Reconfigurations of Native North America

AN ANTHOLOGY OF NEW PERSPECTIVES

Edited by

JOHN R. WUNDER AND KURT E. KINBACHER

FOREWORD BY MARKKU HENRIKSSON

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Contents

Maps and Tables

CHAPTER 10

Indian Gaming, Sovereignty, and the Courts: The Case of the Miccosukee Tribe of Florida

MIIA HALME

THE FIRST Indian-owned bingo parlor was opened in the United States by the Seminole Tribe in 1979. The venture soon became so successful that it encouraged a great number of other Native American nations to follow their example. As a consequence, by 1997, 142 tribes in 24 states had Las Vegas–style casinos. The success of Indian gaming derives from the sovereign status of tribes guaranteed by numerous treaties and the granting of special title to Indian lands that allows for gambling in states where it otherwise may be prohibited.[1]

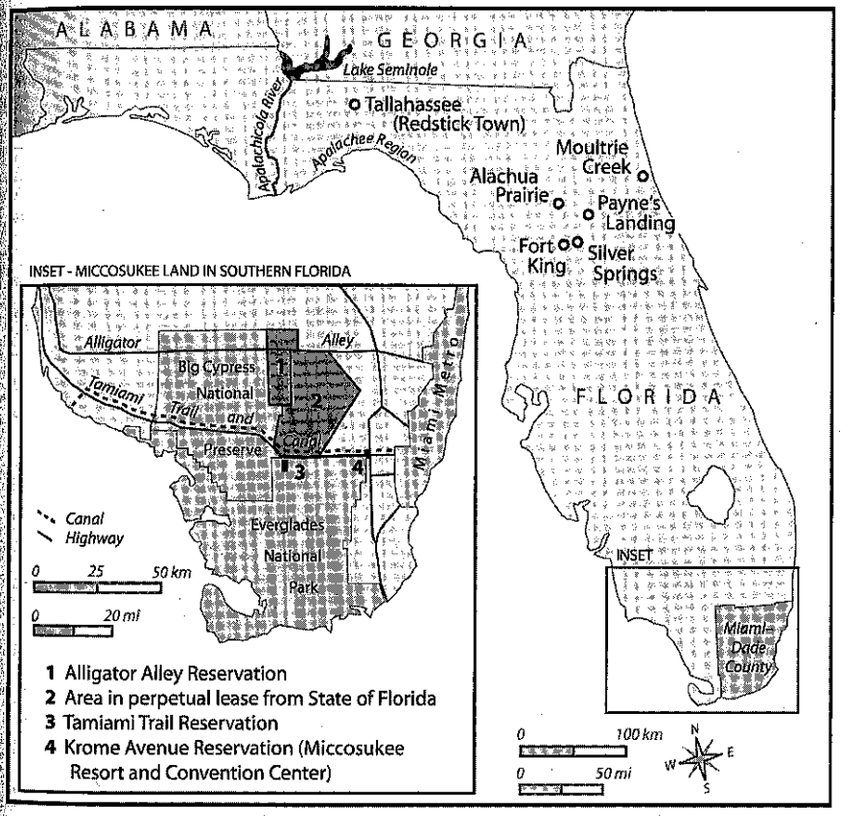
In a short period, Indian gaming has grown to account for a considerable proportion of gambling in the United States. In 1998 it constituted 15 percent of the estimated $100 billion annual turnover of the gaming business.[2] Gambling revenues grew rapidly throughout the 1990s, and the trend to the present shows no signs of slowing down as the number of casinos increases and the establishments become more luxurious. Indian gaming has become an important employer, supporting, for example, an estimated 16,000 jobs directly and 34,000 jobs indirectly in California. Gaming has also reduced the state of California's welfare payments by $50 million.[3] As becomes immediately evident from such figures, the influence of casinos is dramatic, particularly on the tribes that possess them, as they have attained an income prosperity that they have never before enjoyed. The effect of casinos becomes even more salient considering that only one of ten tribes without a casino is economically independent.[4]

This chapter examines the effects of Indian gaming on the indigenous peoples of the United States, focusing in particular on the role of courts in this development. Attention is first devoted to federal Indian policies of the past decades and

sovereignty developments up to the present. These themes are elaborated through an analysis of the gaming experiences of the Miccosukee Tribe of Florida. The Miccosukees adopted gaming but not without controversy arising from impacts upon tribal sovereignty and new issues related to gambling economic success.

THE COURTS AND INDIAN GAMING

Casinos have induced dramatic changes in the relationship of tribes with the predominant American society. In some ways, they appear to have restarted the old war between Indians and whites, although in a more sophisticated form. In the mid-nineteenth century, as the U.S. Army and settlers fought against Native Americans, whites began to realize how expensive this mode of warfare was, both in terms of money and loss of life. Thus, they began to seek alternatives to outright war through the legal system. As Sidney Harring has argued, history shows law to be a far more effective tool of domination than outright war had ever been: It



Seminole Sovereignty over Two Centuries: Diplomatic Landmarks, 1820–1845, and Gaming on the Miccosukee Reservations, 1970–2000

involved minimal costs, and—as Indians were not allowed to participate in lawmaking or legal proceedings—it was virtually impossible for them to fight against legal applications.[5] What followed was the creation of one-sided and unfair laws depriving Indians of their collective and individual rights, the most notorious of which was the General Allotment Act, also known as the Dawes Severalty Act, of 1887.

