

ABSTRACT

Estimating Native American Contributions To Washington State Tax Revenue

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In this study we estimate how much tax revenue Native Americans in Washington contribute to the state and local governments. We analyze current economic data provided by tribal, state, and federal government sources in order to measure tax revenue resulting from the tribal presence.

We collected data based on 1) wages earned by tribal members employed by tribal owned enterprises, 2) business expenditures by tribally owned economic enterprises, 3) wages earned by tribal members not employed by tribal-owned businesses, and 4) wages earned by Native Americans who are Washington State residents, but not necessarily members of Washington's tribes. Our primary methodology is based on similar studies of this kind from the states of Arizona, Michigan, and New York. Most of the numeric data on tribal economic activity is based on information gathered by Veronica E. Tiller and Robert A. Chase in their groundbreaking 1998 report entitled Economic Contributions of Indian Tribes to the Economy of Washington State. Additional data were taken from the Washington State Population Survey (Office of Financial Management, 1997). We generated three estimates of state and local taxes paid by Native Americans; our primary method calculated a total revenue contribution of \$139.5 million per year. Two simpler calculations yielded estimates of \$136.7 and \$134 million. Furthermore, we postulate that indirect fiscal impacts owing to Native American economic activity may be significantly larger: estimates of total revenue contribution expand to over \$207 million per year.

In addition to providing valuable and unique data on the revenue contributions of Washington Native American's to state coffers, we provide broad contextual information on tribal economic development, sovereignty, gaming, and taxation. We evaluate current economic information against an historical backdrop. We recommend that Washington State continue to diverge from past policy-making influenced by the politics of "discovery" and America's colonial past. We emphasize that Native American entrepreneurial efforts constitute new and historic opportunities to develop valuable economic partnerships between tribal nations and Washington State. We recommend tax compacting as only one of many opportunities for economic partnership that could provide long-term benefits to both tribal nations and the citizens of Washington State.

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CHAPTER I

Introduction

Economic conditions are changing for many of Washington's 29 federally recognized Indian tribes. In Washington State and across the United States Indian tribal economies are improving as tribes develop innovative and self-supporting business structures that allow them to become financially self-sustaining. As the tribal wealth grows, clearly understanding their contributions to Washington State's economy acquires greater importance and urgency.

The Governor's Office on Indian Affairs, under the direction of Governor Gary Locke, recently hosted a conference on state/tribal relations. During that statewide summit, a number of issues were explored through a series of structured interviews with state and tribal leaders. In a report on the proceedings, Prothro (1999) relayed a suggestion that grew out of discussions pertaining to evolving economic development:

Improve understanding of the economic realities affecting Tribes. For example, consider ways to estimate the total taxes paid by Tribal members to the State and localities and the total revenues from the State and localities that are returned to the Tribes (p. 22).

One interviewee asked, "Do State and Tribal government leaders have a good understanding of the role of Tribes in the State economy? If not, how can this understanding be improved?" (Appendix C.).

This applications project intends to illuminate one small aspect of what we a much larger question, by generating reasonable estimates of the role of Native Americans in the Washington State economy, particularly in terms of gauging the tax revenue resulting from the Native American presence in the state. By describing and measuring these tax contributions, it is our hope that our work will help strengthen the relationship between the tribes and the state by helping legislators and state tax payers understand and value the tribes as partners in economic development. We see great potential for the use of this study in informing policy deliberations in such issues as: state and tribal economic

development strategies, taxation and revenue sharing, gaming, public education and safety, and other issues of critical importance to all Washington citizens.

A. The Importance of Measuring Tribal/Native American Tax Revenue

This work constitutes what we believe to be the first attempt to estimate the tribally related tax revenue accruing to Washington State government. State government in Washington depends heavily on state-wide sales and use taxes, and because historically state taxation on reservations is limited, Indian tribes have been considered by some to be a financial drain on Washington's economy. However, because few businesses exist on reservations, most purchases of goods and services made by Native Americans are made off-reservation, and hence are taxed. Thus Native Americans, spending their wage earnings, ultimately represents an important source of revenue dollars. Clearly, strong tribal economies produce tax dollars that serve to strengthen the overall Washington State economy.

