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## Social and Economic Consequences of Indian Gaming in Oklahoma

**Kenneth W. Grant II • Katherine A. Spilde • Jonathan B. Taylor**



**NATIVE NATIONS INSTITUTE**  
FOR LEADERSHIP, MANAGEMENT, AND POLICY

UDALL CENTER FOR STUDIES IN PUBLIC POLICY  
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**NATIVE NATIONS INSTITUTE  
Udall Center for Studies in Public Policy  
The University of Arizona  
803 East First Street, Tucson, Arizona 85719  
Tel 520 884-4393 Fax 520 884-4702  
<http://udallcenter.arizona.edu>**

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**THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT  
John F. Kennedy School of Government  
Harvard University  
79 John F. Kennedy Street, Cambridge, MA 02138  
Tel 617 495-1480 Fax 617 496-3900  
<http://www.ksg.harvard.edu/hpaied>**

# **SOCIAL AND ECONOMIC CONSEQUENCES OF INDIAN GAMING IN OKLAHOMA**

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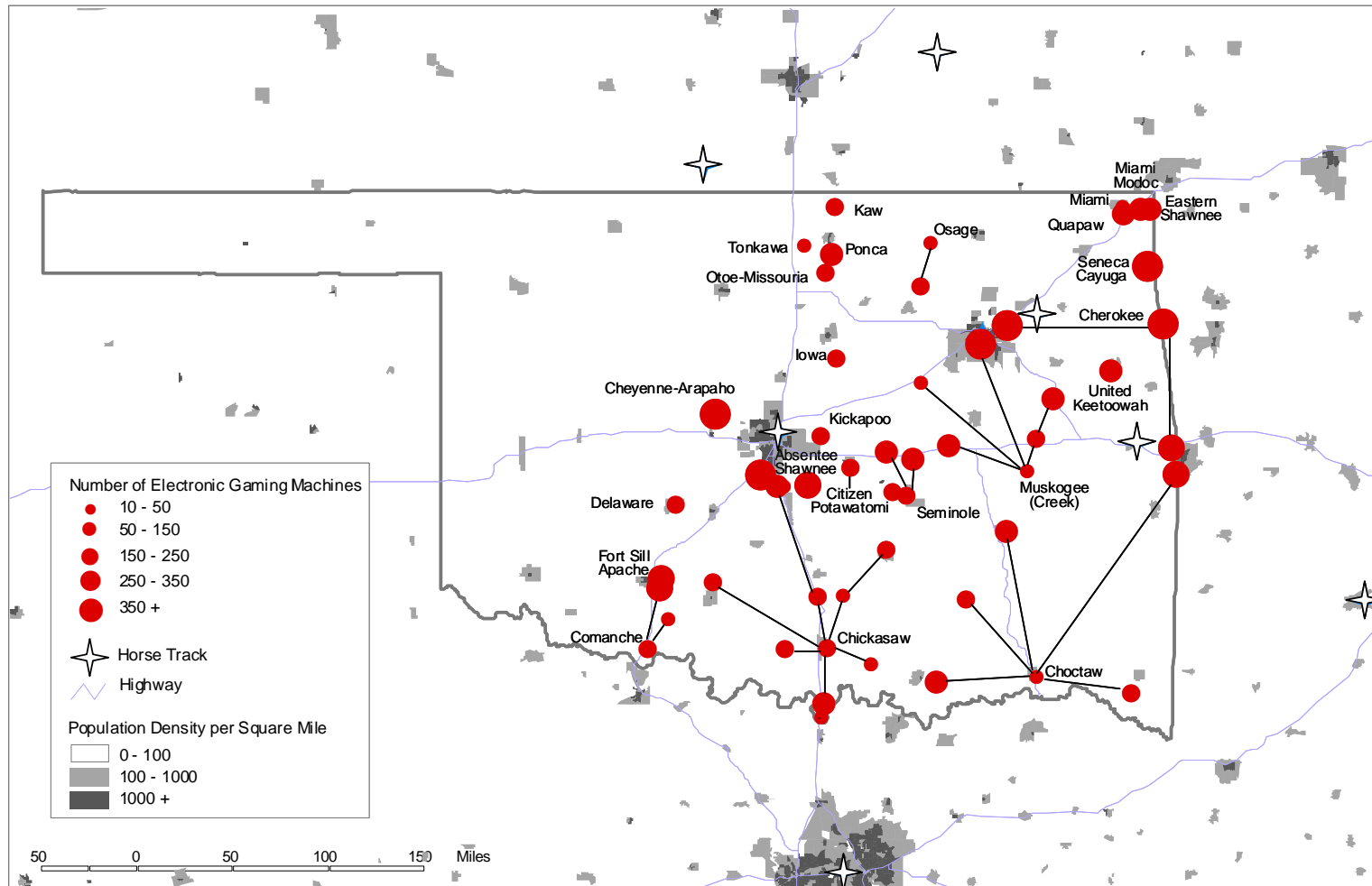
Kenny Grant is a Research Fellow, Katherine Spilde is a Senior Research Associate, and Jonathan Taylor is a Research Fellow with the Harvard Project on American Indian Economic Development. Grant and Taylor are also consultants with Lexecon Inc. Funding for this research was provided by the Oklahoma Indian Gaming Association. The authors' opinions are their own.

# **SOCIAL AND ECONOMIC CONSEQUENCES OF INDIAN GAMING IN OKLAHOMA**

## **EXECUTIVE SUMMARY**

Much has been written in the mainstream press about Indian gaming and its impact on Indian and non-Indian communities. The debate, however, tends to be focused on Class III or “casino-style” gaming. The effects of Class II gaming have largely been overlooked by the press and, unfortunately, by the research community as well. Notwithstanding their second-class status in the research, Class II gambling ventures have the potential to bring substantial change to the Indian communities that develop them. In this study of Class II gaming operations in Oklahoma we find that tribal governments are translating revenues and employment opportunities derived from Class II gaming operations into positive social investment. This change is reflected in quality-of-life improvements within both the tribal communities themselves and in surrounding non-tribal communities. Moreover, Class II operations have a net positive impact on the Oklahoma economy by virtue of their demonstrated ability to attract out-of-state customers to depressed regions of Oklahoma. The tribes’ successes offer a striking example of the principal intent of gaming operations, namely socioeconomic self-determination for tribes.

**Figure 1**  
**The Oklahoma Indian Gaming Market, 2002**  
 In-State and Out-of-State Population Density and Indian Gaming Capacity



**Note:** The nearest out-of-state gaming establishments with EGMs are in Bossier City and Shreveport, LA, 105 miles from the Oklahoma border. None of the indicated track facilities offer electronic gaming machines.

**Sources:** Survey of Oklahoma Indian Nations; GeoLytics, *CensusCD 2000, Short Form Blocks* (Brunswick, NJ: GeoLytics Inc., Jan. 7, 2002); [www.casinocity.com](http://www.casinocity.com).

## I. INTRODUCTION TO INDIAN GAMING IN OKLAHOMA

Across the United States, 207 Indian nations operate 316 gaming facilities in 28 states with gross revenues reaching an estimated \$12.7 billion.<sup>1</sup> Given the size and growth of this sector of the gaming industry, it is not surprising that Indian gaming has become one of the most controversial issues confronting tribes. As Indian gaming has grown, it has attracted the attention of the national media, while researchers have sought to measure its effects on Indian and non-Indian communities alike.<sup>2</sup> This attention, however, has tended to be focused on Class III or “casino-style” gaming. In contrast, the effects of Class II gaming—bingo, pull-tabs, and technologic aids to these games—have largely been overlooked by the research community and press alike. Yet, tribes whose nations are located within the State of Oklahoma have predominantly offered Class II gaming operations and, therefore, provide an opportunity to assess the impacts of what is generally considered to be less lucrative forms of gaming. We find that tribal governments in Oklahoma are translating revenues and employment opportunities derived from these enterprises into positive social change. This change is reflected in quality of life improvements within both the tribal communities themselves and

<sup>1</sup> National Indian Gaming Commission; David W. Anders, and Salvatore F. Di Pietro, *US Gaming Industry: 2001 Statistical Summary, Market by Market Analysis of Gaming Revenue, Growth Rates, and Win per Person* (New York, NY: Merrill Lynch, February 20, 2002).

<sup>2</sup> See, e.g., Center for Applied Research, *The Benefits and Costs of Indian Gaming in New Mexico* (Denver, CO: Center for Applied Research, January 1996); Center for Applied Research, *Indian Reservation Gaming in New Mexico: An Analysis of Its Impact on the State Economy and Revenue System* (Denver, CO: Center for Applied Research, 1995); Steven Cornell, et al., *American Indian Gaming Policy and its Socio-Economic Effects: A Report to the National Gambling Impact Study Commission* (Cambridge, MA: The Economics Resource Group, July 1998); John M. Clapp, et al., *The Economic Impacts of the Foxwoods High Stakes Bingo & Casino on New London County and Surrounding Areas* (Storrs, CT: Arthur W. Wright & Associates, September 1993); Steven C. Deller, Amy Lake, and Jack Sroka, *The St. Croix Casino: A Comprehensive Study of Its Socioeconomic Impacts* (n.p.: University of Wisconsin Extension, August 1996); ECONorthwest, *A Report for the Confederated Tribes of Siletz Indians: An Economic Impact Study* (Portland, OR: ECONorthwest, 1999); Gerald I. Eyrich, *Economic Impact Analysis: Cabazon Band of Mission Indians* (n.p.: Constituent Strategies, Inc., n.d.); Stephen A. Hoenack, and Gary Renz, *Effects of the Indian-Owned Casinos on Self-Generating Economic Development in Non-Urban Areas of Minnesota* (Plymouth, MN: Stephen A. Hoenack and Associates, May 1995); Cheryl Simrell King, and Casey Kanzler, In collaboration with the First American Education Project, “Background to Dream: Impacts of Tribal Gaming in Washington State,” [<http://www.firstamericans.net/Impact%20on%20Gaming%20report%202.pdf>], May 16, 2003; James M. Klas, and Matthew S. Robinson, *Economic Benefits of Indian Gaming in the State of Minnesota* (Minneapolis, MN: Marquette Advisors, January 1997); James M. Klas, and Matthew S. Robinson, *Economic Benefits of Indian Gaming in the State of Oregon* (Minneapolis, MN: Marquette Advisors, June 1996); Minnesota Indian Gaming Association and KPMG Peat Marwick, *Economic Benefits of Tribal Gaming in Minnesota, 1992* (Bemidji, MN: Minnesota Indian Gaming Association, April 1992); James M. Murray, *Direct and Indirect Impact of Wisconsin Indian Gaming Facilities on Wisconsin’s Output, Earnings, and Employment* (n.p.: University of Wisconsin Extension, December 1997); James M. Murray, *The Impact of American Indian Gaming on the Government of the State of Wisconsin* (n.p.: University of Wisconsin Extension, 1993); Jonathan B. Taylor, et al., *Indian Gaming in Arizona: Social and Economic Impacts on The State of Arizona* (Cambridge, MA: The Economics Resource Group, Inc., June, 1999); Veronica E. Tiller and Robert A. Chase, *Economic Contributions of Indian Tribes to the Economy of Washington State* (n.p.: Tiller Research, Inc. and Chase Economics, n.d.)

surrounding non-tribal communities. The tribes' successes offer a striking example of achieving the intent of tribal enterprises, generally, tribal gaming operations, specifically, and the subsequent regulatory act governing gaming enterprises, the Indian Gaming Regulatory Act (IGRA)—namely, economic self-sufficiency and tribal self-determination.