Today, following the money brought in by casinos, Indians have for the first time real chances of fighting back against this unfair legal warfare. Recent years have shown tribes actively challenging anti-Indian laws in courts and lobbying for pro-Indian treatment in legislatures. Evidence of this is found in the number of cases brought to the U.S. Supreme Court concerning Indians and states, which in 1997 through 2000 amounted to a total of 102, of which 16 resulted in high court decisions.[6] The multiplicity of cases is important in two respects. First, it offers a demonstration of the societal power gaming money has granted tribes; over the past four years Indian governments have had the means to pursue their rights in all levels of the American legal system. In other words, tribes today have the financial means to transform themselves into effective proponents of their rights.[7]

However, an even greater impact is created by a second aspect of importance. The abundance of cases demonstrates that the benefits of casinos are making Indian nations into serious collective adversaries for the first time in history. Consequently, although only a small percentage of tribes possess casinos, these cases extend the benefits of gambling revenues to those tribes not owning them and thus lacking the necessary funds to pursue their cases beyond the lower courts. In other words, the fights undertaken by wealthy tribes improve the position of their less wealthy counterparts in the form of precedent.[8] The importance of precedent is well demonstrated by a U.S. Supreme Court ruling from 1974 that declared matters relating to Indian land rights to fall under the exclusive jurisdiction of the federal government, a judgment that has brought enormous benefits to tribal communities as a whole. As a consequence of this ruling, tribes have been free to initiate proceedings in federal courts to correct past violations of their land rights by a state; previously tribes would have required permission from that same state to begin proceedings.[9]

The positive effects of such rulings in part contributed to changes in tribal communities during the 1980s, and particularly the 1990s, that have been termed "revitalization" movements. Combined, these changes brought an end to the isolation of American Indians, which had limited much indigenous political and economic unity among the 1.2 million tribal members.[10] Such recent unity is demonstrated, for example, by annual sovereignty symposiums held since 1994, which have become an important forum for discussions about Indian culture, spirituality, social issues, and tribal law.[11] Revitalization caused the emergence of a new pan-Indian identity, accompanied by growing tribal populations. Out of the many

interconnected reasons for this positive development, new leadership and adoption of more favorable federal Indian policies rise above all others in importance.

New and revitalized leadership has been attributed in particular to Indian participation in World War II, where the use of war rituals revived traditions and strengthened Indian collective identity, and decorated war veterans offered leaders who had acquired recognition and experiences outside reservations and who were better equipped to guide Indian peoples in the postwar era.[12] In the 1960s and 1970s, the fruits of these changes produced Native American leaders who became active opponents of government termination policies. Another important development was the founding of NARF, the Native American Rights Fund, originally operated under the Office of Economic Opportunity in California and directed at combating poverty. Behind the creation of NARF was the realization that for effective improvement of Indian political and economic circumstances, a national organization staffed with Indian advocates who specialized in Indian law was needed. Today, after almost three decades of actively pursuing their goals, the NARF has forty full-time staff members and is called the most important advocate organization with expertise in Indian law in the United States.[13]

These internal developments were accompanied by three decades of favorable federal Indian policies dominated by the ideology of self-governance. The explicit goal of the policy was to strengthen tribal communities by giving them more power over their own affairs to make them independent of the Bureau of Indian Affairs.[14] Self-determination was also emphasized during the presidencies of Richard Nixon, Jimmy Carter, and Bill Clinton. Clinton issued two presidential statements during his terms, enforced a government-to-government relationship between the federal government and tribes,[15] and introduced the bill in 2000 permitting land consolidation to reverse the disastrous effects of the 1887 Dawes Act and to begin "real Indian trust management."[16] In addition, the Clinton administration also increased federal funds for Native Americans considerably, which had been significantly reduced since Reagan's presidency, a decline "masked by budget numbers."[17] These changes, however, did not occur entirely without controversy; and before moving to the troublesome aspects of these developments, closer attention will be devoted to a case study of the Miccosukee Tribe of Florida and how it adjusted to changing federal policies.

THE MICCOSUKEES

The Miccosukees are a small tribe of 490 members living in the Everglades of South Florida. With a history of warfare with European colonial powers and subsequently the United States, the Miccosukees hold a special status for being the only Indian nation never to have made official peace with the United States after the Seminole–United States wars of the nineteenth century. The Miccosukees still refer

to themselves as "undefeated." Today Miccosukees inhabit three reservations and a large area leased from the State of Florida *in perpetuity.* The tribe has operated a high-stakes bingo parlor located on the Krome Avenue Reservation near Miami since 1990. This bingo operation currently attracts thousands of gamblers daily with aspirations of instant fortune.[18] Its popularity has grown continually, making it a primary source of revenue for the Miccosukees. Annual returns—a closely guarded secret by the tribe—are estimated to be several million. In 1998, the tribe expanded its operations with the opening of the Miccosukee Resort and Convention Center, a 302-room luxury resort and casino, which in addition to gambling has become an important venue for boxing matches.[19]

The casino has had a dramatic impact on the life of the Miccosukees. Previously poverty stricken, the tribe is now affluent, enabling it to offer scholarships to all adult members. Whether this new wealth has helped to alleviate the social problems plaguing the community remains unclear as Miccosukees are still are affected by high rates of alcoholism and other problems previously associated with poverty.[20] Whatever the internal situation, on a societal level the tribe is prospering, as it works actively to preserve and strengthen its culture and operates its own police department and court, education system, and various social programs. All apply both traditional Indian and modern ways to solve tribal problems.