The potential for effective, revenue producing economic partnerships with tribal governments comes at a time when Washington's tax base has been, or may be, eroded by several economic factors. Citizen initiatives such as Initiative 695 which dramatically ended a tax on vehicles, e-commerce with its great potential for out-of-state and thus untaxed purchases, and a potentially "softening" economy may all be factors in eroding the tax base (Washington Research Council [WRC] 2000). At the same time, state and tribal economic development partnerships represent an opportunity for new relationships where both sides can benefit. Both tribal and state governments share many of the same goals. As tribal leaders put it, their intent is, "to assure safe and healthy communities..." and "to assure sustainability of their economic enterprises through good relations with their neighbors..." (Prothro, 1999, p 20-21).

It is important to note that tribes often refer to gaming as the "new buffalo." In Washington State, about half of all tribal economic activity is related to gaming. Yet, as our review of the literature in Chapter II indicates, many government officials and citizens criticize tribal gaming for a number of reasons.

However, within the broad context of history, it is vital to recognize that colonial policies destroyed the “buffalo,” and that often American Indian tribes were “relocated,” far from their original homelands, causing a disruption of hunting and agricultural practices that sustained their societies. Perhaps if the “new buffalo” has arrived, we should, this time, support tribal efforts to become self-sustaining. Our research indicates that state and tribal governments will benefit if they work together to create new economic opportunities that benefit all of Washington’s citizens.

B. Organization of this Paper

There are, of course, significant legal, socioeconomic, cultural, and political qualifiers that impact how any measure of tribal tax revenue may be viewed. As we examine issues of economic development and revenue generation, we must ask ourselves whether current state and federal governmental policies support Native American efforts toward economic recovery and self-sufficiency. In order to broadly address the spectrum of such concerns, Chapter II and III of this report provide the reader with a contextual backdrop for considering current revenue issues between states and tribes. Relationships between Washington State and the Indian nations within its borders are complex. These relationships developed within the context of colonialism with its concomitant racial strife and cultural clashes. This unfortunate legacy must be reckoned in any consideration of contemporary taxation questions.

In Chapter II, we examine a broad array of literature that is directly or indirectly linked to measurement of tribal tax revenue contributions, national and local debates related to tribal taxation and economic development, the legal foundations of tribal sovereignty, self-determination and the federal “trust” relationship, and tribal and state relationships.

In Chapter III of this report we examine the framework of colonialism. This framework can be seen even today within the structure of state and federal laws and governmental policy-making. We make the argument that the sheer

force of colonialism and the politics of “discovery” forever disrupted the self-sustaining societal structures of the native peoples of America. Economic development and revenue contributions made by Native Americans can be most accurately viewed within the context of a history of loss. Washington’s Native Americans have lost land, lost resources (game, fishing, and agricultural land), and have even been pressed to lose their identities as American Indians. At the same time this history of loss is qualified by the tribes’ strong will to protect, sustain, and pass on to new generations tribal culture and values. We close Chapter III by discussing the perils of repeating a history of “irrational” policy-making. We suggest ways in which we may learn from history, and in so doing be spared the pain of repeating it.

Chapter IV details, one after another, three specific methodologies used in the revenue calculations of this report. Each of these methodologies is used to develop parallel projections, and thus provide three similar estimates of tribal/Native American tax revenue accruing to both Washington State and local, (non tribal) governments.

In Chapter V we conclude with a discussion of the use of multipliers, and then the application of such multipliers to the data set generated in the earlier chapters. This chapter also includes a discussion of the potential sources of error in our calculations, briefly reviews contemporary disputes over Washington State taxation of tribes, and then notes the potential for tax compacting between the state and the tribes to resolve the current conflicts over taxation.

C. Methodology

The purpose of our study was to estimate the contribution of Native Americans to the revenue stream of Washington State. This research question was easy to formulate but more difficult to answer. Not only were facts and figures hard to distill and sometimes distorted by the lens of history, but also a number of key concepts need to be clarified. For purposes of this report, we calculated the revenue contributions (a) from tribal economic activity and the wages earned by enrolled tribal members, and (b) revenue contributions of Native

Americans residing in Washington State who are neither enrolled tribal members nor employees of tribal economic enterprises. Thus our calculations are an aggregate of all who may be identified as Native American living in Washington State.

