THE HAND THAT'S BEEN DEALT: THE INDIAN GAMING REGULATORY ACT AT 20

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I. INTRODUCTION

Two decades ago, as Congress deliberated over the bill that would become the Indian Gaming Regulatory Act of 1988 (IGRA), Indian gaming consisted of a few tribes' high-stakes bingo halls and card rooms located in just a handful of states.[1] At the time, Indian gaming was seen by many people as a modest and relatively benign—though unregulated—industry with some potential to jump-start struggling tribal economies. Today, tribal gaming is the fastest-growing segment of legalized gambling in the United States. This explosion has been fueled by Americans' seemingly insatiable appetites for slots, high-stakes poker, and bingo. In 1988, Indian gaming earned about $200 million; in 2007, revenues from nearly 400 tribal casinos operated by more than 225 tribes in twenty-eight states topped $26 billion.[2] Over the last twenty years, even as Indian gaming has become firmly entrenched in public life, it has become increasingly controversial, drawing vociferous opposition—often alongside staunch support—at nearly every turn.

Indian gaming is not alone in its tremendous growth over the past two decades. As the National Gambling Impact Study Commission noted in its 1999 Final Report, "Once exotic, gambling has quickly taken its place in mainstream culture: Televised megabucks drawings; senior citizens' day-trips to nearby casinos; and the transformation of Las Vegas into family friendly theme resorts, in which gambling is but one of a menu of attractions, have become familiar backdrops to daily life."[3] That assessment, just a decade old, already seems quaint. Once viewed as a vice, gambling is now legal in all but two states[4] and includes gaming in

1. Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 (2000).

2. Press Release, National Indian Gaming Commission, NIGC Announces 2007 Indian Gaming Revenues (June 18, 2008), http://www.nigc.gov/ReadingRoom/PressReleases/PressReleasesMain/PR93062008/tabid/841/Default.aspx [hereinafter Press Release]. The number of tribal gaming facilities reported by the National Indian Gaming Commission (NIGC) is in flux more than one might assume. The NIGC reports annual data based on audit reports submitted by tribal gaming operations by mid-calendar year, but because the fiscal year differs by tribal gaming operation, the NIGC does not finalize revenue reports until the following year. *Id.* Facility openings and closures, the NIGC's authority to order closures, and even litigation contribute to the variance in the true number of tribal casinos operating at any given time.

3. NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 1-1 (1999), *available at* http://govinfo.library.unt.edu/ngisc/reports/finrpt.html.

4. As a matter of state law, Utah and Hawaii prohibit all gambling. *See* HAW. REV. STAT. §§ 712-1221 to -1223 (2008); UTAH CODE ANN. §§ 76-10-1101 to -1102

riverboat or land-based casinos, racetrack or pari-mutuel wagering, charitable operations, and state-run lotteries.[5] The Las Vegas Strip is on a roll, experiencing its greatest construction boom in a generation.[6] The World Series of Poker and *Poker After Dark* are televised, and participants in the World Poker Tour are digitally rendered and lionized in best-selling video games.[7] A recent feature film romanticizing the story of the MIT blackjack team grossed over $80 million in the United States alone.[8] And the tremendous growth of sports betting and online gambling is fueled, in part, by college or even law students looking for a rush, a chance to pay for their tuition, or to make it big in poker's World Series.[9]

(West 2008). *See also* Lee Davidson, *Outside Pressure: Will International Deals Force Gambling on Utah?*, DESERET MORNING NEWS (Salt Lake City, Utah), June 30, 2005, at A1, *available at* http://deseretnews.com/dn/view/0,1249,600145192,00.html. *But cf. id.* (noting that pursuant to "murky" Utah laws, "[b]ingo and poker clubs now operate widely in Utah, offering video gaming and other wagering similar to what is found in casinos").

5. STEVEN ANDREW LIGHT & KATHRYN R.L. RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE 10–11 (2005) [hereinafter LIGHT & RAND, THE CASINO COMPROMISE] (documenting the extent of Indian gambling in the United States); KATHRYN R.L. RAND & STEVEN ANDREW LIGHT, INDIAN GAMING LAW AND POLICY 3–5 (2006) [hereinafter RAND & LIGHT, LAW AND POLICY] (documenting the extent of legalized gambling in the United States); *see also* American Gaming Ass'n, Industry Information Fact Sheets: General Info (June 2008), http://www.americangaming.org/Industry/factsheets/ general_info_detail.cfv?id=15.

6. *See Gambling in America: A Cut in the Wages of Sin*, THE ECONOMIST, June 28, 2008, at 73 (describing Las Vegas's "biggest-ever building spurt" of hotels, resorts, and condos, including 40,000 new rooms in the next four years alone).

7. *See* ESPN Poker, 2008 World Series of Poker, http://sports.espn.go.com/espn /poker/wsop (last visited Feb. 19, 2009); Poker After Dark, http://www.pokerafterdark.com (last visited Feb. 19, 2009). Video games for major gaming platforms include *World Championship Poker 2*, *World Poker Tour*, and *World Series of Poker*.

8. *See* BoxOfficeMojo.com, 21 (Sony Pictures Mar. 28, 2008), http://www.boxofficemojo.com/movies/?id=21.htm (last visited Jan. 15, 2009).

9. *See, e.g.*, Andrew Egan, *Texas Student to Enter World Series of Poker*, DAILY TEXAN, July 14, 2006, *available at* http://media.www.dailytexanonline.com/2.4489/1.967589-1.967589 (profiling an economics senior who earned a $10,000 seat at the 2006 World Series of Poker Main Event through an online "freeroll" tournament); Michael McCarthy, *Gambling Madness Can Snag Court Fans*, USA TODAY, Mar. 28, 2007, *available at* http://www.usatoday.com/sports/2007-03-27-gambling-cover_N.htm; Gambling Takes Hold of College Students, ABC News (Mar. 10, 2006), http://abcnews.go.com/WNT/Story?id=1710705&page=1 (last visited Aug. 28, 2008) (reporting that fifty-seven percent of young men surveyed stated they gambled at least once a month).

All told, nontribal gaming is a $65-billion-a-year industry in the United States.[10] Indian gaming accounts for only a little more than a quarter of the nation's legalized gambling industry revenues.[11] Yet, it is tribal gaming that generates the vast majority of attention—and criticism—from policy-makers and the public alike.[12]

One argument is that the industry—and, by extension, the IGRA—has succeeded beyond Congress's or many tribes' wildest expectations, generating hundreds of thousands of jobs and billions of dollars in economic development, and uplifting the poorest of the poor on tribal reservations. The other is that the troubling outgrowths of the IGRA's overly forgiving regulatory scheme include Indian gaming's potential to exacerbate crime rates, the spread of problem and pathological gambling, and the undue influence or corruption being exerted on the American political system. Beyond Indian gaming's profitability, such debates ultimately revolve around the questions of who benefits and who loses from the presence of tribal casinos and what is the appropriate role of government in sanctioning the industry.

Anniversaries of landmarks in American law, politics, and public policy provide a terrific—if at some level arbitrary—opportunity to take stock of where we have come from, where we are at, and where we are going, both in terms of the specific event and the effect it has had on our society. The IGRA is one such landmark. Twenty years later, what did Congress actually intend the IGRA to accomplish? How well has the IGRA facilitated Congress's policy goals? Given the hand that has been dealt to them, how successful have American Indian tribes been in achieving their own policy goals, which may or may not overlap with the IGRA's goals, or those of the federal, state, and local governments? Such questions provide a useful opportunity to explore what lawmakers and policy-makers expect from Indian gaming during its next two decades, and how it will get there.

10. *See* American Gaming Ass'n, Gaming Revenue: Current-Year Data (Oct. 2007), http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=7 (listing gross gambling revenues for 2006).

11. *See id.* The American Gaming Association (AGA) estimated 2006 total gaming revenues at just under $91 billion, of which Indian gaming accounted for $25 billion. *Id.*

12. Elsewhere, we have described the extent of public fascination with Indian gaming, particularly in popular culture, as well as the nature of tribal gaming as a lightning rod for criticism. *See* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 1–2, 121–37.

How should one begin such an assessment? And given how enormous the industry and diverse the players and their interests, how does one avoid being overly reductionist? When Congress enacted the IGRA, it articulated two main policy goals: to codify tribes' right to conduct gaming on Indian lands and to adequately regulate that gaming.[13] In this Article, we take up the far-from-trivial task of tracking two decades of Indian gaming against these goals and in relation to tribal experiences.[14] Part I provides an overview of how and why the IGRA was enacted and Congress's policy objectives. Part II profiles, in brief, several of tribal gaming's effects on tribes and American Indian communities, which Congress intended to be the IGRA's primary beneficiaries. Starting from the premise that Indian gaming is rooted in much more than black letter law, Part III identifies three of the most important legal and political developments since the IGRA was enacted: the U.S. Supreme Court's decision in *Seminole Tribe v. Florida*,[15] the rise of tribal–state revenue-sharing agreements, and controversies over "off-reservation gaming." Perhaps not surprisingly—and yet, quite significantly—we find that the IGRA has had both intended and unintended legal, political, and policy consequences for American Indian and non-Indian populations and jurisdictions.