The success of the tribe has been reflected in its population, which jumped from 369 to 492 between 1994 and 2001.[21] Since 1987, Billy Cypress has led the Miccosukees. In addition to campaigning vigorously for the Miccosukees, he has held leadership roles in various Indian organizations since the 1970s, serving on the board of directors of the U.S. South and Eastern Tribes and the Florida Governor's Council on Indian Affairs. Since 2000, he has been a member of the NARF board of directors. Under Cypress's management, the Miccosukees have also become involved in the Florida Governor's Commission for a Sustainable South Florida and the South Florida Ecosystem Restoration Task Force.[22] In 2002, the achievements of Billy Cypress brought him recognition as Indian Leader of the Year by the National Indian Business Association.[23]

LAND RIGHTS AND COURT CASES

Reflecting the national trend, their new prosperity allowed Miccosukees to become active litigators. The cases they resolved to fight are almost all the result of a stormy relationship between the State of Florida and the tribe.

Miccosukee history in Florida is instructive. By 1845 the Miccosukees lived in central and northern Florida on lands they thought would be theirs forever. However, by 1860, following the atrocities of the Third Seminole–United States War, they had to abandon this area to take refuge in the swamps of the Everglades. There, shielded from their adversaries, they reassembled their community and continued their traditional life that had been disrupted by war. Tribal members grew to consider the Everglades their homeland, referring to it as "Our Mother," and lived there relatively undisturbed until the early twentieth century when Miami grew to metropolis proportions.[24] Southern Florida became flooded with immigrants, which gave rise to tremendous housing, resource, and infrastructure needs. These demands were satisfied by drying out large portions of the Everglades swamp and building the Tamiami Trail, actions that made Miccosukee lands for the first time easily accessible to outsiders. The Miccosukees once more found their homelands under siege. By World War I, the State of Florida was "virtually" ignoring the "historic land rights of the Seminole and the Miccosukee people and . . . the State . . . without Congressional authority or approval, removed the Miccosukees . . . from their lands (driving) them deeper into the Everglades."[25]

These events set the background for the ongoing legal battles between Miccosukees and the State of Florida. Between 1995 and 2001, the tribe became involved in a total of eight lawsuits against the State of Florida,[26] of which at least two were triggered by environmental concerns. One of these involved an Everglades restoration plan, a billion-dollar project hailed by President Clinton but called by environmentalists a "license to pollute."[27] As a consequence of a Miccosukee lawsuit, the entire plan was subjected to review.[28] Another case initiated in spring 2000 resulted from tribal opposition to the State of Florida's decision to dry out more of the Everglades wetlands.[29]

The majority of lawsuits relate to Miccosukee land rights, as the tribe aims both to expand its area and to gain more control over lands on which they reside. Both goals have been achieved by the Miccosukees. The tribe also undertook a long struggle with the U.S. government to enforce their right to live in their traditional homelands. As a result, in 1998 after four years of "Congressional pressure and years of litigation," the tribe acquired an additional 300 acres from federal lands for their Tamiami Trail Reservation. The same year also saw the passing of the Miccosukee Reserved Area Act by Congress. Since the passage of this federal legislation, the government entered into a contract with the Miccosukees, promising to preserve the land in its natural state *in perpetuity* for the use and benefit of the tribe. What should further be noted is that the State of Florida was not invited to participate in these negotiations. Understandably, the affair generated great controversy, which was further intensified by the tribe's desires to gain total control over the area, a plan fiercely opposed by state officials who argued that such action would set a "dangerous precedent" to the restoration plans of the area[30]—a curious concern considering the dedication the Miccosukees have demonstrated toward environmental preservation. In addition, following years of litigation, the tribe gained a permit to build additional housing to alleviate a chronic shortage,[31] and a Miccosukee plan to facilitate the purchase of an additional forty-six acres for $1.8 million has been realized.

In sum, the relationship of the State of Florida and the Miccosukees is less than amicable. Another reflection of this state of affairs is the communication allegedly sent by the tribe to the Florida attorney general in 1997 requesting a meeting between the tribe and representatives of the office to outline the "general legal principles limiting the State's authority over the Miccosukee Tribe and its territories." The State failed to respond to this request, and the meeting has yet to materialize.[32] The tribe's increased influence has also resulted in greater exposure in the local print media, generating such newspaper headlines as "Miccosukees' clout is shaping Glades restoration," and "Miccosukees on a roll in the Everglades."[33] In sum, the money brought to the tribe by its casino has transformed it into an important political actor that can no longer be overlooked or belittled by the State of Florida.

GAMING CONTROVERSIES

The increased influence and prosperity of the Miccosukees have, however, not been treated with universal rejoicing, as the arrival of "Las Vegas on the Miccosukee Reservation" has become a sore spot for many Floridians. Although the Miccosukees have thus far been spared lawsuits relating to their casino, general opposition to Indian gaming affected their operations, including attempts by Florida's congressional delegation to tax Indian casinos. This controversy also led to repeated denials of the tribe's requests to expand its casino into a full-scale operation.[34] Attitudes changed gradually over the years since the mid-1990s as tourism supported by gambling has become an important source of revenue and employment for Florida, including floating casinos that, under the pretense of sailing to international waters for a few hours, were free to offer full-scale gaming.[35] This conflict was debated until 2007 when the state of Florida finally reached a gambling accord with the Miccosukee Nation. In a matter of months, the Miccosukee Casino boasted 1,700 video pull-tab machines and 58 poker tables, as well as high-stakes bingo.[36]

Prospective attitudinal changes surrounding gambling, however, have not muffled the ongoing battle between the State of Florida and the Seminoles, Florida's other Indian tribe, as they have been fighting in the courts for years for the right to operate electronic slot machines and video gambling machines. The legal battle has been further complicated by a 1997 U.S. Supreme Court ruling that tribes are, due to their sovereign status, immune to lawsuits brought by states. In other words, despite being physically within their borders, the operation of casinos is outside the regulatory powers of states—yet another fact making states unhappy with the emergence of Indian casinos. This immunity could, however, be in jeopardy in the future, following recent attempts by states to gain more control over Indian casinos, but at present it appears that the controversy and litigation do not pose a

threat to the success of Indian gaming. In July 2000, the Seminoles announced to media sources that they were planning a new $300 million, Hard Rock Cafe–theme resort with 750 rooms.[37]