What follows is a brief presentation of the state of Indian gaming in Oklahoma. It is not intended to be a definitive assessment, as the industry continues to grow. It is, however, intended to provide some context on the relative size and scope of the tribes' operations. As of December 31, 2001, twenty-three tribes owned and operated fifty-five gaming facilities.<sup>3</sup> And while the majority of growth in the number of these facilities has taken place in the last decade, with approximately two-thirds of the facilities having been built after 1994, tribal gaming operations have been in existence since the 1970s. This growth, moreover, shows no sign of abating as a handful of tribes are in the process of opening facilities or have plans to do so (e.g., the Osage Tribe).<sup>4</sup>

The fifty-five gaming facilities are located in all but the far western reaches of the state (see Figure 1). Because federal law requires that Indian gaming facilities be located on Indian lands, this dispersion is primarily the result of the location of Indian landholdings rather than the result of smoothly operating market forces. The patterns shown in Figure 1 indicate that historical Indian landownership patterns constrain, to some degree, tribal decisions regarding facility location (e.g., substantial numbers of facilities are well away from the state's larger population centers and the interstate highway system). As we shall see in detail below, the resulting distribution of facilities has important positive implications for the economic impacts of gaming on the State of Oklahoma.

As of the time of this study, the tribes' gaming facilities contained 9,104 electronic gaming machines (EGMs)<sup>5</sup> and 17,930 bingo seats. In 2000<sup>6</sup> these facilities:

- turned over an estimated \$208 million in revenue,

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<sup>3</sup> These are: Chickasaw Nation, Cherokee Nation, Muscogee (Creek) Nation, Choctaw Nation, Seminole Nation, Cheyenne-Arapaho Tribes, Comanche Nation, Seneca-Cayuga Tribes, Ft. Sill Apache Tribe, Absentee Shawnee Tribe, Miami Nation / Modoc Tribe, Quapaw Tribe, Eastern Shawnee Tribe, Ponca Nation, Osage Tribe, United Keetoowah Band of Cherokees, Citizen Potawatomi Nation, Kickapoo Tribe, Otoe-Missouria Tribe, Delaware Nation, Iowa Tribe, Kaw Nation, and the Tonkawa Tribe.

<sup>4</sup> Of course, the number of facilities does not necessarily capture the number of gaming machines in the market, but nothing we observed indicated that the industry would not continue to grow along that dimension as well. Tribes continue to offer new machines in their existing facilities as market demand allows.

<sup>5</sup> EGMs are technologic and electronic aids to the Class II games of bingo, pull tabs, and other games similar to bingo.

<sup>6</sup> Six facilities did not open until 2001. The following numbers, and all casino financial and impact numbers presented in this study, represent a composite "typical" year that combines calendar year 2000 data, Fiscal Year 2000 data, and annualized data from the six facilities that opened in 2001.



- employed an estimated 3,857 people,<sup>7</sup>
- purchased a combined \$73 million in supplies and services from Oklahoma and other businesses,
- paid \$43 million in wages and salaries,
- transferred on the order of \$83 million to their respective tribal governments,<sup>8</sup> and
- withheld an estimated \$500,000 in state unemployment taxes.<sup>9</sup>

These statistics indicate that while Oklahoma Indian gaming represents but a small part of the overall US Indian gaming sector (i.e., less than a 2% share of the national market), it is fairly significant in the context of the Oklahoma economy. For example, the number of Indian gaming employees puts the enterprises on par with Oklahoma's single-family home construction industry, which employed 4,372 contractors in 2000, and the petroleum and coal products sector, which employed 4,033 workers.<sup>10</sup> Indian gaming's \$208 million in revenue put it on par with Oklahoma's television

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<sup>7</sup> Sixteen of twenty-three Indian nations (operating 83% of Oklahoma's electronic gaming machines) employ 3,315 people in those operations. Eleven of these tribes report an average of 27% non-Indian employment in gaming operations (Survey of Oklahoma Indian Nations). The '*Survey of Oklahoma Indian Nations*' was an instrument written and distributed by the authors to all twenty-four tribes in Oklahoma operating gaming facilities in the fall of 2001. It included questions regarding both financial and social policy matters. The information from the survey responses was augmented and verified by site visits to fourteen tribes, and follow-up phone calls. Thirteen tribes, accounting for 78% of the electronic gaming machine capacity and 79% of the bingo capacity, responded to the survey. Estimates for gaming revenue, vendor outlays, payroll outlays and gaming employment were made for non-respondent gaming facilities. For gaming revenue a log-log regression was run using the number of electronic gaming machines and bingo seat capacity as the independent variables, and revenue as the dependent. Data from 24 of the 55 facilities (accounting for 47% of the electronic gaming machine capacity and 47% of the bingo seat capacity) was relied upon, producing an adjusted R-square of over 0.75. A similar process was used to estimate missing vendor outlay and payroll dollars, and casino employment. All three regressions produced adjusted R-squares of 0.74 or higher.

<sup>8</sup> The transfer of cash profits to tribal governments is estimated since the governments, acting as owner-investors, return funds to the enterprises or allow the enterprises to retain earnings for reinvestment purposes, the amount of which varies from year to year according to the prerogatives of the tribes. Here and below, we treat these reinvestment decisions as governmental in nature and therefore allocate all revenues remaining after vendor outlays, payroll, and taxes to be "transfers to the tribe" whether they are in fact transferred or not. In essence, this has the effect of turning our 2000 data into a "hypothetical" year where all cash profits are transferred to the tribal governments who then have the option of using the funds for programs, reinvestment in the gaming operation, or investment elsewhere.

<sup>9</sup> Survey of Oklahoma Indian Nations.

<sup>10</sup> "Petroleum and coal products" includes: petroleum refining; refineries; asphalt paving, mixtures, and blocks; asphalt felts and coatings; lubricating oils and greases; and other petroleum and coal products. The category does not include oil and gas extraction. U.S. Department of Labor, Bureau of Labor Statistics, "Covered Employment and Wages (ES-202) Data Files," [http://www.bls.gov/cew/home.htm], December 2001.

broadcasting sector (\$209 million) and its ambulatory health care sector (\$219 million).<sup>11</sup> Moreover, as we shall see below, since Indian gaming facilities tend to attract economic activity to depressed areas and their profits are spent by tribal governments, the economic development benefit to the state is potentially much larger, dollar for dollar, than it would be with non-Indian, non-governmental businesses.

Indian gaming facilities in Oklahoma vary substantially in size in accord with their market opportunities. They span the range from small travel centers, housing approximately two dozen EGMs, to the 620-machine Creek Nation Tulsa Bingo. Fifteen of the facilities offer off-track betting (OTB). Overall, the eleven smallest facilities have, in total, 384 electronic gaming machines, representing just 4% of the EGM capacity, and 935 bingo seats, representing just 5% of the total bingo seats. In contrast, the eleven largest facilities have approximately 4,137 EGMs, representing 45% of the EGM capacity, and approximately 8,480 bingo seats, representing 47% of the total number of seats bingo seats. In total, the facilities average 165 EGMs and 326 bingo seats. To put the Oklahoma facilities in perspective, neighboring Missouri's casinos hold on average 1,671 electronic gaming machines.<sup>12</sup>

While the various facilities range significantly in size, the total distribution of the enterprises is relatively even with respect to the population of the nations. While the five Oklahoma tribes with the largest capacity represent a relatively large share of the gaming market (e.g., 57% of the EGM capacity), they are also the tribes with the largest tribal membership (75% of the total membership population). This does not mean the distribution is uniformly better than, say, the national average—there are some tribes with disproportionately low shares of capacity. Nonetheless, despite inherent constraints of geography and historical Indian land tenure, Oklahoma Indian gaming is remarkably evenly distributed.

In sum, Oklahoma Indian gaming has been long in development yet recent in maturation. It is a significant industry in Oklahoma, especially in certain regions of the state. Currently, the scope of Indian gaming in Oklahoma is largely Class II, with 15 Class III OTB facilities operating in the state. Indian nations in Oklahoma operate a wide range of facilities—from 17 EGMs up to 620—yet the facilities tend to be much smaller than those in neighboring states. Moreover, while the capacity is heavily concentrated on a tribal basis, the ownership is more evenly distributed among Indian nations in Oklahoma on a population basis than are Indian gaming facilities in the US generally.

### Commentary Overview

It is clear that Indian gaming in Oklahoma is a growing industry with a range of positive social and economic impacts. The next sections delve more deeply into Indian gaming policy and its effect on both the State of Oklahoma and Indian nations in Oklahoma. Section II answers the question: Why *Indian* gaming? Many Americans are under the impression that Indian nations were *given* the right to offer gaming by the

<sup>11</sup> U.S. Bureau of the Census, “1997 Economic Census, Summary Statistics for Oklahoma, 1997 NAICS Basis,” [<http://www.ces.us.gov/epcd/ec97/ok/ok000.htm>], March 27, 2002.

<sup>12</sup> Missouri Gaming Commission, “Annual Report to the General Assembly, Fiscal Year 2001,” [<http://www.mgc.state.mo.us/annual%20reports/2001/annual2001.html>], March 5, 2002.

federal government, but that is not the case. Tribal governments initiated gaming themselves as a means to address severe federal funding shortfalls. Moreover, federal Indian gaming policy is an expression of modern Indian self-determination policy—the only successful federal policy to address Indian social conditions in this century. Section II shows why federal Indian self-determination policy has been successful and why Indian gaming policy is a wholly consistent extension of it.

Section III turns to the question of gaming’s impact on Indian nations in Oklahoma. While American Indians in Oklahoma fare better than their counterparts in other states along some social dimensions, in many respects, American Indians stand on the lower rungs of Oklahoma’s socioeconomic ladder. Since Indian gaming is governmental gaming, it offers the prospect of substantial social reinvestment to address the critical social and economic deficits American Indians have long faced. Section III documents what tribes have done to diversify their economies, educate their people, and otherwise invest gaming revenues in the vitality of their communities. As this report will illustrate, such investments spill over to the local non-Indian communities in positive ways.

Section IV then examines the economic impact of Indian gaming on the State of Oklahoma. A common criticism of gaming asserts that gaming cannibalizes existing businesses and does not generate net new activity. While the view is partly true in that consumers might choose to go to more movies were gaming not an option, the view misses some larger points. Section IV shows how gaming generally, and Indian gaming in Oklahoma in particular, can generate net new regional growth in three ways: i) by retaining Oklahoma residents who might otherwise have gone out of state for gaming entertainment; ii) by attracting out-of-state tourists to Oklahoma, and iii) by increasing the intensity of economic activity within the state.<sup>13</sup>

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<sup>13</sup> Counterintuitively, in the jargon of economics, attracting tourism from out-of-state increases *exports*. In other words gambling entertainment services are “exported” to out-of-state consumers, even though the tourists themselves actually come *into* Oklahoma. Conversely, retaining Oklahoma tourists in state when they would have gone out of state is *import substitution*, as domestic Oklahoma venues substitute for out-of-state departures, for example, *imports* of gaming entertainment services from Las Vegas.

## II. THE GOVERNMENTAL FOUNDATIONS OF OKLAHOMA INDIAN GAMING

The signature feature of the socioeconomic impact of Indian gaming in Oklahoma derives from the status of Oklahoma Indian nations as governments. Clearly, the creation of any new gaming facility has socioeconomic impacts. New jobs may be created; employment at competing enterprises may wane; and the associated income effects may alter the social terrain. But the particular socioeconomic impacts of Indian gaming derive from the fact that it is run by a government and its revenues accrue to that government. Generally, and in contrast to private casino corporations, a vastly larger share of the net income of government-owned gaming enterprises is directed toward public goods such as education, health, infrastructure, and economic diversity. Thus, while corporations may be essential engines for healthy societies, governments are particularly specialized to invest directly in socioeconomic recovery across a broad spectrum of indicators of socioeconomic health. Such investment is particularly important where the governments in question preside over some of the most persistent poverty in the United States—the poverty of American Indians.