II. THE IGRA'S ENACTMENT

A. California v. Cabazon Band of Mission Indians[16]

How exactly did tribal gaming become a $26-billion industry? The answer begins with Congress's passage of the IGRA on the heels of tribes' unexpected victory in *California v. Cabazon Band of Mission Indians*.[17] The U.S. Supreme Court's landmark judgment reaffirmed tribal sovereignty and opened the door for the spread of Indian gaming.[18] At the time, though, no one knew quite how momentous *Cabazon* would be.

13. 25 U.S.C. § 2702 (2000).

14. In this Article, our account is necessarily brief. For more in-depth and detailed analytical accounts, see LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5; KATHRYN R.L. RAND & STEVEN ANDREW LIGHT, INDIAN GAMING LAW: CASES AND MATERIALS (2008) [hereinafter RAND & LIGHT, CASES AND MATERIALS].

15. Seminole Tribe v. Florida, 517 U.S. 44 (1996).

16. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987).

17. *Id.*

18. *Id.* at 221–22.

In the mid-1980s, like a number of tribes across the United States, the Cabazon Band ran a modest bingo parlor and a poker room on its reservation near Palm Springs.[19] After state officials threatened to close down the Band's gaming operations, the Band sued and the case made it all the way to the Supreme Court.[20] California argued that the Band's high-stakes bingo and poker games violated state law and wanted the Court to recognize its authority to regulate gambling on reservations.[21] The Band argued that its political and legal status as a sovereign government prevented state interference in its affairs.[22] California's theory was that Congress had provided that state law applied to the tribes through Public Law 280, a 1953 federal statute that gave certain states jurisdiction over tribes within the states' borders.[23] The law gave states a broad grant of criminal jurisdiction but only a limited grant of civil jurisdiction, evoking the distinction between "criminal/prohibitory" and "civil/regulatory" laws.[24] If, as California argued, its laws were criminal prohibitions against gambling, then the state would have authority to enforce them against the tribe under Public Law 280.[25] But if California's gambling laws were civil regulatory laws, the state would not have enforcement authority against the tribe.[26]

The Supreme Court examined California's broader public policy concerning gambling, noting that it operated a state lottery and permitted pari-mutuel horse-race betting, bingo, and card games.[27] "In light of the

19. *Id.* at 205.

20. *Id.* at 206.

21. *Id.* at 205, 207.

22. *Id.* at 214.

23. *Id.* at 207. Through Public Law 280, Congress delegated specified states, including California, broad criminal jurisdiction and limited civil jurisdiction over tribes within their borders. An Act to Confer Jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with Respect to Criminal Offenses and Civil Causes of Action Committed or Arising on Indian Reservations Within Such States, and for Other Purposes, Pub. L. No. 83-280, ch. 505, 67 Stat. 588 (1953) (codified as amended at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and other scattered sections of 18 U.S.C. and 28 U.S.C. (2000)).

24. In *Bryan v. Itasca County*, the Supreme Court noted that although Public Law 280's "central focus" was "provi[ding] for state criminal jurisdiction over offenses committed by or against Indians on the reservations," Public Law 280's grant of civil jurisdiction was limited and did not provide broad authority for state regulation generally. Bryan v. Itasca County, 426 U.S. 373, 380–87 (1976).

25. *Cabazon*, 480 U.S. at 208.

26. *Id.*

27. *Id.* at 210–11.

fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery," the Court reasoned, "we must conclude that California regulates rather than prohibits gambling in general and bingo in particular."[28] The state, therefore, did not have regulatory jurisdiction over tribal gaming operations because only the tribe or Congress, if it chose to exercise its authority, could regulate Indian gaming on reservations.

The arguments over how to interpret Public Law 280 that were at the heart of *Cabazon* seemed merely to reflect a dry, legalistic distinction between criminal and civil law, but actually embodied much more abstract principles concerning the nature and extent of governmental authority. Because *Cabazon* turned on the question of whether tribes' sovereign status precluded state interference in their bingo operations, the case really was about the scope of tribal sovereignty itself.[29] If the handful of states

28. *Id.* at 211. The Court also rejected the state's assertion of jurisdiction on other grounds, including the federal Organized Crime Control Act of 1970 and the strength of the state's interest. *See id.* at 213–14, 216–21.

29. *See id.* at 216. The contemporary legal doctrine of tribal sovereignty essentially means that the United States recognizes tribes as independent sovereign nations whose locations within the boundaries of a state do not subject them to the application of state law. Tribes nevertheless are bound by the longstanding trust relationship with the federal government and retain only the political and legal authority that Congress has not expressly abrogated under its asserted plenary power pursuant to the U.S. Constitution's Indian Commerce Clause. *See* U.S. CONST. art. I, § 8, cl. 3 ("The Congress shall have Power . . . To regulate Commerce . . . with the Indian tribes"). The federal legal doctrine of tribal sovereignty effectively means that tribes, in fact, are "semi-sovereign." While acknowledged as a contested political and legal reality, this legal sense of sovereignty is far from the accepted gospel among American Indian people, as well as many legal scholars who have generated a large body of critical literature on the nature and scope of federal authority "over" tribal nations. *See, e.g.*, DAVID E. WILKINS, AMERICAN INDIAN SOVEREIGNTY AND THE U.S. SUPREME COURT: THE MASKING OF JUSTICE (1997); DAVID E. WILKINS & K. TSIANINA LOMAWAIMA, UNEVEN GROUND: AMERICAN INDIAN SOVEREIGNTY AND FEDERAL LAW (2001); Robert N. Clinton, *There Is No Federal Supremacy Clause for Indian Tribes*, 34 ARIZ. ST. L.J. 113 (2002) (challenging the foundation for tribes' "semi-sovereign" status under federal law); *see also* Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381 (1993); Eric Kades, *History and Interpretation of the Great Case of* Johnson v. M'Intosh, 19 LAW & HIST. REV. 67 (2001); Nell Jessup Newton, *Federal Power over Indians: Its Sources, Scope, and Limitations*, 132 U. PA. L. REV. 195 (1984); Robert A. Williams, Jr., *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence*, 1986 WIS. L. REV. 219. Moreover, the idea of "tribal sovereignty" reflects different cultural and social meanings that overlap with and, for some, transcend tribal sovereignty's legal

with some authority over tribes under federal law could not regulate gambling on reservations, then no state could. Only in states where gambling violated state public policy would Indian gaming be in question. Because many states, like California, had relaxed their gambling laws in recent years to permit charitable gaming and state lotteries, very few states had public policies that would prevent tribes from operating gaming establishments. In short, after *Cabazon*, so long as gambling did not violate state public policy, tribes could operate and regulate their own gaming establishments as an exercise of tribal sovereignty free of state interference.[30]

B. *The IGRA's Policy Goals*

Cabazon coincided with the modest but steady growth of the burgeoning tribal gaming industry in the 1980s, and the IGRA was very much a product of post-*Cabazon* lobbying efforts. Indian gaming was on Congress's radar screen due to the contest between states and tribes over its regulation. *Cabazon*'s bottom line—that states were powerless to regulate Indian gaming—catalyzed Indian gaming opponents who forcefully lobbied Congress to authorize state regulation.[31] One of the states' main arguments was that they needed to prevent the infiltration of organized crime into Indian gaming. That certainly got Congress's attention—as did the lobbyists for Las Vegas casino interests, who did not want to see their market share eroded. Because of *Cabazon*, Congress

and political dimensions. In prior works, we sought to synthesize an overview of tribal sovereignty's various conceptions. *See* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 4–6, 18–25.

30. Presumably, under the Court's reasoning, only states covered by Public Law 280 would have authority to enforce their criminal or prohibitory laws on reservations. But even in states not covered by Public Law 280, federal law—notably the Johnson Act, 15 U.S.C. § 1175(a) (2006)—limited tribes' abilities to operate gaming by outlawing "gaming devices," including slot machines, in Indian country. *See, e.g.*, Alex Tallchief Skibine, *Scope of Gaming, Good Faith Negotiations and the Secretary of Interior's Class III Procedures: Is I.G.R.A. Still a Workable Framework After* Seminole*?*, 5 GAMING L. REV. 401, 401 (2001).

31. Alexander Tallchief Skibine, Cabazon *and Its Implications for Indian Gaming*, *in* INDIAN GAMING: WHO WINS? 68 (Angela Mullis & David Kamper eds., 2000). According to U.S. Senator Harry Reid—one of the IGRA's architects—after the Court decided *Cabazon* "there was little choice except for Congress to enact laws regulating gaming on Indian lands. The alternative would have been for the rapid and uncontrolled expansion of unregulated casino-type gambling on Indian lands." Harry Reid, Commentary, *The Indian Gaming Act and the Political Process*, *in* INDIAN GAMING AND THE LAW 17 (William R. Eadington ed., 2d ed. 1998).

sought to act quickly to regulate tribal gaming before it could explode, and that required reaching a political compromise—a "casino compromise," as we have labeled it—between state and tribal interests.[32] The IGRA expanded the kinds of games tribes could operate to include casino-style games, but also gave the states more power to regulate those games.