A principal concern in our research was finding relevant economic data needed to formulate an estimate of tribal tax revenue. We found an appropriate source in the work of Tiller and Chase (1999). Their report contributed groundbreaking evidence of the vital and growing tribal economies in Washington State. It provided an overview of tribal economic activity that reflects a billion dollars worth of annual production. It summarized financial information provided by 23 of the (then) 27 federally recognized Washington Indian tribes, and several state and federal agencies. The authors emphasized that tribes are not a drain on the state's economy, but rather contribute to the state and federal tax-base and invigorate local economies.

Our research, including discussions with representatives from both Washington State's Office of Financial Management (OFM) and the Washington State Department of Revenue (DOR), revealed that Tiller and Chase's report provided the most up-to-date information available in regards to tribal economic activity. Additional information on the state Native American population, and their income earnings, was found in the concurrent survey work of the Office of Financial management (OFM 1997). Our estimate of overall tribal tax revenue was therefore based both on the OFM survey, and on the Tiller and Chase report. The OFM report surveyed individuals representing the broad Native American population in Washington State, whereas the Tiller and Chase report focused on data concerning enrolled tribal members.

Our methodology examined 1) wages earned by tribal members employed by tribal-owned enterprises, 2) business expenditures of tribally owned economic enterprises, 3) wages earned by tribal members not employed by tribal-owned businesses, and 4) wages earned by Native Americans who are Washington State residents, but not necessarily members of tribes. It is important to note that tribal members are exempt from state sales tax when purchasing items on-reservation.

Tribal economic enterprises do not pay business and occupation taxes, and tribal trust property is exempt from taxation.¹ Tribal members *do* pay federal income tax. The National Congress of American Indians (NCAI) points out, “Individual American Indians and Alaska Natives and their businesses pay federal income tax just like every other American. The one exception is when an Indian person receives income directly from a treaty trust resource such as fish or timber, that income is not federally taxed” (NCAI, 1999, p.1). Tribal members also pay the state and local sales taxes when they purchase goods and services outside the reservation. However, because the number of businesses on reservations is extremely limited, it is estimated that at least 60 percent of gross tribal wages are spent on consumables off-reservation, and of that, 85 percent of those sales are taxable (Sheane, Morrissy, Wineland, Kaplan and Behringer, 1995, p. 55).

The basis of our estimated contributions of Native Americans to Washington’s revenues were estimates of the percentage of the wages earned that go to sales taxes, as well as the estimated state payroll taxes paid on those earnings. We found appropriate models for accomplishing this task in the writings of Prairie Research Associates (PRA, 1996), the Arizona Legislative Council (Sheane et al., 1995), the Oneida Indian Nation (Coopers & Lybrand, 1995), and the Michigan Indian Gaming Enterprises/University Associates (UA/MIT), 1993).

We have chosen to concentrate our work (for the most part) on tax revenue generated by wage-related spending of tribal enrollees and other Native Americans, and the subsequent sales taxes paid on wage expenditures. We also performed some measurement of revenue generated by tribal-owned business expenditures. Overall we chose to focus on wages, not operations, maintenance and capital expenditures for the following reasons: (a) disaggregated data were less available in the areas of capital expenditure, and (b) we had strong, verifiable wage data. In addition, in Chapter V of this paper we suggest possible multiplier effects generated by the overall tribal presence in Washington State.