The tribal sovereignty that underlies Indian gaming’s governmental nature must be understood in its relationship to American history, law, and regulatory policy. This section outlines the essential underpinnings of tribal sovereignty<sup>14</sup> and then turns to analysis of how tribal interests in self-governing authority have been balanced against the interests of other governments in the US federal system. In Oklahoma, the framework for balancing these competing interests has resulted in Indian gaming ventures that are different from those of most other US tribes. Specifically, Oklahoma Indian nations are restricted to a scope of games—bingo, pull-tabs, and related games—that are generally less attractive to customers and thus less lucrative. As a result, Oklahoma Indian nations have more modest resources to invest in socioeconomic recovery.

### Tribal Governments Preside Over Self-Determined Societies

American Indian tribal governments occupy a unique political and historical position in American government. The US Constitution institutionalized the “government-to-government” relationship between the federal government and the Indian nations, thus establishing a relationship distinct from that between the federal government and the states or foreign nations. The Constitution was drafted so that the federal government would have exclusive responsibility for Indian affairs.<sup>15</sup> Congress was authorized to “regulate commerce with the Indian Tribes,”<sup>16</sup> while the President was

<sup>14</sup> Interested readers should turn for further enunciation of the principles of Indian sovereignty to American Indian Resources Institute, *Indian Tribes as Sovereign Governments* (Oakland, CA: AIRI Press, 1988); William C. Canby, Jr., *American Indian Law in a Nutshell*, 3<sup>rd</sup> ed. (1998; reprint, St. Paul, MN: West Publishing Company, 2002); and Rennard Strickland, *Felix S. Cohen's Handbook of American Indian Law* (Charlottesville, VA: Mitchie Bobbs-Merrill, 1982).

<sup>15</sup> William C. Canby, *American Indian Law*, 10-32

<sup>16</sup> U.S. Constitution, art. I, sec. 8, cl3.

empowered to make treaties, with the consent of the Senate.<sup>17</sup> This recognition of tribes as sovereigns in the writing of the Constitution and in subsequent legal precedents stems from the inherent powers of self-governing societies that pre-date the United States. Notwithstanding centuries' worth of adjustments to those inherent powers, today tribal governments retain substantial powers to govern.

Moreover, these powers of self-government are not simply the legacy of legal precedent, but rather they are a dynamic, vigorous, and vital part of tribal and Congressional policy making today. Historically, federal Indian policy has fluctuated between efforts to assimilate Indians and break up tribal communities, on the one hand, and policies of federal protection of tribal cultures and support for governments, on the other.<sup>18</sup> These divergent and often conflicting policy approaches have had at least one general feature in common: all of them failed to adequately address the crushing poverty and bleak social conditions on most Indian lands.

Grass-roots initiatives for Indian self-government have been germinating at the tribal level since World War II, and with burgeoning effectiveness and prominence since the mid 1970s. These efforts have had concrete positive consequences for tribal development. Field-based research demonstrates that the effective exercise of tribal sovereignty, supported by capable institutions of self-government, contribute critically to Indian socioeconomic recovery.<sup>19</sup> That research has also shown that tribes that have displaced outside decision-makers tend to perform better in the marketplace, operate more efficiently, and undertake more innovation.<sup>20</sup> In the face of this evidence, policy makers, researchers, and tribal leaders often argue that self-determination is the *only*

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<sup>17</sup> U.S. Constitution, art. II, sec. 2, c12.

<sup>18</sup> For a full treatment of federal Indian policy history, see e.g., Stephen Cornell, *Return of the Native: American Indian Political Resurgence* (New York, NY: Oxford University Press, 1998); Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven, CT: Yale University Press, 1987); David E. Wilkins, *American Indian Politics and the American Political System* (Lanham, MD, MDRowman & Littlefield Publishers, Inc., 2002); Francis P. Prucha, *The Great Father: the United States Government and the American Indians* (Lincoln, NE: University of Nebraska Press, 1995).

<sup>19</sup> Results of Harvard Project research are published widely. See, e.g., Stephen Cornell, and Joseph P. Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations," in *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, Cornell and Kalt, eds. (Los Angeles, CA: American Indian Studies Program, University of California, 1992); and in Stephen Cornell, and Joseph P. Kalt, "Sovereignty and Nation-Building: The Development Challenge in Indian Country Today," *American Indian Culture and Research Journal* 22, number 3 (1998): 187-214.

<sup>20</sup> See, e.g., see Matthew B. Krepps, and Richard E. Caves, "Bureaucrats and Indians: Principal-Agent Relations and Efficient Management of Tribal Forest Resources," *Journal of Economic Behavior and Organization* 24, number 2 (1994): 133-151; and Mim Dixon, Yvette Roubideaux, Brett Shelton, Cynthia Mala, and David Mather, *Tribal Perspectives on Indian Self-Determination and Self-Governance in Health Care Management* (Denver, CO: National Indian Health Board, 1998).

approach in a century-and-a-half of experimentation that has brought hope to reservations mired in poverty.<sup>21</sup>

Moreover, at least since the mid-1970s Congress has passed a substantial number of significant acts that recognize and support the tribes' own efforts to govern themselves more effectively. The legislation includes acts that grant power to tribes to administer and manage federal programs designed for Indian benefit much as states might do—either as contractors to the federal government or as block-grantees<sup>22</sup> and numerous others that support tribally directed approaches to development.<sup>23</sup> Taken together, these acts comprise the 'Self-Determination Era' of federal policy that eschews paternalism toward Indians and the termination of tribes in favor of supporting devolution of self-governing powers to the tribal level.

Indian gaming is part-and-parcel of the self-determination drive by tribal governments. Contrary to popular conceptions that IGRA somehow “gave” Indians the right to offer gaming, Indian gaming was initiated by tribal governments as a vehicle to address socioeconomic need, not in response to a federal legislative mandate. The Seminole Tribe of Florida opened the first high-stakes bingo operation in 1979, and by the time IGRA passed in 1988, Indian gaming was at least a \$100 million business.<sup>24</sup> Thus, while tribal gaming emerged during the period of federal Indian self-determination policy, it is important to note that it was the result of tribal action consistent with, but not a product of, that federal policy.

### **Balancing State, Federal, and Tribal Interests in Gaming**

Of course, tribes do not possess these rights of self-government in isolation—they coexist with states and the federal government, both of which have stated interests in minimizing the potential risks of gambling, e.g., infiltration by organized crime. In addition, since gambling policy has historically been left to state government policy makers, states were naturally interested in linking tribal government gaming rights to their own. Thus, as tribes began to innovate in the gaming industry, it became quickly apparent that a balancing was needed between competing tribal, state, and federal interests. Not surprisingly, this balancing first appeared in the context of litigation.

*Seminole Tribe of Florida v. Butterworth* (1983) first addressed the tension between tribal and state regulatory authority over tribal gaming facilities.<sup>25</sup> The

<sup>21</sup> Joseph P. Kalt, *Economic Development in Indian Country*, Statement to the U.S. Senate Committee on Indian Affairs, Hearing of September 17, 1996.

<sup>22</sup> *The Indian Self-Determination and Educational Assistance Act of 1975*, U.S. Code, vol. 25, sec. 450a(c); *Native American Housing Assistance and Self-Determination Act of 1996*, U.S. Code, vol. 25, sec. 4101.

<sup>23</sup> See, e.g., *Indian Health Care Improvement Act of 1976*, U.S. Code, vol. 25, sec. 1601; *Indian Financing Act of 1974*, U.S. Code, vol. 25, sec. 1451; the *Indian Gaming Regulatory Act*, U.S. Code, vol. 25, sec. 2701.

<sup>24</sup> U.S. Senate Committee on Indian Affairs, *Report together with Additional Views*, 100<sup>th</sup> Cong., 2d sess (1988), S. Report 446: 2.

<sup>25</sup> *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 3110 (5<sup>th</sup> Cir. 1982), cert. Denied 1982.

aforementioned Seminole Tribe's bingo hall offered jackpots in excess of the State of Florida's limit of \$100. After Florida attempted to impose its regulatory statutes on the Tribe, the Tribe sued the State, arguing that the relevant statute was regulatory in nature and that the federal government had never transferred civil/regulatory jurisdiction over the Tribe to the State of Florida. The court concluded that the Florida bingo statute was "civil/regulatory" rather than "criminal/prohibitory,"<sup>26</sup> and thus found that the Seminole Indian Tribe was not subject to the State's statute and could not be prosecuted for violating the limitations imposed by it.<sup>27</sup>

The issue of tribal and state regulatory jurisdiction came under scrutiny repeatedly after *Butterworth* but most prominently in *California v. Cabazon Band of Mission Indians* (1987).<sup>28</sup> The Cabazon Band of Mission Indians began offering bingo and card games on their reservation in the early 1980s, and the State of California and Riverside County attempted to enforce state and local regulations against the Tribe's enterprises. The ensuing litigation culminated in the US Supreme Court deciding that since bingo and card games were permitted in California in some form and were merely regulated by the State, these games were subject to civil/regulatory jurisdiction and were thus subject only to tribal regulations, not State regulations.<sup>29</sup> The tribal and federal interest in upholding tribal self-determination was demonstrated, as *Cabazon* appropriately emphasized the federal government's interest in Indian self-government, including the goal of encouraging tribal self-sufficiency and economic development.<sup>30</sup>

The *Cabazon* decision confirmed tribal regulatory authority over gambling on Indian lands. As a result, many states were concerned about what they perceived to be a loss of jurisdiction with regard to gaming within state borders. Congress responded to widespread state concerns by drafting and passing the Indian Gaming Regulatory Act (IGRA) in 1988. IGRA balanced the interests of tribal and state governments in a number of ways.

### *Classification of Games*

The balance struck in IGRA begins with the classification of gaming activity into three classes, each regulated by different combinations of governments. These classes can be summarized as follows:

<sup>26</sup> For further discussion of "criminal/prohibitory" versus "civil/regulatory" matters as they pertain to Indian Country, see *Bryan v. Itasca County*, 426 U.S. 373 (1976) which established that through Public Law 280 the former was granted to some states and the latter retained by the tribes.

<sup>27</sup> *Seminole Tribe*, 658 F.2d 3110 (5<sup>th</sup> Cir 1982) Cert. Denied 1982.

<sup>28</sup> *California v. Cabazon Band of Mission Indians*, 783 F.2d 900 (1986).

<sup>29</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987): 211; see also Kathryn R.L. Rand, and Steven A. Light, "Do 'Fish and Chips' Mix? The Politics of Indian Gaming in Wisconsin," *Gaming Law Review* 2 (1998): 129, 131.

<sup>30</sup> Justice White wrote, "The inquiry [into the competing interests of states and tribes] is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

- **Class I** gaming means social games or traditional forms of Indian gaming;
- **Class II** gaming means (i) bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)...including (if played in the same location ...pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and (ii) card games that are explicitly authorized by the laws of the State, or are not explicitly prohibited by the laws of the State and are played at any location in the State...; and
- **Class III** gaming means all forms of gaming that are not Class I gaming or Class II gaming,<sup>31</sup>

Notwithstanding Congress's attempt to strike a balance, the ambiguous demarcation of game classes, particularly the definition of Class III games only in the negative, resulted in further litigation by states and tribes. Not surprisingly, the definition of Class I gaming has remained constant; however the Class II and Class III definitions have been the subject of much debate and litigation. One significant issue rests on the definition of technologic aids for Class II gaming. Congress provided that "technologic aids" to the play of Class II were allowable as Class II and thus would not require state oversight. In particular, Congress made clear that it intended for tribes to "have maximum flexibility to utilize games such as bingo...for tribal economic development."<sup>32</sup> Indeed, the Senate Committee Report detailing IGRA's Class II definition states that, "the Committee specifically rejects any inference that tribes should restrict class II games to existing games sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the [IGRA] language regarding technology is designed to provide maximum flexibility."<sup>33</sup> As many might have predicted, market participants have responded with greater and greater sophistication of Class II games, and as a result, the United States and the tribes have been engaged in extensive litigation over the classification of gaming machines, with tribes and gaming machine vendors winning several important recent cases.<sup>34</sup>

Thus, while IGRA did attempt to balance interests by classifying games, the practical difficulty of drawing bright lines of demarcation between games has resulted in continuing 'balancing' via litigation. Nonetheless, as the next sections demonstrate, even with legal uncertainty about what games Oklahoma Indian nations could or could not offer and the more important constraint of not offering Class III games, Oklahoma Indian

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<sup>31</sup> *U.S. Code*, vol. 25, sec. 2703.