When enacting the IGRA, Congress adopted specific findings and policy goals to explain the comprehensive regulatory framework and guide its application.[33] Congress intended to balance tribal sovereignty and reservation economic development with state interests in controlling crime and regulating gambling generally.[34] The IGRA's policy declaration covers two broad areas: connecting Indian gaming to the general federal policy of tribal self-determination and providing effective regulation of Indian gaming. Specifically, the IGRA's stated purpose is to codify tribal rights to conduct gaming on Indian lands "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments," while providing sufficient regulation to ensure legality and to protect the financial interests of gaming tribes.[35]

How would these policy goals be accomplished? By now, nearly everyone who has an interest in Indian gaming is familiar with the IGRA's novel categorization of tribal gambling by "class." Class I gaming, subject to exclusive tribal jurisdiction, includes traditional tribal games of chance.[36]

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32. *See generally* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5. Many tribes saw the IGRA as a compromise in a different sense: the codification of a compromised version of tribal sovereignty. *Id.*

33. Congress found that: (1) a number of tribes had opened gaming establishments as means of generating tribal government revenue, (2) several tribes had entered into outside management contracts, but federal standards governing such contracts were not clear, (3) federal law did not provide clear guidance on appropriate regulation of Indian gaming generally, (4) "a principal goal of Federal Indian policy [was] to promote tribal economic development, tribal self-sufficiency, and strong tribal government," and (5) tribes have exclusive regulatory jurisdiction over tribal gaming that is not prohibited by either federal law or state public policy. *See* 25 U.S.C. § 2701 (2000).

34. For a detailed discussion of the IGRA's legislative history, see Roland J. Santoni, *The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?*, 26 CREIGHTON L. REV. 387, 395–403 (1993); *see also* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 42–44; RAND & LIGHT, LAW AND POLICY, *supra* note 5, at 29–33.

35. *See* 25 U.S.C. § 2702 (2000). Additionally, Congress enacted the IGRA to establish an independent federal regulatory authority in the form of the National Indian Gaming Commission. *Id.*

36. *See id.* § 2703(6) (referring to social games played for little value or

By 1988, tribal bingo games had been operating for nearly a decade with relatively few problems. Congress assigned bingo and similar games to Class II, regulated primarily by tribal governments with some federal oversight.[37] Given the concerns raised by commercial gaming in Las Vegas, Reno, and Atlantic City, Congress saw big-money casino-style gambling as implicating legitimate state regulatory interests in preventing the infiltration of organized crime and controlling gambling generally. For tribal casinos, *Cabazon* seemed to undermine these state interests. Therefore, the heart of Congress's "casino compromise" was the IGRA's requirement that in order to conduct Class III or casino-style games, including slot machines and house-banked card and table games, a tribe must enter into a compact—an intergovernmental agreement—with the state.[38] This tribal–state compact requirement created a role for state regulation after *Cabazon*, as Congress returned some authority over Indian gaming to the states.[39]

III. INDIAN GAMING TODAY

While tribal gaming's socioeconomic impacts are most obvious on reservations throughout the United States, it is also clear that the effects of twenty years of Indian gaming under the IGRA extend far beyond reservation borders and could be considered along a number of axes—for example, costs and benefits, social and economic, and tribal and nontribal. To cite an example of tribal gaming's positive ripple effects, the National Indian Gaming Association estimates that seventy-five percent of the 670,000 tribal casino jobs in 2006 were held by non-Indians, many of whom live off the reservations.[40] Tribal gaming also generates a substantial amount of state and federal tax revenues.[41] On the other hand, the risk of

traditional games "as a part of, or in connection with, tribal ceremonies or celebrations"); *see also id.* § 2710(a)(1) (indicating the exclusive jurisdiction of the tribes over Class I gaming).

37. *Id.* §§ 2703(7), 2710(a)–(c).

38. *Id.* § 2710(d)(3)(A).

39. *Id.* §§ 2703(8), 2710(d).

40. NAT'L INDIAN GAMING ASSOC., INDIAN GAMING FACTS, http://www.indian gaming.org/library/indian-gaming-facts/index.shtml (last visited Feb. 20, 2009).

41. According to economist and industry expert Alan Meister, Indian gaming operations generated $13.5 billion in federal, state, and local tax revenues in 2007. ALAN MEISTER, INDIAN GAMING INDUSTRY REPORT 55 (2008–2009 ed.); *see also* Scott A. Taylor, *Federal and State Income Taxation of Indian Gaming Revenues*, 5 GAMING L. REV. 383 (2001) (explaining taxation of Indian gaming).

increased problem and pathological gambling is often raised as the most serious social cost of legalized gambling, and it is possible that the spread of tribal casinos both exports and exacerbates that negative externality among Indian as well as non-Indian populations.[42] For purposes of brevity and clarity, this Part will focus on a short overview of several of tribal gaming's effects on tribes and American Indian communities, as the owners and operators of tribal casinos, and the intended beneficiaries of Indian gaming.[43]

A. *Revenue*

According to the National Indian Gaming Commission (NIGC)—the independent federal regulatory agency created by the IGRA—tribal gaming has experienced steady growth since its inception, both in terms of the number of operations and total revenue. In the last decade alone, net gaming revenue tripled from $8.5 billion to $26 billion as the industry spread and matured.[44] As tribal casinos have increasingly become full-scale destination resorts with the amenities of their commercial counterparts—hotels, sit-down restaurants, spas, concert arenas, sports venues for WNBA basketball teams, snowmobiling races, mixed martial

42. *See generally* Stephen Cornell et al., *American Indian Gaming Policy and its Socio-Economic Effects: A Report to the National Gambling Impact Study Commission* (1998), *available at* http://www.indiangaming.org/library/studies/1004-erg_98rept_to_ngisec.pdf (discussing the positive economic outcomes and the uneven, albeit positive, social impact of tribal gaming); NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 3 (concluding that gambling should be regulated at the state, tribal, and local levels because that is where the economic and social side-effects are most keenly felt); JONATHAN B. TAYLOR ET AL., THE NATIONAL EVIDENCE ON THE SOCIOECONOMIC IMPACTS OF AMERICAN INDIAN GAMING ON NON-INDIAN COMMUNITIES (2000), *available at* http://www.hks.harvard.edu/hpaied/docs/PRS00-1.pdf (concluding that the economic and social impacts of Indian casinos on the surrounding community are greater than those of non-Indian casinos); HARVARD PROJECT ON AM. INDIAN ECON. DEV., CABAZON, THE INDIAN GAMING REGULATORY ACT, AND THE SOCIOECONOMIC CONSEQUENCES OF AMERICAN INDIAN GOVERNMENTAL GAMING, http://www.ksg.harvard.edu/hpaied/pubs/cabazon.htm (last visited Feb. 22, 2009).

43. For an extensive assessment of Indian gaming's socioeconomic impact on tribes, states, and localities, including both positive and negative externalities, see LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 77–104; *see also* MEISTER, *supra* note 41; Brian Nadel, *Indian Gaming: The Native American Success Story*, *available at* http://www.indiangaming.org/info/pr/press-releases-2007/TribalGaming-04-16-07.pdf.

44. Press Release, *supra* note 2.

arts tournaments, and golf courses—nongaming revenue rose to over $3 billion in 2007.[45]

However, industry growth is not uniform across tribes, states, or gambling facilities. One key factor explains much of the variance in these outcomes: location. Tribal casinos in or near large metropolitan areas or population clusters with ready access to millions of customers earn significantly more than those casinos in rural locales.[46] In 2007, the NIGC region that included California generated nearly $8 billion; the region including Connecticut, Florida, and New York generated $6.5 billion.[47] These two regions totaled one-fifth of the gaming operations in the United States while generating over half of the revenues.[48]

Tribal casinos in the largest markets earn in excess of $250 million in annual revenue.[49] Indeed, the handful of the most lucrative tribal casinos—such as the Mashantucket Pequots' Foxwoods Casino and Resort and the Mohegan Sun in Connecticut, and the Shakopee Mdewakantan Mystic Lake Casino Hotel in Minnesota—gross $1 billion or more.[50] More typical, though, is revenue that amounts to a fraction of such figures. In 2007, just six percent of tribal gaming operations earned more than $250 million, but those operations accounted for nearly forty-two percent of the total industry revenue.[51] On the other end of the spectrum, over half of all tribal gaming facilities earned $25 million or less, and one out of every seven casinos earned less than $3 million.[52] Simply put, there are few if any "whale sightings" in North Dakota.[53]

45. Nongaming revenue by category includes food and beverages, lodging, shopping, and entertainment. MEISTER, *supra* note 41, at 13.

46. *See id.* at table 5.

47. *Id.*

48. Press Release, *supra* note 2. The NIGC reports revenue by region only. California and Connecticut were the two highest-grossing states in 2007, as they have been for some time. MEISTER, *supra* note 41, at 13, 27.

49. MEISTER, *supra* note 41, at 13.

50. LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 91, 108, 196 n.106.

51. *See* Press Release, *supra* note 2 (chart on 2007 Gaming Operations & Revenues by Range).

