowing Class III gaming.
3. It creates a National Indian Gaming Commission.
4. It outlines tribal powers and responsibilities for gaming regulation subject to review by the commission.

The commission augments other arrangements for criminal jurisdiction that may exist by specifically addressing the need for oversight of Indian gaming activities. It is authorized, among other things, to (1) issue closure orders, (2) impose fines, (3) approve tribal ordinances and gaming contracts, (3) issue subpoenas, (4) permanently close a gaming operation, (5) monitor gaming activities and inspect gaming premises, (6) conduct background investigations, (7) inspect records, and (8) hold hearings. These provisions, together with the fact that the FBI specifically monitors the activities of organized crime, have been very successful in preventing both the infiltration of organized crime and an increase in crime in general associated with Indian gaming activities. As discussed earlier, the only real concerns have been several instances of fraud (including some skimming of profits) and mismanagement amounting to dollar amounts representing less than 1 percent of the gaming revenues generated within Indian Country.

The compacts have been another story. A "compact" is an agreement between sovereigns, such as between two states, or, in this case, between a state government and a tribal government. The compact agreement is intended to provide a means for the two powers to work out terms under which an activity of joint interest, in this case gaming, will be conducted relative to their respective sovereignty and jurisdictions. Powers of tribal sovereignty in relation to states, as in other instances, derive from two sources: the residual or inherent sovereignty possessed by Indian Nations prior to the colonization of what is now the United States, and that stemming from the trust or promise of the U.S. government to protect the autonomy, distinctiveness, and self-governing status of the Indian Nations.

As a superior sovereign (in the legal sense of having the most extensive powers of internal and external sovereignty), the United States can act to diminish Indian sovereignty, much as it exercises a superior sovereignty relative to the states by virtue of the "national supremacy clause" of Article VI in the U.S. Constitution. The IGRA compels tribes to negotiate compacts before opening Class III gaming operations. It compels states to negotiate by allowing tribes to sue them if the state does not enter into negotiations in good faith. Nineteen states have entered into some seventy-six compacts with tribes (see Figure 2). Twelve states, however, have claimed Eleventh Amendment immunity from suits brought by tribes under the IGRA.

Figure 2. Indian gaming in the United States

Much of the conflict now between states and tribes is probably attributable to the fact that, relatively speaking, there has been little conflict in the past. Tribes have not made many assertions of tribal sovereignty in the past, simply because they have not had anything to protect or gain by asserting it. In other words, states have had little experience confronting jurisdictional limits imposed on them by assertions of tribal sovereignty. The boundaries between a reservation and a state are much like the boundaries between two states. One state may not like the laws of another regarding drinking laws or divorce, but it cannot do much about these laws. Citizens from the two states can move freely across the border, enjoying the more lax regulations of neighboring jurisdictions. This situation is a significant problem only in small states or in border regions. Suddenly, having a self-governing Indian reservation within a state means having a new border area with regulations that may be different from the state wholly surrounding it.

Until recently, there has been little attraction for non-Indians to move back and forth across the borders with Indian Country; gambling changes that. Rather than being a case of unfair competition, the situation is two bordering sovereigns with different regulations over an activity apparently enjoyed to various degrees by citizens of both. To help the two sovereigns manage potential conflict arising

from this situation, they may enter into a compact. This is also the common solution for small neighboring states and for multistate metropolitan areas, for instance, in controlling crime in the Washington D.C.-northern Virginia-southern Maryland area.

There are three other issues of contention between states and tribes, which form the basis for recent efforts by the National Governors' Association to lobby for amendments to the IGRA. These are the acquisition of new trust lands used for casino development, the definition and clarification of "good faith," and a desire by the states to limit the types of Class III gambling allowed. It is not clear how these conflicts will be resolved, although there has been a significant amount of activity on both sides aimed at urging or preventing Congress from taking action on these issues.

The concept of "trust land" was established as a means for the federal government to protect Indian people against fraudulent loss of their land and economic base. It would be difficult to assert that this implies an all-out ban on the use of trust land for gambling in light of the overwhelming evidence that gambling produces economic prosperity with minimal losses due to mismanagement or fraud.