<sup>32</sup> U.S. Senate Committee on Indian Affairs, *Report together with Additional Views*, 9.

<sup>33</sup> *Ibid.*

<sup>34</sup> See, e.g., *Diamond Game Enterprises v. Reno*, 230 F.3d 365 (D.C. Cir. 2000); *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713 (10<sup>th</sup> Cir. 2000); *United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091 (9<sup>th</sup> Cir. 2000); *United States v. Santee Sioux Tribe*, 174 F. Supp. 2d 1001 (D. Neb. 2001).



nations have been able to make substantial investments in socioeconomic recovery with proceeds from their gaming enterprises.

*Indian Gaming Regulation*

The second area of interest IGRA attempted to balance concerned the division of labor between governments with regard to the regulation of games. Under IGRA, Class I games are to be wholly tribally controlled. That is, traditional games were to be considered entirely the purview of tribal self-governance, consistent with respect for indigenous culture and with the low stated need for regulatory oversight by other governments. Class II games, in part, because they were seen as less lucrative and, therefore, less attractive for manipulation than Class III games, were to be primarily regulated by the tribal governments with regulatory oversight from the federal government through the National Indian Gaming Commission (NIGC). And Class III games were to be regulated according to the terms of a compact between the tribes and states, thus allowing states the option of sharing regulatory jurisdiction with tribes over casino-style gaming within their borders (see Figure 2). Thus, casino-style games are subject to tribal regulation, a negotiated level of state regulation,<sup>35</sup> and federal oversight, in Congress’s recognition of state concerns for matters such as organized crime, adequate regulation, and reimbursement for regulatory costs.

**Figure 2**  
**Governmental Participation in the Regulation of Tribal Gaming**

Gaming Class	Government		
	Tribal	Federal	State
I	✓		
II	✓	✓	
III	✓	✓	✓

Source: 25 USC § 2701 *et seq.*

By this arrangement Congress intended to “balance the need for sound enforcement of gaming laws and regulations with the strong federal interest in preserving the sovereign rights of tribal governments to regulate activities and enforce laws on Indian land.”<sup>36</sup>

<sup>35</sup> Note that at least one state, Michigan, has no role in the regulation of Indian gaming under its compact with the tribes. The compact calls for the tribes to post notices to that effect in their casinos. U.S. General Accounting Office, *Casino Gaming Regulation: Roles of Five States and the National Indian Gaming Commission* (Washington, DC: GAO, May 1998), 42-43.

<sup>36</sup> U.S. Senate Committee on Indian Affairs, *Report together with Additional Views*, 5

As mentioned above, the National Indian Gaming Commission (NIGC) was created under IGRA to serve as the federal regulatory oversight agency for Indian gaming. The NIGC is an independent federal commission housed within the Department of the Interior. The NIGC is an essential component of the regulation of Indian gaming and is involved in all the phases of development of an Indian gaming operation as well as directly charged with monitoring Class II gaming, which is the principal class of Indian gaming at issue in this study.<sup>37</sup> IGRA spells out a number of regulatory requirements that must be met before Class II or Class III gaming can proceed. First, the NIGC must review and approve all tribal gaming ordinances. The NIGC also reviews all contracts with outside management companies. This review includes the use of field investigators to conduct background investigations on individuals and entities with management responsibility or related financial interest for a tribal facility. After the gaming venue is operational, the NIGC has a number of important roles. IGRA requires that the tribe properly license all “key employees” and primary management officials of a gaming operation. All gaming tribes submit fingerprint cards on key employees along with employee applications, investigative reports, and suitability determinations. The NIGC reviews this information and acts as a channeling agency on behalf of the tribes to process fingerprint cards through the FBI.

The NIGC is specifically authorized to monitor Class II gaming by inspecting and examining gaming premises and auditing Class II records. The NIGC also has the broad authority to determine whether a tribal gaming operation is complying with all provisions of IGRA, all NIGC regulations, and all tribal regulations. With this regulatory authority comes broad enforcement authority. If the NIGC determines that IGRA, NIGC regulations, or tribal regulations are violated, it may issue notices of violation, closure orders, and civil fines up to \$25,000 per day, per violation, as can each gaming commission.<sup>38</sup>

Since tribal gaming is governmental gaming, tribal governments are its primary regulators. Regulating the tribal gaming industry is a costly undertaking but a necessary part of the business. While specific numbers for the tribes within this study were unavailable, research conducted by the National Indian Gaming Association (NIGA) of their members’ resources dedicated to tribal gaming regulation reveals that nationally tribal governments spend at least \$164 million per year on tribal gaming regulation. In addition to funding their own tribal gaming commissions and enforcing tribal gaming ordinances, NIGA found that tribal governments collectively give \$40 million to states and another \$8 million to the National Indian Gaming Commission in order to support regulation efforts. Tribes also train and employ more than 2,800 commissioners and regulators nationally.<sup>39</sup> In total, this regulatory arrangement that combines tribal, federal,

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<sup>37</sup> *U.S. Code*, vol. 25, sec. 2706 (b) (1).

<sup>38</sup> Penny J. Coleman, “*Testimony before the National Gambling Impact Study Commission, July 30, 1998*,” [<http://govinfo.library.unt.edu/ngisc/meetings/jul3098/p160730.html>], May 26, 2003.

<sup>39</sup> From a survey of gaming tribes with a response rate of 78%. National Indian Gaming Association, *Indian Gaming Regulation: Tribal, State and Federal Payments* (Washington, DC: NIGA, April 2002).

and (in the case of Class III), possible state regulation has successfully protected Indian gaming from systematic infiltration by organized crime.<sup>40</sup>

### *Compacting*

Finally, IGRA requires states and tribes to negotiate agreements, called compacts, before a tribe may offer Class III gaming on Indian lands. A tribal-state compact is meant to address two specific issues: (1) the scope of gaming allowed in the state; and, (2) the terms of regulation of gaming activities.<sup>41</sup> In Oklahoma, the Governor is authorized to negotiate and enter into cooperative agreements on behalf of the state with federally recognized tribal governments to address issues of mutual interest.<sup>42</sup> In addition to the Governor's role, the Joint Committee on State and Tribal Relations represents the legislative branch of Oklahoma's state government during the compacting process.<sup>43</sup> Approved agreements or compacts are then made official by the Office of Oklahoma's Secretary of State.

Since the enactment of IGRA, 15 of Oklahoma's federally recognized tribal governments have entered into off-track, pari-mutuel Simulcast Horse Wagering Compacts with the State of Oklahoma. Currently, ten tribes in Oklahoma offer off-track betting—a Class III activity—in 15 facilities. These compacts represent the successful exercise of tribal and state sovereignty as tribal governments and the State of Oklahoma work together on issues of common interest.<sup>44</sup>

In sum, federal regulation of Indian gaming was a response to Indian nations' self-determined attempts to address their respective socioeconomic needs. Due to the enactment of IGRA, Indian gaming today takes place within a legal framework imposed by the federal government, a framework that attempts to balance the competing interests of the various jurisdictions that might be impacted by its existence, namely Indian nations and their adjoining neighbors, the individual states. The operations of these twenty-four

<sup>40</sup> Bruce G. Ohr, "Statement of Bruce G. Ohr Chief, Organized Crime and Racketeering Section Criminal Division, Department of Justice, Presented to the Senate Committee on Indian Affairs Oversight Hearing on the Indian Gaming Regulatory Act, Wednesday, July 25, 2001," [<http://www.usdoj.gov/otj/statementbrucegohr.htm>], May 26, 2003.

<sup>41</sup> Tribes retain a federal right to offer forms of gambling already permitted in the state. Therefore, a compact is not a document "giving" tribal governments the right to have gambling. Rather, a tribe-state compact governs the conduct of gaming activities that tribal governments can legally offer. *U.S. Code*, vol. 25 sec. 2710 (3) (A)

<sup>42</sup> *Oklahoma Statutes*, sec. 74-1221c.

<sup>43</sup> This Committee was created by statute in 1988. Oklahoma Indian Affairs Commission, "State and Tribal Relations in Oklahoma," [<http://www.oiac.state.ok.us/s-trelations.html>], March 27, 2002.

<sup>44</sup> Oklahoma Indian Affairs Commission, "Compacts, Contracts, and Agreements," [<http://www.oiac.state.ok.us/cca.html>], March 27, 2002. In addition to the gaming compacts, the State of Oklahoma and numerous tribal governments have a multitude of intergovernmental agreements covering motor fuel taxation, police cross-deputization, tobacco taxation, and other policies of mutual concern

tribal nations are no exception. This “balance” influences the character of their gaming operations and, hence, their power to precipitate socioeconomic change.

### III. WHAT INDIAN GAMING MEANS FOR INDIAN NATIONS IN OKLAHOMA

Assessing the social impacts of Indian gaming entails a combination of methodologies and strategies, some of which may be difficult to implement.<sup>45</sup> Unfortunately, the bulk of gaming impact analysis to date has weighed estimates of assumed social costs against the estimated economic benefits of gaming.<sup>46</sup> This approach, however, often results in a serious methodological oversight in that it fails to measure Indian gaming's particular social *benefits*. Since citizens of Indian nations are more likely to undertake gaming from a relatively disadvantaged social position vis-à-vis non-Indians, gaming can bring benefits to Indian nations that are more pronounced than they would be in a less disadvantaged context. In addition, Indian gaming generates numerous intangible benefits – providing hope or security to a disadvantaged community – that often escape analysis because they are difficult to measure quantitatively.

The evidence from Indian nations in Oklahoma indicates that tribal governments are making substantial socioeconomic investments. The Seneca-Cayuga Bingo facility, for example, is providing first-time employment opportunities to formerly discouraged, underemployed, and unemployed tribal citizens, and its employees' children are now cared for at the new tribally owned and operated daycare center. Many Cherokee and Choctaw citizens are learning their history and language for the first time through gaming-sponsored educational programs. Miami tribal members can read their own history in a tribally owned library and archive which houses over 16,200 documents and connects six other tribal libraries to a shared catalog. Members of the Citizen Potawatomi Nation can now afford to attend powwows and events hosted by other Potawatomi tribes in the Midwest, strengthening family ties that were weakened by federal removal policy.

The list of social investments by tribal governments is extensive and spans virtually all areas of community life. And while the effects of these investments are hard to measure in many instances, the breadth and depth of the investment activity are indicative of substantial efforts toward socioeconomic recovery. This section reviews the most recently available evidence on the socioeconomic status of American Indians in Oklahoma in comparison to non-Indians in Oklahoma and documents many of the activities tribal governments have undertaken to improve the lives of Oklahoma's tribal citizens.