52. *Id.*

53. *See* Michael Kaplan, *Gambling: The Whale Hunter*, CIGAR AFICIONADO, May/June 2003, *available at* http://www.cigaraficionado.com/Cigar/CA_Archives/CA_Show_Article/0,2322,1294,00.html (describing a visit by sixteen high rollers—or "whales"—with $3 million in credit lines to San Diego County's Barona Valley Ranch Resort and Casino, owned by the Barona Band of Mission Indians); *cf.* LIGHT & RAND,

B. *Impact on Tribes*

1. *Revenue and Government Services*

As Congress recognized when it enacted the IGRA, funds from public gaming—meaning government-operated gaming—can be used for the public welfare.[54] This goal of Indian gaming policy is similar to the idea that the "profits" from state-run lotteries should be directed to the state's public treasury for a specific programmatic purpose, such as public education. The policy rationale for tribes' use of revenue is tailored to an urgent need: it seeks to address poverty and its accompanying effects on American Indian people.[55] Many reservation communities were, and still are, in exceptionally dire socioeconomic straits.[56] To achieve the IGRA's policy goals and ensure that Indian gaming benefits tribes and tribal members, the IGRA limits how tribes may spend revenue earned through tribal gaming operations.[57] Tribes may use Class II and Class III net gaming revenues: "(i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies."[58] If approved by the Chairman of the NIGC,[59] tribes may use those revenues to "make per capita payments to [tribal] members."[60]

These categories are both quite broad and highly specific. In practice, they manifest a diversity of revenue uses because the individual tribes do not share identical needs. The size, location, and unique history of each tribe influence its current socioeconomic circumstances and priorities. Some tribes may have little net gaming revenue to spend; others may address pressing needs related to basic government services such as housing; others may choose to invest in nongaming economic enterprises; and still others may choose to divide a portion of the revenue among their members.[61]

THE CASINO COMPROMISE, *supra* note 5, at 111–18 (describing the contrasting climate for Indian gaming in North Dakota).

54. LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 44.
55. *Id.* at 98.
56. *See, e.g.*, *id.*
57. 25 U.S.C. § 2710(d)(2)(a).
58. *Id.* § 2710(b)(2)(B).
59. *Id*. § 2710(d)(2)(A).
60. *Id*. § 2710(b)(3).
61. *See, e.g.*, Kathryn R.L. Rand & Steven Andrew Light, *How Congress Can*

In accordance with the IGRA's provisions, tribes have used gaming revenue for public services, including police, fire, and emergency services; infrastructural improvements such as roadways and public utilities; social programs like education, health care, and elderly care; and the construction of housing and community centers.[62] Gaming has lifted American Indians, who have historically been the poorest of the poor, from welfare to work by providing job opportunities and diminishing the state's responsibility to make public entitlement payments.[63]

Specific examples of how tribes use gaming revenue are amazingly varied. The Mille Lacs Band of Ojibwe in Minnesota has used gaming revenue to fund the construction of schools and hundreds of homes while investing in over forty local businesses.[64] The tribe has also created a pension plan for its elders.[65] The Tule River Indians in California have built an alcoholism treatment center.[66] The Chickasaw Nation in Oklahoma has constructed a diabetes care center.[67] The Mississippi Band of Choctaw Indians has used gaming revenue to fund basic government services, including education, fire and police protection, and an "integrated health care system which includes an accredited hospital, field clinic, nursing home, and kidney dialysis center."[68]

Gaming appears to have had a highly beneficial impact on many reservations. At the same time, a recent comprehensive assessment of the status of tribal nations at the beginning of the twenty-first century found

and Should "Fix" the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform, 13 VA. J. SOC. POL'Y & L. 396, 425–26 (2006) (discussing differences among tribes in the context of tribal institution building).

62. *See, e.g.*, NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 3, at 6-14 to -16; *see also* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 98–101 (detailing the use of tribal gaming revenues to improve quality of life and support cultural heritage for tribe members); Nadel, *supra* note 43.

63. *See, e.g.*, Steven Peterson & Michael DiNoto, The Economic Impacts of Indian Gaming and Tribal Operations in Idaho 3 (Aug. 8, 2002), *available at* http://gaming.uleth.ca/agri_downloads/855/Study.pdf (finding that along with decreasing reservation unemployment rates, public entitlement payments decreased by $6 million due to tribal gaming in Idaho).

64. Nadel, *supra* note 43, at S4, S6.

65. *Id.* at S6.

66. *Id.*

67. *Id.* at S9.

68. Richard J. Ansson, Jr. & Ladine Oravetz, *Tribal Economic Development: What Challenges Lie Ahead for Tribal Nations as They Continue to Strive for Economic Diversity?*, 11 KAN. J.L. & PUB. POL'Y 441, 446 (2002).

that both gaming and nongaming tribes have made noteworthy advances in the capacity of tribal governments to serve their members.[69] During 1999 and 2000, gaming and nongaming tribes' real median household income grew at a rate two to three times that of the United States population as a whole.[70] Strikingly, however, tribal members living on reservations remain four times as likely to live in poverty as the average American.[71]

2. *Governmental Capacity*

The enormous legal, regulatory, fiscal, managerial, and other administrative demands of developing and operating successful casinos, the political nature of iterated tribal–state intergovernmental relations, and the need for programmatic development and disbursement of gaming revenue through government services have required gaming tribes to establish or dramatically bolster their institutional capacity. In addition to independent gaming commissions, many, if not most, tribes are in the process of building tribal court systems and law enforcement agencies, as well as schools and healthcare, elder care, and childcare programs.[72] Such public institutions—owned and operated by the tribe—increase governmental capacity to deliver public services and build bridges between tribal government and its constituents. In addition to its gaming commission, for instance, the Mississippi Band of Choctaw has created and funded a court system, housing authority, utility commission, real estate and natural resources programs, a forestry department, and other public services.[73]

For tribes with existing deficits in these areas, particularly those with low socioeconomic baselines and large memberships, it takes time and

69. TAYLOR ET AL., *supra* note 42, at 3.

70. HARVARD PROJECT ON AM. INDIAN ECON. DEV., THE STATE OF THE NATIVE NATIONS: CONDITIONS UNDER U.S. POLICIES OF SELF-DETERMINATION 115 (2008).

71. *Id.* at 114–15.

72. The NIGC has repeatedly encouraged and, at times, compelled tribes to "ensure that [their gaming] commission is an independent body, separated completely from the tribe's role as owner and operator of the tribe's gaming activities." NIGC, *Independence of Tribal Gaming Commissions*, Bulletin 99-3 (Oct. 12, 1999), *available at* http://www.nigc.gov/ ReadingRoom/Bulletins/BulletinNo19993/tabid/200/Default.aspx. To meet IGRA's regulatory requirements, "[e]ffective regulatory oversight requires a functional separation between the operation of tribal gaming and the regulation of that tribal gaming. In the NIGC's experience, a well-run tribal gaming commission, free to regulate without undue interference from tribal leadership, is the best vehicle for achieving this functional separation." *Id.*

73. Ansson & Oravetz, *supra* note 68, at 446.

resources to build culturally appropriate institutions that strengthen tribal governments and adequately serve tribal members. However, studies have found that healthy reservation communities are best served by government institutions that are determined and operated by tribal members and are culturally specific—governments that truly are "by tribes, for tribes."[74]

3. *Economic Development and Diversification*

Indian gaming creates economic opportunities beyond slot revenue and croupier jobs. Increasingly, tribes are leveraging gaming revenue to diversify their economies.[75] Many tribes have opened businesses related to gaming enterprises, such as restaurants, hotels, recreational and skiing facilities, and gas stations.[76] Others have leveraged gaming profits to diversify beyond a casino resort or other tourism-based ventures.[77] The Oneida Nation of Wisconsin, for example, opened a Radisson hotel and conference center next to its Oneida Bingo and Casino in Green Bay, Wisconsin.[78] The Oneida have also leveraged gaming proceeds to invest in or partner with nontribal commercial enterprises on electronics, personal communications, and printing ventures, as well as a joint retail park with Wal-Mart.[79]

The Mississippi Band of Choctaw Indians is often held up as a model of how gaming can be leveraged toward economic development and diversification. The Band operates plants that manufacture or assemble automobile harness wires, speakers, and cables for such companies as General Motors, Ford, and Chrysler; an electronics plant with clients including AT&T, Xerox, and Westinghouse; and a plant that assembles

74. On the importance of tribal institution-building to healthy reservation communities, see, for example Joseph Kalt, *Constitutional Rule and the Effective Governance of Native Nations*, *in* AMERICAN INDIAN CONSTITUTIONAL REFORM AND THE REBUILDING OF NATIVE NATIONS 184 (Eric D. Lemont ed., 2006); Miriam Jorgensen & Jonathan Taylor, *What Determines Indian Economic Success?: Evidence from Tribal and Individual Indian Enterprises*, THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT (2000), *available at* http://www.hks.harvard.edu/hpaied/pubs/documents/WhatDeterminesIndianEconomicSuccess.pdf; *see also* Rand & Light, *supra* note 61, at 421–26 (discussing tribal institution building as a lodestar goal for Indian gaming policy reform).