The issue of "good faith" negotiation may be of declining relevance. More and more of the conflicts that originally gave rise to "good faith" lawsuits and impasses have reached a negotiated or facilitated solution. Arizona, for example, was the site of state-tribal conflict over gaming that made the headlines for months, with impasses, stand-offs, a legislative gambling ban, and reports that the two sides were beyond the point of negotiation. Then in one day, June 24, 1993, Governor Fife Symington signed eight separate gaming compacts with tribes.[63] Apparently, as many as six other Arizona tribes now want gambling compacts. The National Conference of State Legislatures and the American Indian Law Center combined their efforts to create the Commission of State-Tribal Relations. The commission developed a national forum for "face-to-face discussions between state and tribal leaders on issues of mutual concern."[64] Although the commission has not been active since its funding ended in 1985, its recommendations are widely regarded and implemented, and the idea of intergovernmental partnerships between states and tribes is gaining ground.[65]

On the question of limiting types of Class III gambling, it is difficult to see how this can occur without significant erosion of tribal sovereignty. This is the kind of issue that is supposed to be worked out individually in state-tribal compacts. It would appear that states are responding to the pressures of for-profit corporations and entrepreneurs rather than out of a concern for balancing tribal economic development with the economic adjustments that are inevitable in areas surrounding reservations.

Recent Developments

As of the fall of 1994, five bills had been introduced into the U.S. House of Representatives aimed at restricting the provisions of the IGRA.[66] Unlike the earlier debates in Congress that led to the IGRA in 1988, the current controversies seem focused squarely on competing economic interests rather than a concern for delineating jurisdictional boundaries between tribal and state sovereignty or a genuine interest in the protection of tribal sovereignty against encroachment and corruption. Introduced by members of Congress from Nevada and New Jersey, this proposed legislation is perceived by pro-gambling Indian leaders as a blatant and open attempt by commercial gaming interests to influence the political process in order to protect their dominance in the gaming market by restricting competition from Indian-run gambling enterprises.[67] Rick Hill, chairman of the Oneidas of Wisconsin and former chairman of the National Indian Gaming Association, said that the proposed amendments "would destroy Indian tribal sovereignty for the sake of perpetuating the gambling czars' historical control of the industry."[68]

Both houses of Congress continued to conduct oversight and task force hearings on the issue of Indian gaming during the 1994 session and are unlikely to act on any of the proposed new legislation until these hearings are completed. The proposed legislation to amend the 1988 IGRA would make the following changes:[69]

1. Apply a more restrictive definition of "Indian Lands." Currently the term includes all reservation lands and would be redefined as only that tribal or individual land held in trust.
2. Prohibit gaming on tribal trust land acquired after October 17, 1988. This eliminates existing exceptions allowing gaming on newly acquired trust land if approved by the governor and if the Secretary of the Interior finds it to be in the best interest of the tribe and not detrimental to the community.
3. Apply a more restrictive definition of "Indian Tribe," which can currently be applied to any present or future federally recognized tribe. The amendment would limit the term to those recognized by October 17, 1988.
4. Overturn the *Cabazon* ruling that states allowing any gaming in a particular class must allow all gaming in that class, and that tribal governments have an inherent right to determine pot limits and methods of play.
5. Restrict games played in Indian-owned operations to those conducted by commercial interests, which would

exclude tribes from entering into gaming that is otherwise only conducted for charities, such as charity casinos.

6. Increase the National Indian Gaming Commission from three to five seats. The added two seats would represent states, thus creating a clear potential for non-Indian control of the commission. Presently two of the three must be from federally recognized tribes.
7. Place a moratorium on new tribal-state compacts for Class III gaming unless approved by the governor of the state. This effectively ends the state obligation to negotiate in "good faith," replacing it with a requirement for the governor's approval.
8. Require compact renegotiations whenever tribal or state law changes, and negotiating from ground zero each time.
9. Eliminate tribes' right to sue for "bad faith" in negotiations. Instead, the United States would have to sue on behalf of a tribe.
10. Give federal courts sole jurisdiction over contract disputes.

Two of the amendments address issues representing conflicting sovereignty and can perhaps best be understood as politically driven legal disputes. First, the requirement that the federal government sue on behalf of tribes in the case of states' failure to negotiate in good faith: the problem with this change, from the perspective of hard-won recognition of Indian rights, is that it encroaches on an element of Indian sovereignty that is similar to that enjoyed by states and in many ways derived from the same inherent and reserved rights associated with such sovereignty. To deny tribes the right to sue states represents a step backward into paternalistic wardship.

Second, while giving federal courts jurisdiction over compact disputes does address a bona fide political concern, many of the other proposed changes are clearly directed toward the goal of restricting Indian-run gaming. However, even in light of these objections, both of these issues represent political dimensions of the federal-tribal-state sovereignty relationship, which all three governments have an interest in clarifying. These two proposals are distinguished by their focus on legitimately political "public" interests, rather than on the "private" commercial interests of the non-Indian gaming industry.