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<sup>45</sup> Certain critically relevant social impacts cannot be captured by standard economic models or in the analysis of census data alone. Rather, social impacts are likely to be best captured by a combination of methods, including econometric analysis of socioeconomic indicators, ethnographic fieldwork, and interviews. The title of the recent U.S. General Accounting Office review of the National Gambling Impact Study Commission says it best: "Economic Effects [are] More Measurable Than Social Effects." U.S. General Accounting Office, *Report to the Honorable Frank R. Wolf, House of Representatives, Impact of Gambling: Economic Effects More Measurable Than Social Effects* (Washington, DC: GAO, April 2000).

<sup>46</sup> See e.g. Deloitte & Touche LLP, *Economic Impacts of Casino Gaming on the State of Michigan* (n.p.: Deloitte & Touche LLP, n.d.)

## The Socioeconomic Status of Oklahoma's Indian Population

Currently, 39 American Indian tribes are located within the State of Oklahoma—38 of which are federally recognized.<sup>47</sup> According to recent enrollment figures, the federally recognized tribes have a combined enrollment of 591,437 citizens.<sup>48</sup> Moreover, considering that 273,230 American Indians reside within the state, American Indians represent nearly 8% of the state's population.<sup>49</sup> Oklahoma was originally inhabited by only a handful of tribes.<sup>50</sup> The majority of Oklahoma's current Indian tribes were removed to the state (once called "Indian Territory") during the federal removal policies that began in the 1830s.<sup>51</sup> According to one scholar, "generalizing about the coming of the Indian(s) to Oklahoma is not easy. Tribes came at different times and for different purposes. Divisions of the same tribe were often split by migration...Most Oklahoma Indians opposed coming to the state...The present Indian nature of the state is the result not of aboriginal Indian choice but of [federal] policy."<sup>52</sup>

The legacy of past federal policies (removal policies and others) has been a litany of socioeconomic ills. American Indians in Oklahoma suffer substantially higher rates of social maladies and health problems. For example, the causes of death for American Indians in Oklahoma are more highly concentrated in categories associated with poverty. Diabetes mellitus is a preventable form of diabetes whose onset is associated with dietary dependence on fatty commodity foods provided in federal assistance programs. This form of diabetes has reached epidemic proportions among Indians, and unfortunately represents both a symptom and a cause of socioeconomic decline for the individuals who suffer from it. Poverty contributes to its onset through bad diet and inactivity, and then patients who suffer from it may become further weakened through associated amputations, blindness, kidney failure, heart disease,<sup>53</sup> and tuberculosis. Making matters

<sup>47</sup> Oklahoma Indian Affairs Commission, "Oklahoma Tribal Facts and Figures," [<http://www.oiac.state.ok.us/factfigures.html>], March 27, 2002.

<sup>48</sup> This figure represents 37 of Oklahoma's federally recognized tribes. There were no enrollment figures available for the Shawnee Tribe or the Yucki (Euchee Tribe), which has filed for federal recognition. (Of course, there are other American Indians who live in Oklahoma who belong to tribes located in other states, and many of those enrolled in Oklahoma tribes do not live in the state.) Oklahoma Indian Affairs Commission, *Oklahoma Tribal Enrollment*, [<http://www.oiac.state.ok.us/enroll.html>], March 27, 2002.

<sup>49</sup> US Bureau of Census, "Census 2000 Summary File 1 (SF 1) 100-Percent Data," [[http://factfinder.census.gov/servlet/QTTable?ds\\_name=DEC\\_2000\\_SF1\\_U&geo\\_id=04000US40&qr\\_name=DEC\\_2000\\_SF1\\_U\\_DP1](http://factfinder.census.gov/servlet/QTTable?ds_name=DEC_2000_SF1_U&geo_id=04000US40&qr_name=DEC_2000_SF1_U_DP1)], March 27, 2002.

<sup>50</sup> See, e.g., Rennard Strickland, *The Indians in Oklahoma* (Norman, OK: University of Oklahoma Press, 1980).

<sup>51</sup> Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (Norman, OK: University of Oklahoma Press, 1972); Angie Debo, *And Still the Waters Run* (Princeton, NJ: Princeton University Press, 1973).

<sup>52</sup> Strickland, *Indians in Oklahoma*, 2-3.

<sup>53</sup> While heart disease among American Indians has not been as pronounced as it has been for non-Indians, heart attacks are becoming among the most common complications of diabetes in American

worse, the cost of diabetes treatment per patient is almost four times the average cost of other health care and more than six times the average per capita expenditure of the Indian Health Service.<sup>54</sup> American Indians in Oklahoma are also more likely to die from liver disease and motor vehicle accidents, causes of death that are associated with the abuse of alcohol; American Indians in Oklahoma are more likely to receive federal and state aid and more likely to have experienced substance abuse and domestic violence.<sup>55</sup>

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Indian communities. U.S. Department of Health and Human Services, Indian Health Service, National Diabetes Program, *Interim Report to Congress: Special Diabetes Program for Indians* (Albuquerque, NM: IHS, January 2000), 55.

<sup>54</sup> Ibid., 10, 14, 15, 52, 54.

<sup>55</sup> These and other socioeconomic status indicators can be found in: Oklahoma State Department of Health, Center for Health Statistics Health Promotion and Policy Analysis, *Oklahoma Health Statistics 1998* (Oklahoma City, OK: Oklahoma State Department of Health, n.d.); GeoLytics, *CensusCD 2000, Short Form Blocks* (Brunswick, NJ: GeoLytics Inc., Jan. 7, 2002); Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 19: Food Stamp/EBT Program, Monthly Average by County and Race/Ethnicity, FY 2000," [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t19.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t19.htm)], February 14, 2002; Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 27: State Supplemental -- Aid to the Blind, Monthly Average by County and Race/Ethnicity, FY 2000", [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t27.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t27.htm)], February 28, 2002; Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 28: State Supplemental -- Aid to the Disabled, Monthly Average by County and Race/Ethnicity, FY 2000," [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t28.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t28.htm)], February 28, 2002; Oklahoma State Department of Health, "Tuberculosis Trends in Oklahoma 1996-2000," [<http://www.health.state.ok.us/program/tb/trends.html>], February 5, 2002; Oklahoma Department of Mental Health and Substance Abuse Services, *Fiscal Year 2000 Data Book, Section One: Admitted Clients Served by Contract Source, Table 1. Statewide Total Counts of Admitted Clients Served* (Oklahoma City, OK: Oklahoma Department of Mental Health and Substance Abuse, n.d.); Oklahoma Department of Corrections, *Facts at a Glance: A Monthly Snapshot of the Department's Population, Programs, Inmate Demographics and More, December 21, 2001* (Oklahoma City, Oklahoma: Oklahoma Department of Corrections, n.d.); Oklahoma Institute for Child Advocacy, Oklahoma KIDS COUNT Partnership, *2001 Oklahoma KIDS COUNT Factbook* (Oklahoma City, OK: Oklahoma Institute for Child Advocacy Inc., 2001); Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 35: TANF Persons, Monthly Average by County and Race/Ethnicity, FY 2000," [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t35.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t35.htm)], February 14, 2002; Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 36: TANF Persons, Monthly Average by Age and Sex, FY 2000," [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t36.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t36.htm)], February 14, 2002; Kenneth Kickham, Robert Bentley, Nury Effendi, and Angela Harden, "Health and Well-Being in Oklahoma: A Long-Term Analysis of Welfare Reform May 2000," [<http://www.okdhs.org/ioppr/research%5Fstudies/tanf%5Fmay2000.htm>], March 27, 2002; Oklahoma Department of Human Services, "Facts and Figures, FY2000 Annual Report, Table 21: Foster Care Children, Monthly Average by County and Age, FY 2000," [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t21.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t21.htm)], February 14, 2002; Oklahoma Department of Human Services, *Facts and Figures, FY2000 Annual Report, Table 22: Foster Care Children, Monthly Average by County and Race/Ethnicity, FY 2000*, [[http://www.okdhs.org/ifinance/Annual\\_Report/FY00/t22.htm](http://www.okdhs.org/ifinance/Annual_Report/FY00/t22.htm)], February 14, 2002.

These socioeconomic statistics are not simply a snapshot of current problems facing American Indians in Oklahoma. Many of today's challenges will create problems in the future as American Indian children are exposed to a host of risks that burden their social, mental, and physical development. Babies born to diabetic mothers, for example, are at risk for serious birth defects.<sup>56</sup> Because the American Indian youth population is a larger proportion of the total, they are more likely to be raised by younger single mothers, more likely to receive federal assistance (TANF), and more likely to suffer from abuse and neglect than in the non-Indian population. Not surprisingly, American Indian children are more likely to drop out of high school.<sup>57</sup>

These burdens on children create further problems for American Indian communities in the future. Children born to teen mothers, for example, are more likely to have lifelong developmental problems, more likely to have problems in school, more likely to suffer from abuse and neglect, and more likely to have children as teens. Children not graduating from high school are more likely to suffer poverty, low earning ability, and financial dependence. Similarly, high school dropouts are more likely to have children who drop out.<sup>58</sup>

Thus, American Indians residing in the State of Oklahoma not only fare more poorly along these dimensions, but the gap between their socioeconomic status and that of other Oklahoma residents is likely to grow. Because these interrelated social and health problems require multiple solutions, it can take generations to show improvement. Indeed, while contemporary American Indians in Oklahoma are suffering disproportionately along multiple dimensions, the gap may well continue to grow if programs continue to be underfunded by the federal government. With regard to health care, for example, expenditures on American Indian care by the Indian Health Service (IHS) are 36% of national averages for personal health care.<sup>59</sup> In addition, Oklahoma IHS units are funded at a per capita level 15% *below* the national Indian health funding level.<sup>60</sup>

Federal underfunding extends to non-health domains of Indian socioeconomic recovery as well. The Bureau of Indian Affairs (BIA) estimates current funding meets only one-third of identified need.<sup>61</sup> In addition, a third-party analysis of the BIA finds

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<sup>56</sup> IHS National Diabetes Program, *Interim Report to Congress*, 61.

<sup>57</sup> See note 55.

<sup>58</sup> Oklahoma Institute for Child Advocacy, Oklahoma KIDS COUNT Partnership, *2001 Oklahoma KIDS COUNT Factbook* (Oklahoma City, OK: Oklahoma Institute for Child Advocacy Inc., 2001), 20, 23.

<sup>59</sup> U.S. Department of Health and Human Services, Indian Health Service, "Level of Need Funded (LNF) Study, November 1999," [<http://www.ihs.gov/nonmedicalprograms/Inf/dld%5Ffiles/sglInf.ppt>], May 26, 2003, 10.

<sup>60</sup> U.S. Department of Health and Human Services, Indian Health Service, "FY 2003 IHCIF –Area Summary," [<http://www.ihs.gov/nonmedicalprograms/Inf/2003/AreaAllowanceSummary.pdf>], May 26, 2003.

<sup>61</sup> Department of the Interior, Bureau of Indian Affairs, *Report on Tribal Priority Allocations* (Washington, D.C.: Department of the Interior, July 1999), 58.



that in addition to structural and managerial problems, the BIA suffers from inadequate personnel and resources.<sup>62</sup> Finally, federal government spending in Indian Country is in relative stasis, if not declining in real per capita terms.<sup>63</sup> One estimate of this “unmet need” is \$700 million nationally,<sup>64</sup> yet the figure only measures the difference in *annual* spending and not the amount needed to bring the quality of life in tribal communities up to par with that in US communities. Given the decades of sustained relative under-spending in Indian Country, the *stock* of such problems is that even the parity in the annual *flow* of resources could not reasonably address them.

### Resources for Social Investment

Because federal resources are historically inadequate to even address, let alone reverse, this trend toward declining health and social welfare, tribal governments are using gaming revenues to address these issues for themselves. Against this backdrop of poor social health, Indian gaming has provided an engine for economic growth for many Indian nations in Oklahoma that has enabled a number of tribes to achieve dramatic improvement in a number of social services, including health care services provision. In addition, tribal investment of gaming revenues is being targeted to improving social infrastructure like education and law enforcement that benefits tribal members and local communities alike.