75. Ansson & Oravetz, *supra* note 68, at 441.

76. *Id.* at 445–46.

77. *Id.*

78. *Id.* at 448.

79. *Id.*

cards for American Greetings.[80] With over 6,000 employees—half of whom are non-Indian—the Band is one of Mississippi's top ten employers.[81] The Chickasaw Nation in southern Oklahoma has diversified its economy to the extent that it has some 6,500 employees in more than fifty businesses, including motels, radio stations, travel plazas, and a chocolatier.[82]

Most assuredly, there are other dimensions to the impact of gaming on reservation life, both positive and negative. Moreover, it is important to note that not all tribes—and not all tribal members, even of gaming tribes—have embraced gaming. This reticence is often due to concerns about the effect of gaming on tribal traditions and culture.[83] What is clear, however, is that over the last twenty years, the IGRA, in conjunction with the overarching framework of tribal sovereignty, has catalyzed major changes in reservation life across the United States.

IV. SIGNIFICANT LEGAL AND POLITICAL DEVELOPMENTS

Though Indian gaming certainly has changed since 1988, the IGRA has not. While the statutory language has remained constant, the legal and political landscape of tribal gaming has been anything but static. The IGRA creates the overarching nontribal legal framework for tribal gaming, but its statutory provisions have been far from the last word on policy outcomes. As the Indian gaming industry has evolved, the politics of tribal gaming have become equally important as—if not more important than—the law that governs it.[84] In this Part, we describe three of the most

80. *Id.* at 445.

81. *Id.* at 445–46.

82. Nadel, *supra* note 43, at S9.

83. The Navajo Nation is one example of a tribe that has hesitated to embrace gaming. *See* Steve Schmidt, *The Tribe That Won't Play*, SAN DIEGO UNION-TRIB., Oct. 20, 2002, at A1. *But see* Karen Francis, *Nation Counting Gaming Revenue*, GALLUP INDEP. (N.M.), July 28, 2008, *available at* http://www.indianz.com/IndianGaming/2008/010047.asp (discussing the passage of the Navajo Nation Gaming Distribution Plan for Fire Rock Casino, the Nation's first casino, scheduled to open in Churchrock, New Mexico, in November 2008); Kathy Helms, *Tribe Plans Second Casino*, GALLUP INDEP. (N.M.), July 23, 2008, *available at* http://www.gallupindependent.com/2008/07july/072308casino.html (noting that the Nation plans to open its second casino, a small Class II operation, in Tse Daa Kaan, New Mexico).

84. *See, e.g.*, Steven Andrew Light, *Indian Gaming and Intergovernmental Relations: State-Level Constraints on Tribal Political Influence over Policy Outcomes*, 38 AM. REV. PUB. ADMIN. 225 (2008) (providing a case study of Minnesota officials' various attempts to change the existing political and economic playing field for Class

dynamic and significant legal and political developments in, and their impacts on, Indian gaming since 1988: the United States Supreme Court's decision in *Seminole Tribe v. Florida*, the rise of revenue sharing, and the continuing controversy over off-reservation gaming.

A. Seminole Tribe v. Florida

In enacting the IGRA, Congress sought to balance tribal sovereignty with state authority, relying on the tribal–state compact requirement "to encourage States to deal fairly with tribes as sovereign governments."[85] The Supreme Court shifted that political balance in favor of the states' when it decided *Seminole Tribe v. Florida* in 1996.[86]

In 1991, the Seminole Tribe filed a suit against Florida and Governor Lawton Chiles under the IGRA, alleging that the state had refused to negotiate a tribal–state compact allowing the tribe to offer Class III games on its reservation. Florida moved to dismiss the tribe's action, asserting state sovereign immunity under the Eleventh Amendment.[87] Essentially,

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III gaming as an example of how the politics of Indian gaming play out through intergovernmental relations).

85. S. REP. NO. 100-446, at 14 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 3071, 3084. The Senate Report explained Congress's concerns about the existing imbalance in state and tribal power:

> Section [2710](d)(7) grants a tribe the right to sue a State if compact negotiations are not concluded. This section is the result of the Committee balancing the interests and rights of tribes to engage in gaming against the interests of States in regulating such gaming. Under this act, Indian tribes will be required to give up any legal right they may now have to engage in class III gaming if: (1) they choose to forgo gaming rather than to opt for a compact that may involve State jurisdiction; or (2) they opt for a compact and, for whatever reason, a compact is not successfully negotiated. In contrast, States are not required to forgo any State governmental rights to engage in or regulate class III gaming except whatever they may voluntarily cede to a tribe under a compact. Thus, given this unequal balance, the issue before the Committee was how best to encourage States to deal fairly with tribes as sovereign governments. The Committee elected, as the least offensive option, to grant tribes the right to sue a State if a compact is not negotiated and chose to apply the good faith standard as the legal barometer for the State's dealings with tribes in class III gaming negotiations.

Id.

86. Seminole Tribe v. Florida, 517 U.S. 44 (1996).

87. RAND & LIGHT, LAW AND POLICY, *supra* note 5, at 92.

> The Eleventh Amendment provides that "[t]he judicial power of the United

the case raised the question of whether Congress could authorize, as it did in the IGRA, a suit against a state without the state's consent.[88] The Supreme Court's answer was a clear no.[89]

Seminole Tribe invalidated the IGRA's centerpiece: the carefully constructed balance of tribal and state sovereignty. Without the statutory enforcement mechanism against the states—the threat of a lawsuit if the state did not sit down at the table to talk reasonably—the requirement that states negotiate compacts in good faith lacked teeth. In the wake of the Court's decision in *Seminole Tribe*, a state could effectively prevent a tribe from engaging in Class III gaming simply by refusing to negotiate a tribal–state compact. As the tribal industry continued to grow, the legal uncertainty created by *Seminole Tribe*'s impact on the IGRA's tribal–state compact process cast a dark shadow over compact negotiations. The Court's decision changed the politics of tribal gaming as well as the law.

Seminole Tribe left open the question of what should happen when a state fails to negotiate with a tribe in good faith toward reaching a tribal–

> States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State." The Supreme Court has interpreted the Eleventh Amendment broadly to generally proscribe suits against the states, including against state officials acting in their official capacity, without the state's consent. This general rule has a few exceptions, including Congress's limited ability to abrogate states' immunity from suit and what is commonly known as the "*Ex parte Young* exception": state sovereign immunity does not extend to state officials acting unconstitutionally or contrary to federal law, so that they may be sued for prospective injunctive relief despite the state's immunity from suit.

Id. (citing U.S. CONST. amend. XI; *Ex parte* Young, 209 U.S. 123 (1908)).

88. *Seminole Tribe*, 517 U.S. at 55.

89. For a more detailed account of *Seminole Tribe* and its underlying logic, see, for example, RAND & LIGHT, LAW AND POLICY, *supra* note 5, at 92–94; RAND & LIGHT, CASES AND MATERIALS, *supra* note 14, at 212–19. Suffice it to say that in *Seminole Tribe*, the Court overruled *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989), to hold that neither the Interstate Commerce Clause nor the so-called Indian Commerce Clause granted congressional authority to override state sovereign immunity. *See Seminole Tribe*, 517 U.S. at 59–72. Additionally, "the Court held that because [the] IGRA's cause of action against the state is narrower tha[n] the general remedy allowed under the *Ex parte Young* doctrine, the exception does not apply to suits under the IGRA." RAND & LIGHT, LAW AND POLICY, *supra* note 5, at 94; *see also Seminole Tribe*, 517 U.S. at 73–76. Ironically, under the Court's reasoning, the same comprehensive remedial scheme in the IGRA that precludes an *Ex parte Young* cause of action also violates the Eleventh Amendment, thus invalidating the statute's own preclusive remedy. *See id.*

state compact. One possibility, of course, was that the state could waive its sovereign immunity and consent to be sued in federal court under the IGRA's cause of action. It was more likely, however, that the state would invoke its Eleventh Amendment immunity under *Seminole Tribe* and the suit would be dismissed, leaving the tribe without a legal remedy for the state's alleged breach of its good-faith duty.

To provide some remedy for tribes, the United States Secretary of the Interior promulgated regulations that allowed the Secretary to issue administrative rules governing Class III gaming when a tribe and state fail to voluntarily negotiate a compact and a state invokes its sovereign immunity to avoid suit under the IGRA.[90] As it happens, the regulations have not been of much use to tribes stonewalled by states unwilling to negotiate gaming compacts. Two recent cases demonstrate the outcomes.

In *Texas v. United States*, the Kickapoo Traditional Tribe sought assistance from the Interior Secretary after its federal suit was dismissed on the state's Eleventh Amendment motion.[91] The Secretary determined the tribe was eligible for an administrative compact and invited Texas to provide comments or to submit an alternative proposal.[92] Instead, the state filed suit in federal court challenging the Secretary's power to issue administrative rules for the tribe's operation of Class III gaming.[93] In 2007, the Fifth Circuit struck down the Secretary's regulations, the state refused to negotiate a compact, and, as of today, no Class III tribal gaming exists in Texas.[94]

90. *See* 25 C.F.R. pt. 291 (2008). The regulations replicated the negotiation and mediation process set forth in the IGRA, adjusted only to reflect a tribe's inability to sue in federal court if a state refuses to waive its sovereign immunity.