Overall, this situation in Florida reflects national developments surrounding Indian gaming, which has from its instigation been greeted with great controversy. Although Indian gaming has supporters among policymakers, who consider it beneficial as it gives tribes more of "a shot at economic independence,"[38] the voices of these proponents have been muted by opponents who have been creating a racket with their complaints and overshadowing or delaying the opening of new establishments with lawsuits. In 1988, such controversies led to the adoption of the Indian Gaming Regulatory Act (IGRA), a twenty-five-page federal law purported to extinguish the quarrels. IGRA renders Indian gambling the most strictly regulated business in the United States. It defines the percentages of ownership required for tribes for their gambling establishments to be called "Indian casinos" and specifies the purposes for which the proceeds of Indian gaming can be used. The law also classifies Indian gaming into three categories, each meticulously described in detail. However, despite all legal precautions, Indian gaming is far from a resolved issue. This is demonstrated, for example, by the cases continuing to be brought before the U.S. Supreme Court. For instance, in the 1997–2000 period alone, the Court heard twelve new disputes involving matters relating to IGRA. Gaming has become the fourth-ranking source of federal disputes relating to Indians.[39]

On the surface, controversies surrounding Indian casinos appear to derive from the long-standing dislike of Americans for gambling, even though it is a huge business in the United States. Gambling in the 1990s grew at almost twice the annual rate of most other industries. The business is also subject to some of the strictest regulations applied to any business in a country opposed to most forms of governmental regulation. The primary reasons for the opposition stem from the undesired side effects of gambling, including gaming and substance addictions, increased crime, and prostitution. The opposition has also recognized the potential negative corollaries for tribes, such as embezzlement and fraud.[40] Concerns have also been expressed about the effects of casinos on Indian social structures and consequences to cultural preservation caused by exposure to social phenomena tribal members do not traditionally encounter. This matter is of particular importance, considering the extent to which casinos tie tribes to foreign values, capitalism being the most predominant among them. How are tribes to prevent individual prosperity from destroying their social systems? Questions have also been posed inside tribes as to the extent to which the new prosperity should be accompanied by cultural change and to what extent traditions should be preserved. These questions have caused some tribes to vote against opening a casino.[41]

In sum, such arguments generally ignore modern constructions of indigenous

sovereignty. First, tribes are informed and able to decide on the issue of gaming themselves, making the patronizing tone of protective concerns unnecessary. Second, considering the kinds and levels of adversity that Indians have experienced and survived in the past—centuries of genocide, plunder, and overall persecution—the argument that mere money could abolish Indian cultures appears unconvincing. Thus, one cannot but observe that the roots of the opposition are embedded elsewhere. A closer inspection of the current relationship between tribes and the dominant society reveals a fierce dispute over money and Indian sovereignty. This is reflected both in initiatives to extend outside regulatory authority over Indian casinos, as well as court cases seeking to address the question of whether revenue provided by casinos should enjoy the same tax exemption of other Indian economic ventures.

The concept of sovereignty plays an important role in Supreme Court cases. On the surface, the main source of friction in cases between tribes and states appears to be land, as ten of the total of sixteen cases decided by the Supreme Court between 1997 and 2000 were connected to issues of control over land. However, a closer examination covering an additional eighty-six cases in which petitions for certiorari were refused by the Supreme Court alters this picture as four major categories emerge: land, Indian gaming, taxation, and Indian sovereign immunity. The latter group—in other words, tribal sovereignty—alone accounted for a total of forty cases.[42]

Kirk Douglas Billie v. State of Florida (2001)

Tension over tribal sovereignty frequently colors the relationship of the Miccosukees with the State of Florida, and it was especially present in the case of *Kirk Douglas Billie v. State of Florida,* a high-profile homicide case tried at the Miami–Dade County Circuit Court in January 2001.[43] The aftermath of this case is still being fought. The events date back to June 26, 1997, when Kirk Douglas Billie, a 31-year-old Miccosukee, went to the home of Sheila Tiger, who at the time was his girlfriend, and seized her truck. Billie drove the vehicle into a canal near the Everglades reservation. What he claims not to have known was that their two small sons were asleep in the backseat, and as the vehicle sank into the water, the boys drowned.

Despite the rather clear-cut facts, the proceedings differed greatly from those of an ordinary trial, and it developed from a manslaughter case into a battle over the historical treatment of indigenous people by the United States, the sovereign rights of Indians, and tribal justice. The incident took place in the Tamiami Canal outside the Everglades Miccosukee Reserved Area, forty miles west of Miami. The heart of the controversy related to the tribe's claims that the incident in question was an "accident" occurring on "historic Indian land," and the Miccosukees therefore should be allowed to decide how best to deal with it. This jurisdictional demand received no sympathy from the State of Florida, which instead sought to convict Billie of first-degree murder with capital punishment. In the end, Billie was convicted of second-degree murder and sentenced in a state court to life imprisonment in April 2001.[44]