¹ See WAC 458-20-192 INDIANS –INDIAN RESERVATIONS and DRAFT RULE 192 (Proposed Lanugage) for WAC 458-20-192 (1) –(23) INDIANS—INDIAN COUNTRY

Our general research approach was influenced by Prairie Research Associates. Noting the need for smaller communities to gauge economic impacts of proposed projects, they suggest the use of simple models that rely on project-related income figures as their base. They argue that wage earnings have the greater local impact, and are therefore more valuable to consider:

Expenditures on wages and salaries tend to have a high local impact. Expenditures on equipment tend to be more diffused, especially if the machines and materials are purchased from outside the region, or are manufactured elsewhere. Typically, the economic leakage associated with capital expenditures is quite high which means that local impacts are low. (PRA, 1996, p. 2)

When we first discussed the idea of estimating the revenue contributions of Washington Indian Tribes to the state economy, the objective was deceptively easy to formulate: Estimate tax revenue generated by the Native Americans in Washington State. This statement, it became increasingly clear, was a significant oversimplification of the problem. There are at least three significant terms that must be defined prior to any kind of calculation. Those terms include the following: revenue, population, and income.

1. Defining Revenue

In the State of Washington, tax revenue may mean many things, as there are a number of mechanisms by which the state collects taxes. The Office of the Forecast Council (OFC) projects the “total General Fund State Revenue” for the 1999-01 biennium as \$20.842.9 billion (OFC, 2000, p.36). This revenue comes to the state as taxes on retail sales, use taxes, a business and occupation (B&O) tax, utility taxes, “sin taxes,” employment security (payroll taxes), and taxes paid to Washington State under the terms of a contractual agreement between tribal and state governments, agreements referred to herein as “tax compacts.”² The various

² Tax compacts are agreements between the individual tribes and the state whereby a disputed tax is collected by the tribal government and reported to the state. In many cases, the agreement leaves the revenue in the hands of the tribal governments to be applied to reservation infrastructure and the needs of the tribal population.

categories of Washington State revenue collections projected for the current biennium are summarized in the following table:

Table 1. Washington State General Fund Revenue by Source

<u>Tax Type</u>	<u>Revenue (in Millions)</u>
Sales	\$10,805.3M
Use	\$709.2M
Business and Occupation	\$3,760.2M
Property Tax (Schools)	\$2,635.3M
Liquor taxes	\$167.5M
Public utilities	\$432.7M
Cigarette	\$132.6M
Real Estate Excise	\$791.2M
Timber Excise	\$25.2M
Timber Excise	\$573.6M
Insurance Premiums	\$335.4M
Motor Vehicle Excise Tax	\$0M
Liquor Excess Funds	\$53.9M
Lottery Revenue	\$222.1M
All other Revenue and Transfers	\$24.6M
Interest Income	\$131.9M
General Fund, Total	\$20,842.9M

(Source: Office of the Forecast Council, February 2000, p. 36)

Note that Washington State does not have a personal or corporate income tax. The revenue report states: “Three taxes: sales and use, business and occupation, and the property tax (state school levy), comprise the majority of Washington’s total General Fund-State revenue. These three taxes accounted for more than 83 percent of the \$19.6 billion total General Fund-State cash receipts in the 1997-99 biennium. This percentage rises to 85.9 percent in the 1999-01 biennium and to 86.0 percent in the 2001-03 biennium” (p. 37).

The sales, property and business and occupation taxes are applied to all Washington State residents, with few exceptions. Notable amongst those exceptions is the limited state authority to collect sales taxes from Native Americans purchasing goods and services on reservation, property taxes on tribal trust lands, and business and occupation taxes on tribally owned enterprises operating on tribal lands. While the legal issues surrounding these jurisdictional questions are complex, we have chosen to somewhat simplify the issues through a series of assumptions regarding the taxable portion of Native American economic activity. Primarily, our taxation estimates are based on state payroll taxes, sales tax collections related to personal incomes, and tribal business expenditures subject to the sales tax. That methodology is discussed in greater detail in Chapter IV.

2. Defining Native American Populations

Official terms used in Washington State to describe Native American minority populations include Washington State Indian population, American Indian population in Washington, Washington State Tribal enrollee population, and Resident Indian population on Washington State Reservations. (Alaska Natives and Aleut peoples are generally counted as American Indians.) These categories and others were used in the work of Tiller and Chase (1998). Ultimately, part of our exercise in revenue calculation included an attempt to define and separate these groups so that we could analyze contributions from these populations correctly. As a result, we found that there were a wide range of numbers ascribed to the Washington State's Native American population. In some cases that is probably the result of numeric discrepancies (rounding errors). In other cases, inconsistencies in population counts were the result of competing methodologies for estimating population. However, the widest and most significant variations resulted from differences in terminology used to define membership in a particular population group.