91. Texas v. United States, 497 F.3d 491, 495 (5th Cir. 2007).

92. *Id.*

93. *Id.*

94. *Id.* at 511. The court explained:

> [I]n IGRA, Congress plainly left little remedial authority for the Secretary to exercise. The judicially-managed scheme of good-faith litigation, followed by negotiation, then mediation, allows the Secretary to step in only at the end of the process, and then only to adopt procedures based upon the mediator's proposed compact. The Secretary may not decide the state's good faith; may not require or name a mediator; and may not pull out of thin air the compact provisions that he is empowered to enforce. To infer from this limited authority that the Secretary was implicitly delegated the ability to promulgate a wholesale substitute for the judicial process amounts to logical alchemy.

Id. at 503.

In Florida, after almost sixteen years of on-again, off-again negotiations with four governors, the Seminole Tribe signed a compact with Governor Charlie Crist.[95] The state was under pressure from the Interior Secretary, who had threatened the state with an impending administrative compact.[96] But less than a year later, the Florida Supreme Court held that the governor exceeded his state constitutional authority in agreeing to the terms of the compact.[97] The validity of the Crist compact remains uncertain, though the tribe continues to operate its casino games.[98]

In the alternative, the court held that even if Congress had not clearly spoken to the scope of the Secretary's authority, Part 291 was not a reasonable interpretation of the IGRA:

> The lynchpin of IGRA's balancing of interests is the tribal-state compact. . . . IGRA's legislative history amply demonstrates that Congress viewed the compact as an indispensable prerequisite to Class III gaming. . . .
>
> . . . .
>
> [T]he Secretarial Procedures contemplate Class III gaming in the absence of a tribal-state compact—directly in derogation of Congress's repeated and emphatic insistence.
>
> . . . .
>
> [T]he Secretarial Procedures stand in direct violation of IGRA, the Johnson Act, and 18 U.S.C. § 1166 insofar as they may authorize Class III gaming without a compact.

Id. at 507–09.

Further, the court held that 25 U.S.C. § 2 and § 9 did not provide "'a general power to make rules governing Indian conduct,'" but instead only delegated authority to the Secretary to promulgate "regulations that implement 'specific laws,' and that are consistent with other relevant federal legislation." *Id.* at 509–10 (citations omitted). The IGRA, according to the court, "does not guarantee an Indian tribe the right to conduct Class III gaming;" rather, it "grants tribes the right to negotiate the terms of a tribal-state compact." *Id.* at 511. As a result, the court concluded, § 2 and § 9 could not operate to grant authority to the Secretary to bypass the requirements of the IGRA. *Id.*

95. Florida House of Representatives v. Crist, 990 So. 2d 1035, 1038 (Fla. 2008).

96. *Id.* at 1040.

97. *See id.* at 1047–50.

98. *See* Mary Ellen Klas, *Ruling Won't Halt Seminoles' Card Games*, MIAMI HERALD, July 20, 2008, at A1, 2A.

B. *Revenue Sharing*

Not long after the IGRA was enacted, the Mashantucket Pequots approached the state of Connecticut to negotiate a compact.[99] The state took the position that although it allowed charities to operate casino-style gaming for "Las Vegas Night" fundraisers, Class III games—and especially slot machines—were contrary to state public policy.[100] Therefore, Connecticut refused to negotiate a compact permitting casino games.[101] The Pequots sued under the IGRA's then-valid cause of action and the court's decision obligated the state to negotiate a compact with the tribe.[102] Because slot machines were prohibited by state law and were not specifically addressed by the Second Circuit's decision, Connecticut and the Pequots reached a compromise rooted in reciprocal mutual benefit: the tribe could operate slots and the state would collect twenty-five percent of the tribe's slot revenue.[103] Ratified in 1992, this historic agreement was the first—but far from the last—tribal–state revenue-sharing agreement.[104]

Given the increasing prevalence of revenue sharing, one might assume that Congress contemplated it. But the IGRA explicitly prohibits states from imposing direct taxes or fees on tribal casinos as a precondition for signing a tribal–state compact.[105] Additionally, in the context of a legal action to enforce the state's duty to negotiate compacts in good faith, the IGRA provides that "[i]n determining . . . whether a State has negotiated in good faith, the court . . . shall consider any demand by the State for

99. Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024, 1025 (2d Cir. 1990).

100. *Id.* at 1029.

101. *Id.*

102. *Id.* at 1032–33.

103. Steven Andrew Light et al., *Spreading the Wealth: Indian Gaming and Revenue-Sharing Agreements*, 80 N.D. L. REV. 657, 665 (2004).

104. *Id.*

105. The provision reads as follows:

> (4) Except for any assessments [to defray regulatory costs] that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the [Class III compact] negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

25 U.S.C. § 2710(d)(4) (2000).

direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith."[106] If the IGRA's plain language suggests that states cannot condition compact negotiations on mandatory tribal payments, how is it that in 2007, tribes made over $1 billion in revenue-sharing payments to states and another $155 million in payments to local governments?[107]

In practice, there is ample wiggle room for states and tribes to enter into a wide range of revenue-sharing agreements. First, despite the IGRA's prohibition on the imposition of taxes, fees, charges, or other assessments on tribes, the Interior Secretary has interpreted the statute as allowing tribes to make payments to states in return for additional benefits beyond the right to operate Class III gaming.[108] If the state provides the tribe with a "valuable economic benefit," typically "substantial exclusivity" in the market—that is, while a state might sanction a lottery, only the tribes can operate casino-style gaming—a revenue-sharing agreement presumably will not run afoul of the IGRA under the Secretary's interpretation.[109] Second, and related to the Secretary's interpretation, is the fallout from the Supreme Court's holding in *Seminole Tribe*. In the absence of the IGRA's cause of action for a state's failure to negotiate a compact in good faith, tribes lack political leverage to bring a state to the table.[110] For Connecticut, New Mexico, Wisconsin, California, New York, Arizona, and other states, revenue sharing has been the carrot.

While the legal limits of revenue sharing are very much a grey area of the law, the political trend is toward increasing state demands.[111] In the

106. *Id*. § 2710(d)(7)(B)(iii).

107. MEISTER, *supra* note 41, at 56.

108. 25 U.S.C. § 2710(d)(4); LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 47.

109. *See, e.g.*, *Indian Gaming Regulatory Act: Oversight Hearing on Indian Gaming Regulatory Act; Role and Funding of the National Gaming Commission Before the S. Comm. on Indian Affairs*, 108th Cong. 5 (2003) (statement of Aurene M. Martin, Acting Assistant Secretary, Indian Affairs, Department of the Interior).

110. *See* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 49–50.

111. The parameters of the Secretary's interpretation are unclear and are fleshed out largely by the fact of compact approval or, much more rarely, disapproval. For example, the Interior Secretary did not disapprove a compact between Wisconsin and the Forest County Potawatomi Tribe, despite the Secretary's concerns that the tribe's revenue-sharing payments exceeded the value of the state's concessions. *See* Steve Schultze, *Gaming Compact Barely Approved*, MILWAUKEE J. SENTINEL, May 2, 2003, at 1B. In one of the very few federal cases addressing the legality of revenue

past year tribes in Connecticut paid the state over $420 million, and tribes in California paid the state more than $275 million.[112] Tribal payments in New York, Arizona, and Oklahoma also continued to increase in 2007, reaching approximately $108 million, $87 million, and $70 million, respectively.[113]

Tribes in California have experienced the most rapid escalation in state revenue-sharing demands. During California's 2004 gubernatorial recall campaign, candidate Arnold Schwarzenegger promised that he would require tribal casinos to pay their "fair share" to the state, by which he meant twenty-five percent of gambling revenue—an estimated $1.25 billion annually.[114] After his election, Schwarzenegger set about keeping his promise by renegotiating several compacts, offering higher caps on the number of slot machines that tribes could operate in exchange for higher tribal payments.[115] In new compacts with a handful of tribes, the state agreed to more slot machines—17,000 additional slots split among the tribes—in exchange for increased annual payments totaling at least $130 million.[116] In 2008, Schwarzenegger estimated the state would receive nearly $450 million from the fifty-seven tribes operating casinos in California.[117]

sharing under the IGRA, the Ninth Circuit essentially adopted the Secretary's approach, relying on California's "meaningful concessions" to the tribes to characterize the revenue-sharing provisions as something other than a "'tax, fee, charge, or other assessment'" upon an Indian tribe. *In re* Indian Gaming Related Cases, 331 F.3d 1094, 1110 (9th Cir. 2003) (quoting 25 U.S.C. § 2710(d)(4)). The court cautioned, though, that "[d]epending on the nature of both the fees demanded and the concessions offered in return, such demands might, of course, amount to an attempt to 'impose' a fee, and therefore amount to bad faith on the part of a State." *Id.* at 1112; *see also* Idaho v. Shoshone-Bannock Tribes, 465 F.3d 1095, 1101 (9th Cir. 2006) (discussing the application of the *Indian Gaming Related Cases* holding).