Federal law mandates that tribal governments invest gaming profits in ways that improve tribal welfare. Section 11 of the Indian Gaming Regulatory Act (IGRA) requires that net revenues from “any tribal gaming” be used for five primary purposes, each related to bettering the socioeconomic conditions of Indian communities.<sup>65</sup> Consistent

<sup>62</sup> “During FY 1996 federal downsizing, Congress, angry at what it saw as widespread incompetence, cut BIA’s appropriation far more than it did for most agencies. The resulting loss of staff further constrained BIA’s operations by eroding its administrative capability.” National Academy of Public Administration, *A Study of Management and Administration: The Bureau of Indian Affairs* (Washington, D.C.: NAPA, August 1999), 12. “In conducting this study, the Academy panel and study team became aware that the Bureau does not have the capacity to perform basic federal functions of accounting, property management, human resources management, procurement, and information resource management efficiently and effectively, let alone to produce program analyses, to generate alternatives and facilitate reasoned choices among alternatives, and to link plans to outputs and outcomes.” *Ibid.*, 77.

<sup>63</sup> The Congressional Research Service notes that, “Indian-related spending, corrected for inflation, has been going down in most areas during the FY 1975-FY 2000 period,” and that inflation-adjusted spending per capita in Indian Country has been falling since 1979 such that after 1985, Indian spending per capita was less than non-defense federal spending per capita. Roger Walke, Specialist in American Indian Policy, Domestic Social Policy Division, Congressional Research Service, “Memorandum to Senate Committee on Indian Affairs, attn: Paul Moorehead, March 2, 1999,” [[www.indian.senate.gov/106brfs/crs1.htm](http://www.indian.senate.gov/106brfs/crs1.htm)], March 27, 2002.

<sup>64</sup> Tribal Workgroup on Tribal Needs Assessments related to Bureau of Indian Affairs Tribal Priority Allocations (TPA), *Final Tribal Report, Empowerment of Tribal Governments*, (n.p.: May 1999), 4-5.

<sup>65</sup> Under IGRA, Indian governments must spend net gaming revenue to: fund tribal government operations or programs; provide for the general welfare of the Indian tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies. *U.S. Code*, vol. 25, sec. 2710. It should be noted that IGRA in and of itself did

with IGRA's requirements, Indian nations in Oklahoma are investing gaming revenues in a variety of tribal programs (health, law enforcement, and education, to name a few) and in economic development activities (i.e., diversification). Indeed, Oklahoma's Indian nations are using gaming revenues to fund social programs that have never been properly funded by the federal government.<sup>66</sup>

Thus, revenues from Indian gaming operations are an important supplement to most tribal budgets. As recognized by the legislative history of IGRA, gaming revenue can often mean the difference between "an adequate [tribal] governmental program and a skeletal program that is totally dependent on federal funding."<sup>67</sup> Even before IGRA was passed, the federal government found that "bingo revenues have enabled tribes, like lotteries and other games have done for State and local governments, to provide a wider range of government services to tribal citizens and reservation residents than would otherwise have been possible."<sup>68</sup>

For many tribes in Oklahoma, gaming revenues represent a significant portion of the tribal government's budget. The Seneca-Cayuga Tribe uses gaming revenues to purchase school clothes and athletic shoes for the kids, sponsor education programs, and provide upkeep for the tribe's ceremonial grounds.<sup>69</sup> The Muscogee (Creek) Nation invests in a higher education fund, culture and language preservation, vocational education, and a Head Start program.<sup>70</sup>

Gaming revenues not only provide much-needed capital for tribal programs; they also allow tribes to leverage additional monies through the attraction of matching funds for many federal programs, including health programs. After years of struggling, gaming revenues are generating an economic ripple effect for Oklahoma's Indian nations. In the words of Principal Chief Beaver, "A lot of our grants are matching funds. It seems obvious that in order to receive matching funds, you've got to have the money to match."

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not change the incentive of tribal governments to invest in their communities. Before the federal government passed legislation on Indian gaming, tribal governments utilized gaming revenues to invest in the social welfare of their respective communities.

<sup>66</sup> Examples include support for: early childhood and day care services, education and school facilities, scholarships, language training, employment training, Head Start, health and wellness center, health care equipment, health care programs and facilities, storm shelters, housing repairs, church renovations, emergency assistance, fire department services, tribal courts, law enforcement, land purchases, mortgage assistance, and social services and elderly programs. Survey of Oklahoma Indian Nations.

<sup>67</sup> U.S. Senate Committee on Indian Affairs, *Report together with Additional Views*.

<sup>68</sup> *Ibid.*, 2.

<sup>69</sup> Grace Lockyer, General Manager, Seneca-Cayuga Bingo, personal communication, October 30, 2001.

<sup>70</sup> Perry Beaver, Principal Chief, Muscogee (Creek) Nation, personal communication, January 8, 2002.

*Health Care*

The bleak picture of health status and health care in Indian Country, particularly in Oklahoma, signals a severe need for additional funds. Because the federal government has not and currently is not sufficiently funding tribal programs, tribal governments in Oklahoma are using gaming revenues to supplement their health care budgets and provide desperately needed services. Often, these services benefit both Indians and non-Indians in the community.

A number of Indian nations in Oklahoma have invested their gaming revenues in health care services and facilities. The Muscogee (Creek) Nation heavily invests gaming revenues into its Health Administration Division, which is responsible for delivery of tribal health care services and the administration of the tribe's hospital and clinics. Revenues from gaming have provided seed money for a number of important facilities and equipment, including the Creek Nation Community Hospital, three ambulatory out-patient clinics, a dental clinic, and an eye clinic.<sup>71</sup> The Muscogee (Creek) Nation also funds its Community Health Service Program with gaming revenues. This program provides assistance to eligible individuals in gaining access to Indian Health Service programs and through referral to private physicians and facilities. It also operates vision programs for children and elders. For example, the tribal eyeglass program serves an average of 400-500 people per year and would not exist without gaming revenue.<sup>72</sup>

The Choctaw Nation, Oklahoma's second largest tribe, opened their first gaming enterprise in 1987 in Durant, and they have since built five more facilities in Southern Oklahoma. Gaming revenues are invested in tribal programs and social services as well as spent to assist local towns and communities. Perhaps the most significant governmental expenditure by the Choctaw Nation is its investment in health and healing. In June of 1999, the Choctaw Nation became the first Indian tribe in the United States to build its own hospital. The \$28 million Choctaw Nation Health Care Center, located in Talihina, provides comprehensive health care services. The hospital features 37 hospital beds for inpatients and 52 exam rooms for outpatients. The Choctaw Nation also operates four health centers in other towns in the region. Together, these five facilities provide 3,734 services on a typical day. Gaming profits have also helped to fund the Hospitality House, which provides free lodging for relatives of recovering patients. New homes for hospital doctors are also partially funded by gaming revenue. Although the hospital is primarily for the use of Indians, it is a community-based hospital that fills a healthcare need for all residents in the area.

The Cherokee Nation Rural Health Care Network includes two Indian Health Service hospitals and six out-patient care clinics. These facilities offer a range of services including acute and urgent care, behavioral health, public health nursing, dental, vision care, nutrition, EMS, and disease prevention. Together, these health care centers provide care to 108,000 individuals.<sup>73</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Cheryl Glass, What the Cherokee Nation means to the State of Oklahoma (unpublished manuscript on file with the author).

*Law Enforcement*

Law enforcement, by contributing to the provision of public safety, stands as one of the most important governmental functions. Without adequately funded law enforcement programs, tribal governments are not able to provide a service essential for a well-functioning society. According to a recent federal report, “today, many Indian citizens receive police, investigative, and detention services that are not only inadequate, but also suffer by comparison to this country’s poorest jurisdictions.”<sup>74</sup> Experts agree that there are fewer than half as many law enforcement officers per capita in Indian Country as there are elsewhere in the United States.<sup>75</sup>

Law enforcement needs in Indian Country become even more urgent in the context of dramatically high crime among American Indians. According to the Bureau of Justice Statistics, “The rate of violent victimization estimated from responses by American Indians is well above that of other US racial or ethnic subgroups and is more than twice as high as the national average.”<sup>76</sup> The average annual number of violent victimizations per 1,000 persons 12 or older is 50 per 1,000 persons. The rate for American Indians is 124 violent crimes per 1,000 American Indians, more than twice the rate for the Nation.<sup>77</sup>

Because the need for additional law enforcement capability is so acute, Indian nations in Oklahoma are investing gaming revenues to fill the gap left by federal underfunding. For example, the Citizen Potawatomi Nation (CPN) has 11,273 Indians residing in its service area.<sup>78</sup> In addition to serving the tribal population, the Citizen Potawatomi Nation provides law enforcement assistance to a range of local police and sheriff departments. In 2000, tribal police assisted local law enforcement with 569 calls. The majority of the assisted calls, 313, were to the Potawatomi County Sheriff

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<sup>74</sup> Department of Justice, Executive Committee for Indian Country Law Enforcement Improvements, *Final Report to the Attorney General and the Secretary of the Interior* (Washington, D.C.: U.S. Department of Justice, October 1997), 8.

<sup>75</sup> The ratio of police officers to residents in Indian Country is 1.3 per 1,000. Meanwhile, the FBI’s Uniform Crime Reports statistics show that there is a ratio of 2.9 officers per 1,000 in non-Indian communities under 10,000 population. Executive Committee for Indian Country Law Enforcement Improvements, *Final Report to the Attorney General*, 9. See also Stewart Wakeling, Miriam Jorgensen, et al., *Policing on American Indian Reservations: A Report to the National Institute of Justice* (Washington, D.C.: National Institute of Justice, July 2001), 40.

<sup>76</sup> Lawrence Greenfeld, and Steven Smith, *American Indians and Crime* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, February 1999), iii.

<sup>77</sup> *Ibid.*, 1.

<sup>78</sup> Citizen Potawatomi Nation, Office of Self-Governance, *Citizen Potawatomi Nation: Statement of Local Contribution to the City of Shawnee and City of Tecumseh in Potawatomi County and the State of Oklahoma*. (Shawnee, OK: Citizen Potawatomi Nation: Office of Self-Governance, May 22, 2001).

Department, with 71 to the Tecumseh Police Department, 68 to the Oklahoma Highway Patrol, and 58 to the Shawnee Police Department.<sup>79</sup>

### *Education*

Under federal law, treaties, and court decisions, the education of Indian children is viewed as a federal responsibility.<sup>80</sup> One of the more recent declarations of the United States Congress's policy towards Indians appears in Section 3 of P.L. 93-638, The Indian Self-Determination and Education Assistance Act of 1975, which states:

Congress declares that a major goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice...

Despite the federal government's obligations, its appropriations have consistently failed to meet the educational needs of Indian communities. For example, the Congressional Research Service reports "the US Department of Education budget has averaged \$26.1 billion in constant 1997 dollars during FY 1975-FY 2001 and has grown at a rate of \$563.2 million a year with little annual variation (an increase of approximately 2.5% per year). In contrast, Office of Indian Education (OIE) programs in the Department of Education, which averaged \$95.8 million a year in constant dollars, declined \$2.5 million a year over the same period (a decrease of approximately 2.5% per year)."<sup>81</sup> This lack of federal funding translates into less money per individual student.<sup>82</sup>

While the federal government has a policy of supporting American Indian education, it has never adequately funded education programs in Indian Country. Therefore, Indian nations in Oklahoma are making up for federal funding shortfalls by investing gaming revenue into education programs ranging from scholarships to training to culture and history courses. For example, the Choctaw Nation has invested \$7.5 million of gaming revenues into scholarships alone.<sup>83</sup> In addition to scholarships, the Choctaw Nation funds a Choctaw language program, a cultural learning center, and student activities. The Absentee Shawnee Tribe has an education allowance, paid for with

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<sup>79</sup> Ibid.