The land on which the incident occurred was, despite the objections of the Miccosukees, not considered Indian land by the court, rendering it under the jurisdiction of the State of Florida.[45] Tribal rights did create, however, considerable barriers to the proceedings as State of Florida prosecutors could not, for example, serve subpoenas to potential Miccosukee witnesses residing on the reservation. The prosecution was frustrated by this and attempted to overcome the impediment through a motion to a U.S. District Court judge to obtain permission to use federal agents, who do have access to the reservation, to serve the subpoenas.[46] This generated considerable criticism from the Miccosukees, who stated that "the public should be outraged by the government's attempt to bully the Miccosukee Tribe."[47] Conversely, the exercise of tribal sovereignty generated great criticism from the Florida media. Such headlines as "Tribal Rights Frustrate Trial" and "First-Degree Murder Case Is in Danger of Crumbling" represented biased media coverage.[48] The *Miami Herald* urged that the case should not end when a verdict is reached, but instead that "state officials should press the Miccosukees to develop procedures for granting access to tribal members who are needed for court proceedings."[49]

The significance of the *Kirk Douglas Billie* case and the controversy surrounding its treatment parallels an 1881 dispute. In late summer of that year Crow Dog, a Lakota, killed the Lakota leader Spotted Tail on the Rosebud Reservation in South Dakota. The matter was dealt with by the tribe in their traditional manner, but when whites discovered that the killer had not been executed, they intervened: Crow Dog was taken to a local court, charged with murder, and sentenced to death. The decision was first upheld by the Supreme Court of Dakota Territory, but then reversed by the U.S. Supreme Court, which recognized Crow Dog's claim that the federal courts lacked jurisdiction over the matter and released him. This decision caused Congress to seek immediate action to alter existing legislation, and the outcome—the Major Crimes Act, which was enacted in 1885—granted the federal government jurisdiction over seven crimes, (murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny) that involve Indians on Indian land. The importance of *In re Crow Dog* and the Major Crimes Act cannot be overemphasized, and for good reason both have been called a "revolution" in relations between Indians and whites. Not only did Congress clearly override a decision of the U.S. Supreme Court, but it also extended federal jurisdiction for the first time into the strictly internal affairs of tribes occurring on Indian land. Legal scholar Sidney Harring further describes the *Crow Dog* case as a bridge in

Indian law, moving it from the era of ineffective sovereignty language of *Worcester* to the subjugation of tribal sovereignty during the nineteenth century.[50]

The reasons behind the Major Crimes Act appear obscure. Why exactly was it drafted? An interesting explanation is offered by Harring, who argues that the reasons were embedded in the forces that prevailed in contemporary American society then and reflected in the desires of the Bureau of Indian Affairs to extend federal criminal jurisdiction over Indians. Harring states that since 1874, the BIA had been involved in at least six parallel murder cases, each time attempting to extend some form of criminal law, either federal or state, over tribal members. Thus, the *Crow Dog* decision proved to be the appropriate "test case" that could produce the desired legislative modifications. Had the attempt failed, the BIA already had other cases ready to pursue for the desired legal alterations.[51] Harring ascribes the acts of the BIA to a broad national movement toward the policy of assimilation and allotment. The new federal jurisdiction served these purposes in two respects: (1) the extension of criminal law increased direct white control over Indians, and (2) it undermined tribal law and traditional mechanisms of social control, thereby weakening tribal relationships, including clan structures and power hierarchies.[52]

ARM-TWISTING OVER SOVEREIGNTY

Dramatic as a comparison between the *Crow Dog* and *Billie* cases may initially appear, the recent trends in federal Indian affairs make the parallel to the 1880s appropriate, because as a consequence of gambling revenues, the status of tribal sovereignty has again become a source of fierce dispute. By the mid-1990s, even though favorable Indian policies had been implemented during the Clinton administration, the threat to tribal sovereignty was an appropriate concern. This is demonstrated, for example, by several speeches given by Attorney General Janet Reno, previously a Florida attorney, who emphasized the importance of strengthening tribal sovereignty.[53] Concern for tribal sovereignty was also present in the hearings of the U.S. Senate Committee on Indian Affairs, as issues relating to Indian sovereignty in 1998 were raised in a total of eight different discussions of the committee and subsequently led to the introduction of two bills directed at protecting tribal immunity.[54]

Since then concerns over tribal sovereignty issues have been pushed to the sidelines, and concern over Indian gaming has regained center stage, a tendency that appears only to have intensified during the presidency of George W. Bush. This is visible in recent discussions of the Senate Indian Affairs Committee and sessions of the 107th Congress, where Indian immunity and sovereignty issues have been replaced by hearings on the IGRA and taxing gambling. An analysis of some of the 2001 bills discussed by Congress shows a pattern of tighter regulation and increased sovereignty limitations, as demonstrated by a bill labeled "Tribal and

Local Community Relationship Improvement Act," that mainly imposed further regulations on Indian gaming. The same year also produced a six-page amendment to the already lengthy IGRA. Initiatives to increase the maximum yearly fee collected by the Indian Gambling Commission in charge of monitoring Indian casinos, from $1.8 million of 1997 to $8 million, and to require state approval to new Indian gambling facilities were made. This proposed law implies the elimination of tribal sovereignty.[55] Recent years have also witnessed gross violations of tribal sovereignty on the part of states, including the imposition of unauthorized labor agreements on tribes in California,[56] and a bill called S. 1691, introduced first in 1998 by Senator Slade Gorton of Washington State that forces Indians to collect state retail taxes from non-Indians in casinos. This proposed law implies the elimination of tribal sovereignty.[57]