112. MEISTER, *supra* note 41, at 56.

113. *Id.*

114. Dan Morain, *Tribe's Measure Offers Tax Deal*, L.A. TIMES, Jan. 22, 2004, at A-1; *see also* Louis Sahagun, *Point Man for Gaming Tribes Is Bold Leader*, L.A. TIMES, Jan. 18, 2004, at A-1.

115. *See* Light et al., *supra* note 103, at 669–74; *see also* Alan P. Meister, *Tribal-State Gaming Compacts and Revenue Sharing: A California Case Study*, 7 GAMING L. REV. 347 (2003) (describing the state of revenue sharing in California before Schwarzenegger's election).

116. John Wildermuth, *Expensive Ballot Fight Looms on February Vote over Indian Casinos*, S.F. CHRON., Dec. 7, 2007, at B-1, *available at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/07/BAM9TM776.DTL.

117. *See* Debra Gruszecki, *Tribes Disclose State Gaming Check Amounts*, DESERT SUN (Palm Springs, Cal.), Aug. 1, 2008, at E-1.

Nevertheless, last year the Rincon Indian Band filed suit in federal court alleging that Schwarzenegger's revenue-sharing demands were not made in good faith.[118] Under its 1999 compact, the Band currently operates 1,600 slot machines that, according to California, enjoy the highest degree of profit-per-machine in the state.[119] The Band sought renegotiation to increase its slot limit to 2,500, but challenged California's demand for increased revenue sharing to be paid into the state's general fund.[120] One financial expert estimated that the additional slot machines would bring in nearly $40 million to the state in annual payments; after paying the state's revenue-sharing demands, the Band's new annual profits from the machines would plummet to less than $2 million.[121] The federal court concluded, "It is difficult to regard the State's proposed plan as anything more than a tax when it functions as a tax."[122]

C. *Off-Reservation Gaming*

At the time the IGRA was enacted, Congress contemplated that most tribal casinos would be owned and operated by tribes on reservation lands.[123] At the very least, the alternative seemed unlikely. To oversimplify, the idea that a tribe or a tribal member could simply purchase land in the middle of New York City or Miami and set up a casino seemed both hugely undesirable and highly unfair to non-Indian city and state residents, and would put commercial gaming interests at a massive competitive disadvantage. In 1988, this possibility appeared wildly unrealistic in terms of state public policy. Further, the idea would constitute a dramatic break with existing federal Indian policy, which is very much tied to the concept of "Indian Country."[124] Moreover, given

118. Rincon Band of Luiseno Mission Indians v. Schwarzenegger, No. 04cv1151, slip op. at 3 (S.D. Cal. Apr. 29, 2008) (order denying in part and granting in part the parties' cross-motions for summary judgment and ordering continued negotiation under 25 U.S.C. § 2710(d)(7)(B)(iii)).

119. *Id.* at 21.

120. *Id.* at 7–9.

121. *Id.* at 21 ("Under the analysis conducted by the State's own expert, Professor William Eadington, the State's October 23, 2006 offer allowing Rincon an additional 900 machines would provide the State with an unrestricted fee for use in its general fund of *$37.9 million dollars* while Rincon would make only *$1,716,000* from adding 900 machines to its current 1,600 machine operation.").

122. *Id.* at 22.

123. Although this is the case in practice, the IGRA is actually more specific in that Indian gaming must be conducted on "Indian lands." 25 U.S.C. § 2710(b)(4)(A) (2000). The term "Indian lands" is defined in the statute. *See id.* § 2703(4).

124. *See, e.g.*, LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 18–

reservation poverty, reservation economies could best benefit from casinos on the reservations. But things can change.

In § 2719 (sometimes referred as "Section 20" in reference to the numbering of the statutory sections in bill form), the IGRA sets forth a general prohibition against tribal gaming on trust lands acquired after the IGRA's date of enactment (commonly referred to as "newly acquired" lands).[125] Alongside the general prohibition are a number of general, state, and tribe-specific exceptions: lands located within or contiguous to the tribe's existing reservation,[126] lands placed in trust as a settlement of a land claim, the initial reservation of a federally recognized tribe, and the restoration of lands for a tribe whose federal recognition is restored.[127]

A broader exception is made for gaming on newly acquired lands that is "in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community . . . ."[128] We call this the "best interests" exception, also referred to as the "two-part determination." For the best interests exception to apply, the Interior Secretary must first consult with the tribe, the state, local officials, and officials of nearby tribes to determine that gaming on the newly acquired

20 (summarizing the federal doctrine of tribal sovereignty and discussing its connection to tribal lands).

125. 25 U.S.C. § 2719(a) ("Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988 . . . .").

126. *Id*. § 2719(a)(1). Seven tribal casinos currently operate under this exception. *See Oversight Hearing on Land Eligible for Gaming Pursuant to the Indian Gaming Regulatory Act: Hearing Before the S. Comm. on Indian Affairs*, 109th Cong. 9–13 (2005) (statement of George T. Skibine, Acting Deputy Assistant Secretary, Policy and Economic Development for Indian Affairs, Department of the Interior) [hereinafter *Hearings*].

127. 25 U.S.C. § 2719(b)(1)(B). Currently, four casinos operate on settlement lands (all stemming from the Seneca Tribe of New York's land claim), three on initial reservations, and twelve on restored reservations. *See Hearings*, *supra* note 126.

An additional exception is made for tribes without reservations as of October 17, 1988: gaming is not prohibited on newly acquired lands if the lands are within the tribe's last recognized reservation and within the state in which the tribe currently resides. 25 U.S.C. § 2719(a)(2)(B). A special exception applies to tribes without reservations that have acquired trust lands in Oklahoma. *Id.* Gaming is allowed on newly acquired lands in Oklahoma if the lands are within the tribe's former reservation or if the lands are contiguous to the tribe's current trust or restricted lands. *Id*. § 2719(a)(2)(A)(i)–(ii). The IGRA also includes specific exceptions for the St. Croix Chippewa Indians in Wisconsin and the Miccosukee Tribe of Indians in Florida. *Id*. § 2719(b)(2)(A)–(B).

128. 25 U.S.C. § 2719(b)(1)(A).

lands would be in the best interests of the tribe and its members and would not be detrimental to the surrounding community.[129] Importantly, the state's governor must concur in the Secretary's determination—essentially, this means the governor has veto power over tribal gaming under this exception.[130] The consultation and governor's concurrence requirements create potential political obstacles to the likelihood that a tribe may conduct gaming on newly acquired lands under the "best interests" exception, as demonstrated by the fact that only three tribes currently operate gaming on newly acquired lands under this exception.[131]

The IGRA's legislative history does not provide much insight into the congressional intent behind the enactment of the § 2719 exceptions. One likely possibility is that Congress meant to address the fact that not all tribes have lands in or near large consumer markets; instead, many tribes, and typically the poorest, are located in rural areas. These exceptions, particularly the best interests exception, allow tribes to acquire land for the purpose of taking fuller advantage of gaming (i.e., tapping into a larger market) with, of course, strict federal and state controls.[132]

Though the term "off-reservation gaming" is often used to refer to gaming under any of the § 2719 exceptions, the Interior Department generally uses the term to refer to land that is neither within or contiguous to existing reservation boundaries.[133] Further, the best interests exception is the sole exception that does not require some historical tie or legal claim to the land in question.[134] Nevertheless, the exceptions, though relatively rarely applied,[135] are political lightning rods in many localities and states, as well as in Congress itself, and have given rise to accusations of tribal

129. *Id.*

130. *Id.*

131. The three tribes are the Keweenaw Bay Indian Community of the Lake Superior Bands of Chippewa Indians, operating a casino in Choclay Township, outside of Marquette, Michigan; the Forest County Potawatomi, operating a casino in Milwaukee, Wisconsin; and the Kalispell Tribe, which conducts gaming in Airway Heights, Washington. *See* RAND & LIGHT, LAW AND POLICY, *supra* note 5, at 158.

132. *See* Rand & Light, *supra* note 61, at 465–69.

133. 25 U.S.C. § 2719(a)(1).

134. *Id.* § 2719(b)(1)(A).

135. In 2005, Deputy Assistant Secretary George Skibine reported to the U.S. Senate Committee on Indian Affairs that, since 1988, the Interior Secretary had approved gaming-related land-into-trust applications just twenty-six times: seven for lands within or contiguous to an existing reservation, four for lands acquired pursuant to settlement of a land claim, three for initial reservations, and twelve for restored lands. *Hearings*, *supra* note 126.

"reservation shopping." Critics see tribes and commercial partners interested in using the "cover" of Indian gaming to enter a new market, foisting themselves on unwilling communities.