By contrast, all of the other proposals enumerated here seem directed exclusively at restricting commercial competition, with the effect, from the perspective of Indian Nations, of severely restricting the sovereignty they fought long and hard to have recognized.

CONCLUSION

Indian gaming is, undoubtedly, the "new kid on the block." Record-level total wagers were reported in July 1993 by the industry magazine *Gaming and Wagering Business*; 10 percent of the total of more than $300 billion was wagered in Indian Country. In the 1980s opposition to Indian gaming rallied around the "criminal threat" argument, claiming a concern both for its harm to Native Americans and to the communities surrounding their communities. Five years after implementation of the IGRA, the complex set of mechanisms intended to control this potential problem is apparently doing a good job. There is little discussion now about the "criminal threat" associated with Indian gaming. Opponents in the 1990s are, instead, crying "unfair competition." Most fail to realize, however, that Indian gaming primarily provides revenue for governments rather than profits for private enterprise. Revenues from Indian gaming are distributed for the benefit of government operations and community programs rather than to corporate stockholders. Although in exceptional circumstances some tribal members will benefit more than others, for example, those with higher paying jobs or in some cases those participating in the initial investment, gaming revenues are overwhelmingly used for community development.[70] This kind of enterprise cannot reasonably be compared with commercial gaming interests. Casinos and high-stakes bingo operations have also become the most important source of jobs in the poorest of the poor communities in this country. Additionally, tribal governments are investing in diverse programs of economic development so that real long-term structural economic benefits derive from the profits generated by the present gambling boom.

The issues now have more to do with the restructuring of a gambling market that now includes Indian-owned and -operated casinos and high-stakes bingo. Indian gaming is not "unregulated," although it often allows for higher stakes and longer hours of operation. Indian gaming is regulated by Indians, along with the federal and state governments. To suggest that their gaming operations must be wholly controlled by states entirely denies the sovereignty of Indian Nations. This makes no more sense than to say that one state should determine the gaming regulations for another state and that if they have different regulations, it amounts to unfair competition. As the markets adjust to new actors, it may well be that consumers show a preference for Indian gaming. That adjustment should be determined by consumer preferences, not by political forces.

The IGRA's provision of legal recourse to the tribal governments when states fail to negotiate compacts in good faith was never intended to be the primary mechanism on which state-tribal cooperation rests. The hope is that state-tribal intergovernmental relations will not

have to rely on the coercive power of the act, or should this provision of the act be struck down, on any protracted legal battle over state versus tribal sovereignty. Such a battle can only prove costly and damaging to both entities. The state-tribal relationship is similar to state-state relations with the added feature of the trust responsibility of the federal government to protect the autonomy and sovereignty of Indian Nations. The current controversies over Indian gaming have brought the issue of tribal sovereignty onto the center stage of state and federal public policy arenas. Hopefully, in the process of resolving these conflicts, everyone will become more knowledgeable and hence better prepared to cooperate in the complex configuration of multiple sovereignties that make up what might best be termed the jigsaw puzzle of American federalism.

NOTES

1 A note on terminology: There are many opinions in Indian Country regarding the terms used to refer to Native American/Indian people and their current forms of government. Some do not think of themselves as "American," others do not like "Indian," in all cases preferring the name used in their own language to refer to themselves. Since in this case English is the language used, I am necessarily limited to words developed by non-Natives/non-Indians to describe the indigenous peoples of this continent. I try to avoid the use of terms that are controversial; however, I will use the terms *tribe(s)* and *tribal* to refer to the jurisdiction(s) of indigenous nations and indigenous nationality. Many indigenous peoples today whose societies are bounded by shared language, history, territory, and common decision-making institutions prefer the use of the term *nation* and in fact resent the term *tribe*. I am using *tribe* and *tribal* here because the reservation system is structured such that sometimes two or more indigenous nations now share a common political system that is referred to as a "tribal government."

2 Some traditional Native people argue that current gambling practices associated with tribal gaming activities are no longer grounded in spiritual understanding and accordingly and in connection with other objections oppose the establishment of for-profit public gaming.

3 Although a higher figure of $5 to $6 billion is often reported in the media, expert testimony before the Senate in June 1993 indicates that this figure probably represents wins rather than gross revenues or actual profits.