Thus, tribal sovereignty is under attack by serious political pressure. The U.S. Supreme Court is responding to these pressures by restricting Indian rights. In 2001, the question of tribal casino taxing was brought before the Supreme Court in two cases: *Chickasaw Nation v. United States* and *United States v. Little Six Inc.*, both of which involved the federal excise tax and its applicability to "pull-tab" games at Indian casinos. To complicate matters, the cases had received opposite decisions from lower courts. In *Little Six,* the revenue was exempted from federal taxation, whereas in *Chickasaw Nation* it was not. Before these cases, the Supreme Court had been quite unequivocal about the issue and had systematically upheld tribes and their commercial activities as enjoying exemption. These two cases, however, reversed that tendency. *Chickasaw Nation* was resolved first, causing the *Little Six* case to be sent back to the Court of Appeals without a verdict. In *Chickasaw Nation,* the Court held that the pertinent section of 2719(d)(i) of the IGRA does not exempt tribes from paying gambling-related taxes as defined in Chapter 35 of the Internal Revenue Code.[58] The Supreme Court sided with the Court of Appeal's reasoning that pull-tab games are considered a "lottery" and are taxable wagers and that the Chickasaw Nation was considered a "person" and subject to taxes.[59] The Court also ruled that the IGRA does not preclude the imposition of federal wagering excise taxes and that the self-government guarantee of the 1855 treaty between the United States and the Chickasaw Nation did not prevent the imposition of the taxes in question.[60] The significance of this decision is undisputed; it significantly undermines tribal sovereignty in favor of external authority.

CONCLUSION

It appears, therefore, that yet another era may be dawning in the relationships of Native Americans and the United States, one which could bring an end to the expressed policy of self-determination. One cannot help but be reminded of the grim history of Indian-U.S. relations, as it has at least twice before shown how

favorable policies abruptly turn into efforts to abolish tribes, first in the 1880s through the policies of assimilation and allotment and in the 1950s and 1960s through termination and relocation policies.[61] This time around something is notably different. Indians are in a position never before experienced in their history. They have the legal ability to fight back. This is evident from the ongoing relationships of the Miccosukees and the State of Florida, particularly after the case of Kirk Douglas Billie. Despite the wishes of Florida, the tribe's sovereign rights "surfaced with a vengeance in the Florida Legislature" during the spring of 2002.[62] A bill was introduced that would cause the State of Florida to lose its jurisdiction to investigate crimes on Miccosukee tribal land, rendering authority solely to Miccosukee tribal courts and federal courts.[63] The State of Florida was anything but happy with this proposal, and Governor Jeb Bush stated that he leaned toward vetoing the bill if it passed.[64] Similar bills were introduced in 2004, 2005, and 2006, but they failed to pass. The issue was reintroduced in 2008.[65] Regardless of this bill's ultimate fate, it remains certain that the relationship of the State of Florida and the Miccosukees is far from being settled, with neither side showing signs of giving in.

Over 200 years ago, the new American nation declared "legal" war on Indians, and now, for the first time in history, Indians have the weapons needed to succeed in this war—meaning access to courts and lawyers—thanks to the money brought to them by casinos and three decades of more favorable Indian policies and federal legislation. Thus, it appears that the war government authorities hoped to use to extinguish treaty rights will not be an easy one to fight. Indians have a real chance to prevail.

NOTES

1. The status of land under Indian law is greatly confusing, following decades of inconsistent legislation. For an introduction, see Stephen L. Pevar, *The Rights of Indians and Tribes,* 2nd ed. (Carbondale: Southern Illinois University Press, 1992), and in particular 16–22. The law governing Indian gaming is the *Indian Gaming Regulatory Act* (IGRA), *U.S. Code,* Chapter 25, Title 29: Indian Gaming Regulatory Act, http://www4.law.cornell.edu/uscode/.

2. Pauliina Raento, "Paheesta perheviihteeksi. Peliteollisuuden leviäminen ja kasvu Yhdysvalloissa [From Vice to Family Entertainment. The Expansion and Growth of the Gaming Industry in the United States]," in *Yhdysvallat—näkökulmia jälkiteolliseen yhteiskuntaan* [The United States—Perspectives on Postindustrial Society], ed. Paulinna Raento and Ilkka K. Lakaniemi (Gaudeamus: University Press of Finland, 1999), 144–58.

3. U.S. Senate, *Tribal Government Tax-Exempt Bond Authority Amendments Act of 2001,* January 3, 2001, http://www.senate.gov.

4. Many of the tribes have gained a measure of economic independence from ventures such as opening dumps on their reservations. Although some commentators view

such ventures favorably, caution is appropriate. It is difficult to imagine how accepting the refuse of the dominant society could, despite new economic possibilities, help disadvantaged tribes to achieve a truly egalitarian position. See Richard J. Perry, *From Time Immemorial: Indigenous Peoples and State Systems* (Austin: University of Texas Press, 1996), 18. The creation of open dumps has also been found to cause serious health and environmental hazards, as the impoverished tribes lack the means to implement proper refuse treatment, a concern that led to the drafting of a proposed statute, "Indian Open Dumps Cleanup," *U.S. Code,* Title 25, Chapter 41, http://www4.law.cornell.edu/uscode.

5. Sidney L. Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (New York: Cambridge University Press, 1994), 13–15.

6. U.S. Supreme Court cases involving or affecting Native Americans are available at http://thorpe.ou.edu/supreme.html.

7. It should, however, be noted that the potency of current discussions for offering generalizations is limited by the fact that the cases of the Supreme Court regarding Indians are not available after this year. Thus, it is difficult to make comparisons and establish exactly how numbers have changed over years. To assume that the number has increased as a sign of the Indians' new social activism is, however, supported by the other initiatives taken in recent years.

8. *Encyclopaedia Juridica Fennica VI: Kansainväliset suhteet* (Jyväskylä, Finland: Gummerus Kirjapaino Oy, 1998), 1,028.

9. Riitta Laitinen, "Vahvistuvan itsemääräämisen haasteet—intiaanien aseman kehittyminenYhdysvalloissa," in ed. Raento and Lakaniemi, 86.