<sup>80</sup> For more information, see, U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, "2002 Fingertip Facts", [<http://www.oiep.bia.edu/docs/FINGER~1.pdf>], May 18, 2003.

<sup>81</sup> Roger Walke, Specialist in American Indian Policy, Domestic Social Policy Division, Congressional Research Service, *Memorandum on Indian-Related Federal Spending Trends, FY 1975-FY 2001*, (Washington, D.C.: Congressional Research Service, March 1, 2000).

<sup>82</sup> National Center for Education Statistics, *Digest of Education Statistics, 2000. Chapter 3, Postsecondary Education. Table 318: Average amount of financial aid awarded in 1995-1996 per student, by type and source of aid and selected student characteristics* (Washington, D.C.: National Center for Education Statistics, 2000).

<sup>83</sup> Choctaw Nation of Oklahoma, *Partners in Success with Oklahoma's Communities* (n.p., n.d.), 2.

gaming funds.<sup>84</sup> The Citizen Potawatomi Nation funds higher education scholarships and college housing stipends with gaming funds.<sup>85</sup> The Muscogee (Creek) Nation administers education and employment training service programs for the tribe through its Human Development Division. This Division receives significant funding from gaming revenues and is responsible for administering the Higher Education Fund, Culture and Language preservation program, Vocational Education, and Head Start Program.<sup>86</sup>

#### *Other Government Activities*

Finally, tribal governments in Oklahoma have used gaming revenues to create new institutions. The Miami Tribe has started a Business Development Authority to coordinate and develop new tribal businesses ranging from a T-shirt shop to an electronic gaming machine company. The Cherokee Nation's business arm, Cherokee Nation Enterprises, develops and operates a number of businesses that generate monthly dividends to tribal government for its general fund. The Citizen Potawatomi Nation has recently reformed its government by separating business and governmental functions to encourage outside investors. In addition, tribal governments have become more active in state- and national-level institutions, such as trade associations and other professional groups, that, prior to gaming, were either unavailable or unnecessary. This wide range of new governmental activity represents a level of civic health that will undoubtedly support ongoing economic development efforts in Oklahoma.

#### **Conclusion**

While the positive social impacts of Indian gaming are sometimes difficult to measure quantitatively, it is clear that Indian gaming has allowed Indian nations in Oklahoma to improve tribal services, thus providing tribal members with a quality of life that may be approaching that of other Oklahomans and other Americans. Consistent with the intent of IGRA, tribal governments in Oklahoma are translating gaming employment and revenue into significant positive social change by investing in social and physical infrastructures and governmental reform, thus producing striking improvements in the quality of life for American Indians and their neighbors. While the legacy of Indian poverty will not be easily erased in Oklahoma, the economic and social benefits of Indian gaming are diverse and substantial. Self-determination—and the ways that Indian nations in Oklahoma have used it—constitutes a public policy success. Indian gaming in Oklahoma represents a striking example of that success.

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<sup>84</sup> Mickey Burke, General Manager, Thunderbird Entertainment Center, personal communication with author, November 27, 2001.

<sup>85</sup> Citizen Potawatomi Nation, *Statement of Local Contribution*.

<sup>86</sup> Perry Beaver, Principal Chief, Muscogee (Creek) Nation, personal communication with author, January 8, 2002.

#### IV. WHAT INDIAN GAMING MEANS FOR THE STATE OF OKLAHOMA

Critics of gaming in general, and Indian gaming in particular, argue that gaming establishments simply shift consumer-spending patterns and, therefore, do not contribute to regional economic growth. That is, they allege, gaming “moves” dollars that would have been spent at one local business to another local business and does not contribute to overall regional economic development. These arguments are based on flawed reasoning that ignores basic principles of economics and misinterprets directly relevant evidence—particularly the evidence specific to *Indian gaming*. This section provides a proper framework for understanding the contributions made by Indian gaming operations and then presents data on Oklahoma Indian gaming and what it means to the Oklahoma economy.

##### The Economics of Gaming Impacts

The critics of gaming often analogize gaming facilities to fast-food establishments. The argument is generally as follows: The introduction of a new fast-food restaurant into a given area does not typically create net new economic activity. A new establishment might improve the welfare of consumers by presenting an additional choice, yet in most locations, a new Burger King, for example, will not improve the regional economy’s productivity, lead to more exports from the region, or otherwise contribute to regional economic growth. Given that people can only eat so much in a day, such establishments simply transfer business from one provider of food to another without bringing economic growth.

The “fast food” argument is inapplicable to Indian gaming because it fails to place Indian gaming within its proper context as a governmental enterprise. First, tribal governments have utilized gaming as an economic development strategy to help address the relatively low socioeconomic status of their citizens (see Section III). Critics of Indian gaming often fail to consider the fact that gaming enterprises often serve to employ citizens who have been on welfare, discouraged from seeking work, or otherwise indisposed to productively participating in the economy. On net, bringing discouraged and unemployed workers into the workforce improves the economy by reducing government spending on assistance and by increasing household spending. For Indian nations, where unemployment rates and welfare dependency are more pronounced than they are for most other American groups, this is a particularly significant benefit. And it is not just a benefit to the American Indian economy—more economically sound tribal households translate into lower taxpayer burdens, greater spending in non-Indian establishments, and lower poverty-induced spillovers. In other words, all Oklahomans stand to benefit, even if it were the case that only Oklahoma’s tribal citizens came off the welfare rolls to work in Indian gaming facilities.

Second, the “fast-food” argument overlooks key regulatory attributes of gaming. Although the national availability of lotteries, horse and dog tracks, riverboat casinos, and land-based casinos has increased dramatically over the past two decades, the deployment of gaming establishments is heavily regulated, especially with respect to the deployment of capacity. For example, in most states, gaming establishments are geographically restricted to Indian reservations, to rivers (e.g., Iowa riverboats), and to

particular municipalities (e.g., Atlantic City and Detroit). Consequently, any assessment of the impact of a particular gaming facility on the regional or state economy must take into consideration the physical location of the gaming facility, as the economic impact of a given gaming facility depends upon:

- the region of concern;
- the opportunities to bring tourists into the region;
- and the opportunities for keeping the region's citizens from spending dollars outside the region.

As will be discussed in more detail below, Indian gaming in Oklahoma is particularly well-placed to draw out-of-state tourists into the state's economy. Thus, in contrast to the assertions put forth by the critics of Indian gaming, the Indian gaming operations in Oklahoma do, in fact, bring out-of-state dollars into the state.

Third, the "fast-food" argument ignores the heavy taxation of Indian gaming establishments. Indian gaming enterprises, because they are government-owned, face taxes of 100%, and those revenues tend to be re-spent locally by tribes. This local investment differs from that of privately owned businesses, which often send dividends to a parent corporation outside the region or to shareholders around the world. Tribal governments in Oklahoma, for example, have reinvested their gaming income locally in infrastructure, education, health care, community development, economic diversification, and a host of other social and economic programs that benefit both Indians and non-Indians (see Section III). These expenditures maintain a relatively high proportion of the profits in the state economy in general, and the non-Indian Oklahoma economy in particular. The majority of Indian gaming's expenditures are made outside of Indian economies as tribal governments are compelled to purchase many, if not all, of their goods and services from non-Indian businesses.<sup>87</sup>

Finally, there are additional economic benefits of Indian gaming that distinguish it from other industries in Oklahoma. For obvious historical and policy reasons, Indian gaming is not transient, as some other businesses are; the Absentee Shawnee's Thunderbird Entertainment Center in Norman, Oklahoma is not going to suddenly depart for Houston because of a merger, as some corporations have done. As such, Indian nations view themselves as permanent Oklahoma residents, and their contributions to local municipalities and charities are indicative of significant local relationships. This long-term commitment to the Oklahoma economy rests upon the interdependence of Indian and non-Indian economies in the state. It is a unique feature of Indian gaming that is often overlooked.

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<sup>87</sup> Because tribal economies are not able to produce all the goods and services to support their gaming facilities, those operations must purchase a majority of these products and services from non-Indian businesses.



## State-Wide Impacts

### *Direct Impacts*

As noted in Section I, Indian gaming is a significant sector of the Oklahoma economy. In 2000<sup>88</sup>, the Indian gaming operations turned over an estimated \$208 million in revenue, directly employed an estimated 3,857 people, and purchased a combined \$73 million in supplies and services. Furthermore, these enterprises paid \$43 million in wages and salaries, transferred on the order of \$83 million to their respective tribal governments,<sup>89</sup> and withheld an estimated \$500,000 in state unemployment taxes.<sup>90</sup>

In addition to these recurring annual expenditures, tribal governments have expended significant capital constructing and remodeling gaming facilities and related infrastructure. Indeed, nine tribes report that from 1993 to 2000, they spent a total of \$37 million dollars on such capital investment.<sup>91</sup>

As noted above, these gaming-related dollars are predominantly expended within the Oklahoma economy. For example, over 80% of the Absentee Shawnee's gaming supplies and other non-labor acquisitions are purchased from vendors located in the State of Oklahoma.<sup>92</sup> Such expenditures have subsequent positive impacts on the state's economy as those suppliers, in turn, buy additional products, pay their employees, and remit tax payments to state and regulatory authorities.

### *Gross Impacts*

To estimate the total impact on the state's economy of these gross direct impacts, we apply a regional model of the Oklahoma economy to the aforementioned supplier purchases, employee wages, and transfers to government. With these inputs, the model then answers the question: What would the Oklahoma economy look like without Indian gaming? As goods and services are bought and sold in the economy they engender subsequent rounds of spending, and these multiplier effects ripple outward, affecting employment, prices, migration, and other economic variables. The model we use, REMI, is widely applied by state revenue departments and other policy analysis agencies to answer these kinds of questions.

In this case, we made modifications to the model to account for the government ownership of the enterprises and then analyzed what multiplier impact the spending has. *Supplier purchases* are the ongoing goods and services (i.e., the non-labor inputs) purchased by the Indian gaming operations in the course of business. As noted above, in a typical year, these expenditures were estimated to be \$73 million. *Employee wages*, the

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<sup>88</sup> See note 6.

<sup>89</sup> See note 8.

<sup>90</sup> See note 7.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

monies paid by the gaming facilities to their employees, were estimated to be \$43 million in a typical year.<sup>93</sup> *Transfers to tribal governments* represent those funds transferred from the gaming operations to their respective tribal governments. As discussed in Section III above, federal law mandates that the net income of Indian gaming enterprises be used by tribal governments for specific purposes that advance community economic and social welfare. Oklahoma's Indian gaming facilities transferred an estimated \$83 million to their respective governments for these purposes.

Indian gaming operations have substantial gross economic impacts on the state's economy. When multiplier effects are taken into account, the aforementioned direct expenditures of \$208 million represent an annual total impact on Oklahoma's economy of nearly \$329 million in gross state product. That is, Indian gaming accounts for an estimated \$329 million worth of final goods and services in the Oklahoma economy. In addition, Indian gaming operations are associated with an estimated 13,240 final jobs, and just over \$23 million in new tax revenues flowing to the state.<sup>94</sup>

Of course, the *gross* economic effects are a first step in impact assessment. Unfortunately, in many studies gross benefits are the last step because net benefits are relatively costly to assess. Nonetheless, sound policy decisions require also asking: How do these gross benefits compare to what would have happened in the economy anyway? The old saying, "There's no such thing as a free lunch," recognizes that most things come at a cost, and the resources deployed to provide Indian gaming entertainment are no exception. A new carpet at a casino might have gone to a movie theater instead, and policy makers must take that diversion of resources into account. Even after gross benefits are estimated, the question remains: Is Indian gaming good for the economy of the state overall, or does it come at an economic cost that renders the policy an economic net bad for the economy? The answer to this question hinges on the behavior of out-of-state customers in Oklahoma and on the behavior of Oklahoma tourists who might otherwise go out of state for gaming entertainment.