4 This is not to say that all forms of gambling presently enjoyed by Indians and non-Indians are consistent with the traditions of all Native Americans, nor would I suggest that the effects of the gaming economy as it is presently managed are always supportive of Native American culture and tradition. This is precisely the issue in the very important debate among Mohawks and other Iroquois nations.

5 I am referring especially to the well-publicized case of the Mohawks of Akwesasne and Kahnawake. See Rick Hornung, *One Nation under the Gun* (New York: Pantheon Books, 1991). Conflicts at Akwesasne turned violent, and several Mohawks were killed as a result. Although there has not

been this level of severe violence in relation to gambling issues elsewhere, the conflicts giving rise to the violence are present on many reservations and center on a question of the fundamental legitimacy of governments that are sometimes perceived as having been imposed on Native peoples in place of their traditional systems of governance and decision making.

6 *Seminole Tribe of Florida v. Butterworth* 658 F. 2d. 310 (1981) cert. denied, 455 U.S. 1020, 102 Sup. Ct. 1717, 72 L.Ed. 2d 138 (1983).

7 *Bryan v. Itasca County* 426 U.S. 373 (1976), 96 Sup. Ct. 2102, 48 L.Ed. 2d 710.

8 *United States v. Winans* 198 U.S. 371 (1905); and *Winters v. United States* 207 U.S. 564.

9 These states were California, Minnesota, Nebraska, Oregon, and Wisconsin.

10 The other states were Arizona, Idaho, Iowa, Florida, Montana, Nevada, North Dakota, South Dakota, New Mexico, Washington, and Wyoming.

11 Eric J. Swanson, "The Reservation Gaming Craze: Casino Gambling under the Indian Gaming and Regulatory Act of 1988," *Hamline Law Review* 15, 2 (spring 1992): 471–97.

12 *McClanahan v. Arizona Tax Commission* 411 U.S. 164 (1973).

13 U.S. Constitution, art. 1, sec. 8.

14 The Cherokee cases (1831–32), Ex Parte Crow Dog (1883), *United States v. Kagama* (1886), *Talton v. Mayes* (1895), the Reserved Rights Case (1905–8), and more recently in *United States v. Wheeler* (1978).

15 Swanson, "The Reservation Gaming Craze," 474.

16 David Holstrom, "Indian Gaming Booms Nationwide," *Christian Science Monitor*, Nov. 10, 1992. The 1993 figures are based on a list of gaming operations provided by the National Indian Gaming Association as of June 1993.

17 Public Law 100–497, Oct. 17, 1988, 100th Congress 102 Stat. 2467, sec. 3.

18 Ibid.

19 Swanson, "The Reservation Gaming Craze," 475.

20 *Congressional Record*, H5029 (July 6, 1988).

21 *Congressional Record*, H8156 (Sept. 26, 1988).

22 Ibid.

23 Figures for Trump based on *Standard and Poor's Industry Surveys: Leisure-Time*, Nov. 12, 1992, and for Indian casino revenues from Christiansen/Cummings Associates, Inc. Trump and two other casino owners, Caesar's World and Promus Cos., account for over 30 percent of the casino market.

24 Bunty Anquoe, "'The Donald' Tries to Trump Tribes," *Indian Country Today*, June 25, 1993.

25 Statement by Rep. James Bilbray, Subcommittee on Native American Affairs, June 25, 1993; copy obtained from the office of Senator Conrad Burns.

26 Keeping in mind the discrepancies between media and expert estimates of net revenues or profits from Indian gaming, $1.5 billion is the lower figure, and $5 to $6 billion is more often quoted in the press.

27 Remarks by William E. Tabor, Oversight Hearing, Subcommittee on Native American Affairs, June 23, 1993, 101.

28 Statement of Paul L. Maloney, Senior Counsel for Policy Criminal Division before the Select Committee on Indian Affairs, U.S.

Senate, concerning the Indian Gaming Act on Mar. 18, 1992; obtained from the National Indian Gaming Association.

29 Ibid.

30 Remarks by William E. Tabor, Oversight Hearing, Subcommittee on Native American Affairs, June 23, 1993, 101.

31 Testimony of R. Anthony Chamblin, President, Association of Racing Commissioners International, House Committee on Natural Resources, June 25, 1993.

32 Testimony of William J. Bissett, House Committee on Natural Resources, June 25, 1993.

33 Testimony of Joseph A. DeFrancis, president of the Maryland Jockey Club, House Committee on Natural Resources, June 25, 1993.

34 Ibid.

35 Testimony of M. R. Bowman, president of the National Horseman's Benevolent and Protective Association, House Committee on Natural Resources, June 25, 1993.