10. For a discussion on isolation, see Russel Lawrence Barsh, "The Challenge of Indigenous Self-Determination," in *Native American Sovereignty,* vol. 6, ed. John R. Wunder (New York: Garland Publishing, 1996), 143–78.

11. The symposiums both increased tribal interaction and raised public awareness about the current stage of Indian affairs. The 1997 symposium held in Miami made headlines in the local media. See "Indian Leaders Discuss Sovereignty Issues at Symposium," *Miami Herald Tribune,* March 14, 1997, http://www.miami.com/herald/newslibrary/. The news media also played an important role as demonstrated by the proliferation of websites such as the one providing access to the Constitution, tribal codes, and other legal documents. See http://thorpe.ou.edu. The media have been called an important factor as well in the overall revival of Indian cultures through such films as *The Last of the Mohicans* and *Dances with Wolves.* For a discussion, see Laitinen, "Vahvistuvan itsemääräämisen haasteet," 82–83.

12. Laitinen, "Vahvistuvan itsemääräämisen haasteet," 84.

13. Native American Rights Fund home page, http://www.narf.org.

14. Francis Paul Prucha, *The Great Father,* abridged ed. (Lincoln: University of Nebraska Press, 1986), 379.

15. U.S. Department of Justice, Presidential Documents, "Government to Government Relations with Native American Tribal Governments," April 29, 1994; and Presidential Documents, "Consultation and Coordination with Indian Tribal Governments," May 14, 1998, http://www.usdoj.gov/archive/.

16. The bill was passed by the U.S. House of Representatives in October 2000 and

subsequently forwarded to the White House. Clinton did not approve the bill during his presidency. U.S. Senate Press Release, "Campbell's Land Consolidation, Business, Development Bills Sent to the President," October 23, 2000, http://www.senate.gov.

17. U.S. Senate Press Release, "Campbell: Budget Numbers Mask Quiet Decline in Federal Spending for Indians," February 26, 1997; and Campbell Committee Approves Increased Funding for Indian Programs," February 29, 2000, http://www.senate.gov.

18. "When Your Number—and Letter—Is Up: Answering the Call of the Bingo Game," *Miami Herald,* September 8, 1996. It should, however, be noted that the opening of the casino has not been without controversy among the Miccosukees. A group of tribal members, calling itself "The Governing Body of the Unconquered Seminole Nation," renounces any contact with the casino, while simultaneously the current chairman of the Miccosukee General Council, Billy Cypress, poses on the casino's website. See http://www.miccosukeeseminolenation.com.

19. "Miccosukees Now Sanction Own Bouts: Chairman Promises Cards Will Have High Profile and Club Fights," *Miami Herald,* February 1, 1999; and http://www.miccosukee.com.

20. Diane Ward, attorney for Kirk Douglas Billie, in personal communication relating to the murder trial of *State of Florida v. Kirk Douglas Billie,* March 14, 2001.

21. "A Glimpse at the Miccosukee Tribe of Indians of Florida," Miccosukee Tribe of Indians Press Release, January 29, 2001, http://miccosukeeTribe.com/business.html. Documents obtained from the Office of Lehtinen, Vargas & Reiner, attorneys for the Miccosukee Tribe.

22. Native American Rights Fund, http://www.narf.org.

23. "Success of Miccosukees Hailed," *Miami Herald,* April 9, 2002.

24. "Miccosukee Tribe: Communication from Miccosukee Council Chairman Billy Cypress to State Attorney Katherine Fernandez-Rundle regarding *State v. Kirk Billie,* Case No. F97–21004," August 31, 2000, http://miccosukeeTribe.com/business.html.

25. Ibid.

26. The number derives from the lawsuits reported in the *Miami Herald* from 1995 to 2001. It is, however, unlikely that the number is mistaken, as court proceedings between Indian tribes and states are always cause for headlines. See http://www.miami.com/herald/newslibrary.

27. "Miccosukees Challenge Everglades Plan," *Miami Herald,* September 17, 1997; and "Everglades Plan Called Hazard," *Miami Herald,* November 20, 1997.

28. The final outcome of the situation remains to be seen. The plan was controversial, such as the opposition of conservationists to certain nominations to the plan steering panel by Governor Jeb Bush. See "Biologist's Allegiance Questioned," *Miami Herald,* September 20, 1999.

29. "Tribe Council's Aide Sues Dade," *Miami Herald,* May 20, 2000.

30. "Glades Plans Split Tribe," *Miami Herald,* July 22, 1998. The issue was finally decided on July 8, 1998, by Congress, but no information is available on the status of the land and whether the Miccosukees obtained total control over it. Senate, Hearings of the Committee on Indian Affairs for the 105th Congress, http://www.senate.gov/~scia/105.

31. "Miccosukees Win Some Breathing Room: Tribe Can Build 30 New Houses," *Miami Herald,* October 26, 1996.

32. Miccosukee Tribe, http://miccosukeeTribe.com/business.html.

33. *Miami Herald,* June 12, 1999.

34. As gambling is outlawed in Florida, casinos are only entitled to "class II" gaming, which according to Section 2703(7) (7)(A) means the following:

"(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo." See IGRA.

In reality, this categorization appears difficult to follow, as traditional bingo games are assisted by computerized scanning devices, multiplying the number of sheets played simultaneously and escalating the amounts to be gambled. See "Indian Leaders Discuss Sovereignty Issues at Symposium," *Miami Herald Tribune,* March 14, 1997. Considering the speed at which the gaming and computer technologies develop, the categorization will undoubtedly have to be modified. This fact has also been recognized by policymakers, who issued the Indian Gaming Regulatory Act of 2001, another six-page addition to IGRA.