On the other hand, state or local officials may see the economic development and job creation opportunities that flow from proposed casino and resort developments and seek creative ways to partner with tribes. Only rarely do such partnerships result in the construction of actual casinos; but, when they do, the political negotiations that lead to such casinos can generate what tribes and localities consider a win for all parties. This often occurs through a combination of job creation, tax payments, and revenue sharing. For example, the Forest County Potawatomi Community in Wisconsin operates one of the three off-reservation casinos negotiated under the IGRA's best interests exception.[136] The tribe employs nearly 2,000 people in Milwaukee, three-quarters of whom live in the county, pay income taxes, and purchase local goods and services, causing a ripple effect that radiates outward from the tribe's casino.[137] In 2006, the tribe transferred $4.2 million to both the city and county of Milwaukee, for a total distribution of nearly $55 million since 2000.[138] These payments were roughly twice what the tribe would have owed if the casino property—before it was placed in trust for the benefit of the tribe—had been subject to local property taxes.[139]

Regardless, in response to political outcry over the potential spread of Indian gaming through reservation and tribe shopping, in 2008 the Department of the Interior issued guidelines and adopted regulations that limit the reach of the IGRA's exceptions.[140] For example, for tribes

136. *See* LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5, at 63.

137. *Potawatomi: Continue Investment in Milwaukee*, WISBUSINESS.COM, Aug. 15, 2006, http://www.wisbusiness.com/index.iml?Article=69253.

138. *Id.*

139. *See id.*

140. Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354 (May 20, 2008) (to be codified at 25 C.F.R. pt. 292). Since 1994, the Bureau of Indian Affairs' (BIA) application of the § 2719 exceptions has been guided by a "Checklist for Gaming Acquisitions and Two-Part Determinations Under Section 20 of IGRA" issued by the BIA's Office of Indian Gaming Management. *See* Kathryn R.L. Rand et al., *Questionable Federal "Guidance" on Off-Reservation Indian Gaming: Legal and Economic Issues*, 12 GAMING L. REV. 194, 197 n.16, 198 (2008). In January 2008, Carl Artman, the Interior Department's Assistant Secretary for Indian Affairs, issued a memorandum titled, "Guidance on taking off-reservation land into trust for gaming purposes." *Id.* at 194. The memorandum included geographic limitations for gaming on newly acquired lands tied to the federal regulations governing land-into-

claiming new or restored reservation lands, the regulations require the tribe to have both a "significant historical connection" and a "modern connection" to the land.[141] Modern connections are defined as within a "reasonable commuting distance" of the tribe's existing reservation, "near" the residences of a "significant number" of tribal members, within twenty-five miles of the tribe's headquarters or other government facilities, or "other factors [that] demonstrate the tribe's current connection to the land."[142] By further constraining what many believed were already narrow exceptions, some individuals found the guidelines and regulations controversial or even problematic on legal, administrative, and economic grounds, as well as in terms of their policy rationale, which was arguably based in paternalistic presumptions about modern tribal interests.[143]

V. CONCLUSION

In 1988, Congress passed the IGRA with the express goals of codifying tribal rights to operate gaming establishments for the purpose of promoting reservation economic development, tribal self-determination, and strong tribal governments, while at the same time providing sufficient regulation to ensure both the legality of the operations and the protection of tribal interests.[144] Under the IGRA's statutory framework, many tribes across the United States have made great strides toward realizing these goals. At the same time, the Indian gaming industry has grown exponentially and become increasingly politicized, presenting myriad new opportunities and challenges—some foreseen and others less so, if at all.

Not long ago, when the tribal gaming industry had yet to break the $20 billion mark, Senator John McCain—one of the IGRA's architects and currently a senior minority member of the United States Senate Committee on Indian Affairs—contended that Congress did not foresee the tribal gaming industry's overwhelming success. "Never in our wildest dreams at the time of the formulation of [the IGRA]," he said, "did we envision that Indian gaming would become the [multi-billion-dollar] enterprise that it is today."[145]

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trust applications for off-reservation acquisitions. *Id.* at 198–99.

141. Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. at 29,378.

142. *Id.* at 29,377–78.

143. *See generally* Rand et al., *supra* note 140.

144. *See* 25 U.S.C. § 2702 (2000).

145. Toby Eckert, *Indian Casinos' Money, Clout Under Scrutiny*, SAN DIEGO UNION-TRIB., June 20, 2005, *available at* http://www.signonsandiego.com/uniontrib/20

That may be true at several levels. In 1988 Congress did not predict how effective the IGRA's framework would be at creating a fertile legal and political environment for the rapid growth of casino-style gaming. Nor did Congress anticipate how entrepreneurial many tribes would be. And, of course, Congress did not realize how Americans would develop a seemingly insatiable thirst for gambling in myriad forms—the Las Vegas Strip, riverboat casinos, state lotteries, the World Poker Tour, sports books, video games, the Internet—or how policy-makers would facilitate legal, political, and regulatory environments that generally favored not only the expansion of legalized gambling, but its continual mainstreaming as "good business" and even "clean family fun." (Senator McCain himself has been described as an "unapologetic gambler."[146])

This Article has raised a few of the most significant legal and political developments since Congress passed the IGRA in 1988, but it would take a book (or three![147]) to cover all of the key controversies, uncertainties, and trends in tribal gaming—a full assessment of the socioeconomic impacts of

050620/news_1n20tribes.html. Senator McCain and others have singled out tribal gaming as uniquely necessitating additional oversight, regulation, and legal reform. During a 2006 Republican Party fundraiser at the Oklahoma Petroleum Club in Oklahoma City, McCain listed three major national policy areas that, in his view, were "out of control": federal spending, immigration, and Indian gaming. Staff Writer, *McCain Calls Indian Gaming, Immigration "Out of Control,"* THE NORMAN TRANSCRIPT (Norman, OK), Sept. 9, 2006, *available at* http://www.normantranscript.com/localnews/local_story_252004102/resources_printstory. Tribal gaming "needs much greater oversight" in order to "prohibit further abuses," McCain said, but "[i]t's probably too late." *Id.* President Barack Obama has expressed his recognition of tribal sovereignty and Indian gaming as an economic development tool, but while a state senator in Illinois, stated a belief that gambling preys on the poor. *See* Peter Nicholas & Peter Wallsten, *In Nevada, Gaming Is a High-stakes Issue*, L.A. TIMES, Jan. 18, 2008, at A1 (reporting on Obama's 2003 quote in the *Chicago Defender* that the "moral and social cost of gambling, particularly in low-income communities, could be devastating"); Barack Obama, *Making My Case in Indian Country*, INDIAN COUNTRY TODAY, Feb. 1, 2008, *available at* http://www.indianz.com/News/2008/006935.asp ("I understand that Indian gaming revenues are important tribal resources for funding education, health care, law enforcement and other essential government functions.").

146. Michael Crowley, *Punch Drunk Love: How Boxing Explains John McCain*, THE NEW REPUBLIC, Aug. 13, 2008, at 7. For his part, President Obama enjoyed "weekly poker games with lobbyists and fellow state senators" that allegedly "helped cement his position as a rising star in Illinois politics." Michael Scherer & Michael Weisskopf, *High Rollers*, TIME, July 2, 2008, at 31.

147. LIGHT & RAND, THE CASINO COMPROMISE, *supra* note 5; RAND & LIGHT, LAW AND POLICY, *supra* note 5; RAND & LIGHT, CASES AND MATERIALS, *supra* note 14.

tribal gaming; the increased stakes and scrutiny of the federal government's tribal acknowledgment process; the spread and deepening of tribal–state political interactions and partnerships, or the need to create a *Seminole Tribe* "fix" for states' arguably unconstitutional political leverage over tribes; the search for a bright line between Class II and Class III electronic gaming; the extent of the NIGC's authority; how tribal–state compacts will be negotiated or revisited; the applicability of federal labor laws to tribal casinos and other tribally owned enterprises versus tribes' assertion of jurisdiction over employment-related decisions; and the growth of tribal political influence and accompanying perceptions of unethical or unlawful behavior, such as the Jack Abramoff scandal.

The most certain conclusion we can draw based on twenty years of tribal gaming under the IGRA is that the legal, political, and economic landscape for tribal gaming will continue to change. New administrative regulations and court decisions will entertain state law challenges to the scope of gaming under tribal–state compacts. Technological innovations by games manufacturers will exploit gray areas in the law or regulations and create new markets for slot or other play. States may continue to try to take advantage of Indian gaming through revenue sharing or perhaps through tribal–state partnerships negotiated outside the confines of the IGRA. Commercial operators will collaborate with tribes to leverage the expertise and clout of each. Policy-makers and community groups will debate the socioeconomic impacts of gaming on their communities; some will push for expansion—perhaps through gaming on newly acquired lands—and others will seek to foreclose tribal gaming altogether.

So what do the cards hold for Indian gaming in the next twenty years? More of the same—but different. That tribal gaming will continue to evolve in both predictable and unpredictable ways is, in its own fashion, both a truism and somewhat of a hedge. At the same time, truisms may be overlooked because they are so obvious, and hedging one's bets generally is wise. Any savvy card player knows it makes sense to keep an eye not just on the hand that's been dealt, but on the deck and the other players at the table.