36 Testimony of James J. Hinkley, House Committee on Natural Resources, June 25, 1993.

37 Will E. Cummings, managing director of Christiansen/Cummings Associates, citing a forthcoming article during his testimony during the House Oversight Hearing, House Committee on Natural Resources, June 25, 1993.

38 Allan O. Wiese and Autumn Stewart, "Intergovernmental and Economic Impacts of Grand Casino and Mystic Lake Casino," unpublished paper prepared for the American Political Science Association Annual Meeting, Sept. 2–5, 1993, Washington, D.C.

39 Francis X. Clines, "With Casino Profits, Indian Tribes Thrive," *New York Times*, Jan. 31, 1993.

40 Wiese and Stewart, "Intergovernmental and Economic Impacts of Grand Casino and Mystic Lake Casino."

41 Ibid.

42 Ibid.

43 Testimony of Will E. Cummings, managing director of Christiansen/Cummings Associates, before House Subcommittee on Native American Affairs, June 25, 1993.

44 Statement of Will E. Cummings, managing director of Christiansen/Cummings Associates, submitted before the House Oversight Hearing, House Committee on Natural Resources, June 25, 1993.

45 Testimony of Will E. Cummings, managing director of Christiansen/Cummings Associates, before House Subcommittee on Native American Affairs, June 25, 1993. Mr. Cummings referred to the discrepancies in his testimony, explaining that a widely quoted figure of $5 to $6 billion probably represents "drop" or "handle" rather than revenue. However, with the figures used by his firm, Indian gaming revenues are approximately the same percentage of national gaming revenues as is often reported in the media, which is about 5 percent.

46 Ibid.

47 U.S. Senate Select Committee on Indian Affairs, June 17, 1986.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.; "Oneida Bingo Fact Sheet, Oneida Tribe of Indians of Wisconsin - March 1986."

53 The recent data were provided by the National Indian Gaming Asso-

ciation in "Tribal Profiles," NIGA, 2233 Wisconsin Ave., N.W., Suite 500, Washington, D.C., 20007.

54 Debra Nyberg, "Casinos Benefit American Indian Tribes and Cities," *New York Mills Herald*, July 30, 1992.

55 Kathleen Sylvester, "Indians Bet on the Lure of the Dice," *Governing*, July 1993, 31.

56 David Holmstrom, "Indian Gaming Booms Nationwide," *Christian Science Monitor*, Nov. 10, 1992.

57 Holmstrom, "Indian Gaming Booms Nationwide"; and Clines, "With Casino Profits, Indian Tribes Thrive."

58 Bunty Anquoe, "Coalition Wages Expensive War against Indian Gaming," *Indian Country Today*, Nov. 19, 1992, A1.

59 *McClanahan v. Arizona Tax Commission* 411 U.S. 164 (1973).

60 However, it should be noted that recent efforts to internationalize the legality of indigenous sovereignty may alter even that in the relation between nation-states and indigenous peoples. This is asserted in a manner similar to human rights, but with the added dimension that aboriginal rights enjoy a well-established history within the legal tradition of many nation-states, including the United States.

61 A full discussion of the legal doctrine on this relationship is beyond the scope of this article. Interested readers are urged to review Charles F. Wilkinson, *American Indians, Time and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987).

62 David H. Getches, Daniel M. Rosenfelt, and Charles F. Wilkinson, *Federal Indian Law: Cases and Materials* (St. Paul: West Publishing Company, 1979), 358.

63 Mary Anderson, "Arizona Tribes, Governors Sign Gaming Compacts," *Indian Country Today*, June 30, 1993, A1.

64 Judy Zelio, "Groups Foster Better Relations between Tribes and States," *State Legislatures*, Mar. 1992, 17.

65 James B. Reed and Judy Zelio, "The Compromise Continues," *State Legislatures*, Mar. 1992, 12.

66 Telephone discussion with congressional committee staff for Subcommittee on Indian Affairs, Natural Resources Committee, House of Representatives, Oct. 18, 1994.

67 *Indian Country Today*, "Protecting Gaming Benefits the Subject of National Conference," June 30, 1993, A-6.

68 *Indian Country Today*, "Proposed Gaming Changes," June 16, 1993, A-1.

69 Ibid.

70 I say this because of the continuing problem of questionable legitimacy in tribal governments, the most extreme case perhaps being Akwesasne, where the difference between the tribal government operating casinos (for now closed, but likely to reopen) for the profit of beneficiaries of tribal government and the commercial operations of non-Indians may be trivial.