35. "New Hotels to Deliver 6,000 Jobs in Miami-Dade," *Miami Herald,* March 3, 2000; "It's Time Florida Legalized Casinos," *Miami Herald,* February 8, 2000; "In Florida, Another Roll of the Dice? Casino Fans, Foes for Battle," *Miami Herald,* November 3, 1996.

36. Robert M. Jarvis, "The 2007 Seminole-Florida Gambling Compact," *Gaming Law Review* 12 (February 2008): 13; "Gaming Action," *Miccosukee Tribe of Indians of Florida,* http://www.miccosukee.com/entertainment_gaming.htm.

37. "Tribal Gaming Grows Despite Fight with State," *Miami Herald,* July 9, 2000.

38. U.S. Senate Press Release, "Campbell Introduces Bill to Preserve Integrity of Indian Gaming," July 31, 1997, http://www.senate.gov.

39. The number refers to both tried cases and denied petitions for certiorari, with the subsequent numbers being 2 and 10. Indian gaming has also encouraged states to exert their rights to tax tribes; in the same years, a total of 24 petitions for certiorari relating to IGRA and taxation were delivered, of which two led to a decision. See http://thorpe.ou.edu/supreme.html.

40. This primary concern is also expressed in the IGRA. One of its explicit purposes is stated to be providing a statutory basis to shield tribes from organized crime and other corrupting influences. To address this concern, the IGRA initiated the establishment of the National Indian Gaming Commission, stated to be essential to meet "congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue." The concern is in practice reflected as monitoring the hiring of primary management

officials and key employees and the supervision of gaming revenues to ensure that they are used for the purposes set forth in the IGRA. *U.S. Code,* Chapter 25, Title 29, Section 2702.2 and 3; and 2710 (F)(ii)(II).

41. Laitinen, "Vahvistuvan itsemääräämisen haasteet," 81.

42. U.S. Supreme Court, http://thorpe.ou.edu/supreme.html.

43. Case No. F97–21004, document obtained from the Office of Lehtinen, Vargas and Reiner, attorneys for the Miccosukee Tribe.

44. "Billie Gets Maximum—Life Sentence," *Miami Herald,* April 20, 2001.

45. Jurisdiction over Indian crimes is a confusing matter, governed, in part, by the Major Crimes Act. For an introduction, see Pevar, *Rights of Indians and Tribes,* 129–53.

46. At the end, the prosecution lawyers solved their dilemma by serving subpoenas on witnesses as they left the reservation. Miami-Dade police officers were reported to have waited for Sheila Tiger to leave the reservation and then taken her into custody to get her to testify in the case. Wayne and Margaret Billie, Kirk's parents, were served subpoenas in the hallway of the courthouse when they arrived at the courtroom to support their son. See "Mom of Drowned Boys Compelled to Testify," *Miami Herald,* January 9, 2001.

47. "Miccosukee Tribe responds to attempt to subvert tribal sovereignty by State of Florida. Statement issued by Billy Cypress," Miccosukee Tribe, September 26, 2000.

48. "Tribe Rejects Subpoenas in Murder Inquiry," *Miami Herald,* September 28, 2000; and "Tribal Rights Frustrate Trial," *Miami Herald,* January 16, 2001. These sentiments are echoed in the statements of the prosecution attorneys who argued that "Congress never intended when it created Indian reservations to make them safe havens for murderers." See "American Indian on trial for killing two children," Reuters Internet edition available through "FindLaw Legal News," http://news.findlaw.com/legalnews/s/20010215/crimemiccosukee.html.

49. "To the Point: Respect US Law," *Miami Herald,* January 12, 2001.

50. Harring, *Crow Dog's Case,* 101.

51. Ibid., 115, 134.

52. Ibid., 101–2.

53. U.S. Department of Justice, "Report of the Executive Committee for Indian Country Law Enforcement Improvements," *Final Report to the Attorney General and the Secretary of the Interior,* http://www.usdoj.gov/otj/icredact.htm.

54. U.S. Senate, "Hearings of the Committee on Indian Affairs for the 105th Congress," http://www.senate.gov.

55. "Campbell Introduces Bill to Preserve Integrity of Indian Gaming"; and U.S. Senate, "Tribal Government Tax-Exempt Bond Authority Amendments Act of 2001" (Introduced in the House), January 3, 2001, "Indian Gaming Regulatory Improvement Act of 2001" (Introduced in the Senate), May 3, 2001, "Tribal and Local Communities Relationship Improvement Act" (Introduced in the House), June 19, 2001, and "Internet Gambling Payments Prohibition Act" (Introduced in the House), July 20, 2001, http://www.senate.gov.

56. U.S. Senate, "Tribal Sovereign Protection Act" (Introduced in the House), January 3, 2001, http://www.senate.gov.

57. See "Campbell Introduces Tribal Conflict Resolution Bill," http://www.senate.gov.

58. U.S. Code, Title 2, http://www4.law.cornell.edu/uscode/.

59. *Chickasaw Nation v. United States,* Docket No. 00–50, decided on November 27, 2001, http://thorpe.ou.edu/supreme.html.

60. "Miccosukee Power Play to Remove State Jurisdiction," *Miami Herald,* March 7, 2002.

61. For a brief description of Indian policies, see Pevar, *Rights of Indians and Tribes,* 1–9.

62. "Miccosukee Power Play," *Miami Herald,* March 7, 2002.

63. "Law Would Keep Cops Off Reservation," *Miami Herald,* March 2, 2002.

64. "Governor May Veto Bill on Tribal Land Crimes," *Miami Herald,* March 14, 2002.

65. See HB 231—Reservations of the Miccosukee Tribe of Indians of Florida, Florida House of Representatives. http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=31762.