### **Spending by Out-of-State Consumers**

Because many of the Indian gaming facilities in Oklahoma are located within driving distance of the state border, out-of-state consumers are in a position to buy a significant portion of Oklahoma's Indian gaming services, and to the extent that they do, this represents a net economic benefit to the state economy. Tribal governments are required by federal law to build their gaming facilities on lands held in trust for them by

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<sup>93</sup> From the perspective of the model, these funds enter the regional economy as "household expenditures" as employees, in turn, use their compensation to purchase basic necessities (e.g., food) and make capital expenditures (e.g., housing and automobiles).

<sup>94</sup> Note that, consistent with government-to-government relationships, the state does not tax the tribal facilities. The taxes reported here are associated with the multiplier effects. When a tribe buys a ton of cement, it does not pay sales taxes on the cement nor pay income taxes on the building made with the cement, but the cement company does pay taxes on its inputs and its income if it is not a tribal enterprise.

the US government.<sup>95</sup> These trust lands are not systematically located where it would be optimal for tribal governments to operate gaming establishments, e.g., near large customer bases. For the most part, tribes have had to take their landholdings as given. In Oklahoma, the distribution of gaming facilities displays the effects of this legal constraint: gaming facilities are distributed in a quasi-random pattern. Some, like the Cherokee Casino in Catoosa and the Chickasaw's Goldsby Gaming Center in Norman, are fortuitously near a metropolitan area or highway. Others, like the Iowa Tribe's Cimarron Bingo Casino in Perkins, are apparently remote from transportation corridors and metropolitan markets (see Figure 1). Whatever the historical reasons for the dispersion of tribal trust land in Oklahoma, it has the effect of putting about half of the Indian gaming capacity within 50 miles of the state border and three-quarters within 100 miles. Consequently, these operations are poised to reach a substantial number of potential out-of-state customers. Between one and five million out-of-state customers find themselves within driving distance of an Oklahoma Indian gaming facility, respectively.<sup>96</sup>

Gaming operations close to the border report that substantial fractions of their customers are non-Oklahomans, ranging from about half to three-quarters. Indeed, assuming that all Oklahoma Indian gaming facilities within 50 miles of the border have an average of 65% out-of-state patronage and all others have an average of 16%, then an estimated \$83 million of the sector's revenues, or 40%, can be considered sales to out-of-state customers, and therefore a direct benefit to the Oklahoma economy.<sup>97</sup>

### Spending by In-State Consumers

To go from gross benefits to net benefits, it is also important to determine the extent to which Indian gaming operations retain Oklahoman dollars that would have otherwise been spent at out-of-state destinations, because such "recaptured" spending represents an additional net benefit to the Oklahoma economy. For example, a certain number of Oklahomans traveled to Las Vegas casinos, Missouri riverboats, Texas horse tracks, and other out-of-state venues (gaming-related and otherwise) prior to the general development of Indian gaming, and now some are persuaded to spend some portion of their leisure budget within Oklahoma because of the availability of Indian gaming facilities. Where this occurs, Oklahoma reaps a net economic benefit.

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<sup>95</sup> Trust status for Indian land means that the federal government retains the title for the land and the tribal government retains the benefit of use and occupancy. In general, trust status was meant to protect tribal lands from non-Indian land speculators by requiring that the Secretary of the Interior approve all trust land sales to non-Indians.

<sup>96</sup> Rules of thumb vary according to the density of gaming markets, but typically customers are willing to travel between 50 and 100 miles to a gaming facility. Note "miles" in this report refers to "crow-flies" miles unless otherwise indicated.

<sup>97</sup> We also assume that in- and out-of-state patrons spend similar amounts at facilities. This is conservative since out-of-state visitors have a greater propensity to stay at a facility longer. See, e.g., Timothy P. Ryan, and Janet F. Speyrer, *Gambling in Louisiana: A Benefit/Cost Analysis* (n.p., Louisiana Gaming Control Board, April 1999).

Unfortunately, obtaining Oklahoma-specific data on residents' spending patterns requires a consumer survey beyond the scope of this research. Available research on neighboring Missouri found that 36% of Missouri residents' gambling expenditures are diverted from out-of-state consumption. Using this assessment as a benchmark by which to assess the potential impact on the Oklahoma economy from residents forgoing opportunities to expend their leisure dollars at out-of-state destinations, Indian gaming operations would have the effect of retaining an additional \$72 million within the state's economy.<sup>98</sup>

### **Net Impacts**

There is a range of the potential net economic impacts on the state's economy, taking into consideration spending by non-Oklahoma residents and potential changes in out-of-state spending by Oklahoma residents. Conservatively assuming that all spending by Oklahomans on Indian gaming simply displaces existing spending on in-state alternatives (i.e., any *net* economic effects arise only from the spending by out-of-state consumers), Indian gaming facilities produce a net economic benefit to the State of \$129 million. That is, conservatively assuming that Indian gaming resulted in no Oklahoma residents forgoing expenditures on out-of-state recreation or leisure activities, then the gaming facilities had a net economic impact of \$129 million dollars; 5,258 net additional jobs were created; and the state reaped almost \$9 million in state tax revenues it would not have had, but-for Indian gaming.

Alternatively, assuming that Oklahoma patrons display patterns similar to those in Missouri (i.e., that about one-third of their gambling expenditure is diverted from out-of-state consumption),<sup>99</sup> results in Indian gaming facilities producing a net economic benefit to the State of Oklahoma of \$201 million in additional gross regional product. That is, the spending at Indian gaming facilities by Oklahomans that would have otherwise been spent outside the state plus the spending from out-of-state customers resulted in an additional \$201 million dollars being added to the state economy, with a corresponding addition of 8,133 jobs and \$14 million in state tax revenues.

### **Regional and Distributional Benefits**

Not only is Indian gaming a net benefit to the state overall, it also has positive consequences for the distribution of economic activity within the state. The location of gaming facilities in many depressed areas of the state means that the job creation and the positive economic benefits flowing from such operations disproportionately accrues to some of the poorest areas of the state. The Oklahoma Department of Commerce defines

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<sup>98</sup> Charles Leven, and Donald Phares, "Casino Gaming in Missouri: The Spending Displacement Effect and Net Economic Impact," Proceedings: *90<sup>th</sup> Annual Conference on Taxation, Chicago, Illinois, November 9-11, 1997* (Washington, D.C.: n.p., 1998) 435-436.

<sup>99</sup> The other two-thirds are assumed to be diverted from other within-Oklahoma spending or saving and, therefore, add no net economic benefit to the state. In-state expenditures are estimated per the discussion in the text at note 97, i.e., 60% of the sector's revenues derive from in-state patrons. It is conceivable that the net impact is higher even than \$201 million, since the possibility exists that Oklahoma consumers might be even more inclined to substitute imports than Missouri consumers.

economically distressed areas as those areas having poverty rates equal to or greater than 30% of the Oklahoma average poverty level or have per capita incomes 15% lower than the state average or worse.<sup>100</sup> Thirty-six of the 55 Indian gaming facilities in Oklahoma, representing 50% of the deployed capacity, are in these distressed areas. Moreover, since about one-third of Oklahoma Indian nations' gaming employees are non-Indians and since Indian gaming facilities are generally net exporters (per the definition in note 13) the net effect on non-Indian household incomes is direct.

In some areas, Indian gaming is replacing industries that have moved or failed. For example, the Miami Tribe and the Modoc Tribe have opened the only joint gaming facility in the State of Oklahoma – the Stables. This facility, located in Miami, Oklahoma, opened in September 1998. Located in a depressed area in northeast Oklahoma, the Stables is one of the largest employers in the area. It opened shortly after Bayline Marine laid off 150 people. Currently the Stables offers 125 jobs, approximately 85% of which are held by non-members.

In particular, these effects are especially visible when the impact modeling is broken down into the rural and urban counties and on the basis of whether they are located within 50 miles of the state's border.<sup>101</sup> The rural counties that have gaming operations and are located near the state's border ("rural border") constitute only 16% of the state economy and these counties, by and large, are economically distressed areas. Yet, these counties receive between 50 and 65% of the economic benefits of Indian gaming. That is, assuming no economic impact from in-state consumers diverting their out-of-state spending, the rural border region's economy increased by over \$85 million dollars in the year 2000 as a result of Indian gaming. This constitutes approximately 66% of Indian gaming's net economic benefits. Assuming that approximately one-third of Oklahoman's spending at Indian gaming facilities would have otherwise been spent beyond the state's border and, consequently, results in net new economic activity to the state, then over \$100 million, or approximately 50%, of the total \$201 million in economic benefits accrued to the people of these disadvantaged counties.

All rural counties having gaming operations (i.e., border and non-border) together constituted only 28% of the state's economy. Nonetheless, they received 75 to 80% of the net economic benefits, or approximately \$100 to \$150 million, produced by Indian gaming facilities. In sum, the regional effects of Indian gaming are disproportionately concentrated. Those areas that are economically marginal in the state benefit the most.

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<sup>100</sup> Oklahoma Department of Commerce, "Major Tax and Financial Incentives," [<http://domino1.odoc.state.ok.us/BUSDev/bit1.nsf/pages/G.+Enterprise+Zones>], May 26, 2003.

<sup>101</sup> For the purposes of regional economic modeling, five regions (comprised of groups of counties) were created. Counties that contained at least one Indian gaming facility were divided into three regions: Rural Border, Rural Non-border, and Urban. (There were no Urban Border counties.) The rural/urban county distinction is based on an analysis of population density and Metropolitan Statistical Areas (MSAs). (MSAs are areas of urban concentration defined by the US Office of Management and Budget and used commonly in publishing census and other government data.) A county was included in the Border region if it contained a casino that is within 50 miles of the state border as the crow flies. All five regions in total include all counties in Oklahoma.

## V. CONCLUSION

Since tribal governments rather than private shareholders decide how the profits of Indian gaming enterprises will be spent, the socioeconomic consequences of Indian gaming are different from those of private gambling establishments. Moreover, Indian gaming is both an expression of and a support for effective Indian self-governance and its attendant promise of socioeconomic recovery.

But importantly, Indian gaming takes place in a legal framework that entails balancing competing interests between governments. The compromises struck in the courts and Congress influence the character and viability of Indian gaming—and thus its power to precipitate socioeconomic change. The classification of games has perhaps the most important effect. Entry into Class II is largely a matter of tribal discretion (if it is allowed by a state for any purpose), but since Class II games are generally of lower (but albeit growing) attractiveness to customers, tribes generally prefer to enter into Class III markets. In Oklahoma, the latter option has been unavailable to this point, but as prior sections demonstrate, Class II gaming has nonetheless allowed tribal governments to address the problems of poverty to a degree never possible before.

In sum, the character of the socioeconomic consequences of Indian gaming in Oklahoma derives from the fact that the profits of gaming are spent by governments presiding over economically disadvantaged societies and by the fact that those governments have to operate within the confines of policies not of their own making. The balancing framework of Indian gaming as it operates in Oklahoma today constrains Oklahoma Indian nations from operating facilities according to the dictates of the marketplace—i.e., on a large-scale Class III basis. Nonetheless, twenty-four Indian nations have chosen to develop gaming facilities in Oklahoma as an expression of self-determination, and their facilities have allowed a level of reinvestment in their societies that was heretofore impossible. And contrary to claims that Oklahoma Indian gaming benefits come at the expense of Oklahoma's economy, Indian gaming actually brings substantial net economic benefits to the state as well.

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