Thus the recent development of new protocols for the collection of ethnic origin data, currently being used to conduct the U. S. Census, both complicated and enriched our data set. Washington State's Office of Financial Management (OFM) directed in-state counting to conform to federal guidelines and subsequently provided detailed race data tables, following the federal guidelines (Zhao, 1999, p.1). In 1998, the Washington State Population Survey asked respondents their races twice; once using questions consistent with the 1977 standard that classifies race into four categories, and allowed only one category be indicated. The second time the survey used the 1997 standard, which expanded race into five categories and allowed selection of multiple categories if applicable.³

OFM analyst, Yi Zhao, produced a report which greatly aided our study (Zhao, 1999). Her report stressed that the OFM's race re-classification impacted race distributions. The most dramatic impact noted was the 4.1 percent decrease shown in the "other" category and the 2.6 percent decrease shown in the "white" category. These changes were postulated to be the result of giving individuals the option of selecting two or more races. Consequently, in the 1998 Survey, "nearly 4 percent of the population was represented in the sample as multiracial. This percentage is much larger than the national average of 2 percent. Further research is needed to determine if this larger percent is the reality or is due to the expanded sample of the minority population" (Zhao, 1999, p. 2).

There was also a decrease in the percentage of people identified as only American Indian, Eskimo & Aleut (AIEA), from 1.00 percent of the total population down to 0.70 percent of the population (a 0.3 percent reduction in the category AIEA). This group is now re-labeled American Indian, or Alaska Native

³ The OFM report includes the following disclaimer: "The Washington State Population Survey was conducted in the spring of 1998 to provide social, demographic, and economic information about Washington. Responses were obtained from telephone interviews of 7,279 household that represented the state as a whole. The survey was designed by the Office of Financial Management (OFM) and conducted by the Washington State University Social and Economic Sciences Research Center. Data are subject to sampling variability and other sources of error" (Zhao, 1999, p. 1).

(AIAN). However, more individuals were identified as multiracial with a Native American ancestry as one of their ethnic constituents. Zhao (1999, p. 3) wrote,

One out of every five American Indians considers him/herself as multiracial. When the respondents have only one choice, more than 99 percent of them marked a certain single race (Other race is included). However, when multiple choices are permitted, some people change their mind. About 22 percent who previously considered themselves as American Indians have marked two or more races when answering the second set of questions.

One of the ways that OMB suggested tabulating the multiracial population was to use the category *All Inclusive*, which groups multiracial populations with one leading race, and all the other races which are marked. In that manner, twenty-four (combinatoric: $n^2 - 1$; $n = 5$) discreet categories of multiracial description can be quantified (Zhao, 1999, p. 4). “In Washington State, people who marked White plus one or more other races form the largest multiracial group followed by those who chose *American Indian & Alaska Native* and some other races” (p. 3, emphasis added). By combining the AIAN (single choice) percent with AIAN and some other races (multiracial choice), the OFM concluded that total AIAN in Washington State was 1.92 percent of the total population (Zhao, 1999, p. 3). That is the number we used in our subsequent calculations.

3. Defining Income Calculations

Like the terms “tax” and “population” we discussed above, the term “income” is similarly subject to qualification. Income discussions are informed by definitional qualifiers such as “per capita”, “household”, and “adjusted.” Household income data are often collected in conjunction with population survey information. While the national census is conducted once per decade, OFM conducted a survey in the spring of 1998 to profile Washington State residents between decennial censuses. OFM collected data by telephone interview with 7,279 households on income, employment, work experience, health insurance, commute modes, computer and Internet usage, as well as basic demographic information. This survey was done through telephone interviews, so it did not

account for the estimated 4 percent of Washington households without phones, and an expanded sampling of minority groups was done to improve inferences about the characteristics of such groups. While we were interested in household income figures for Washington's Native American population, race related income figures were not presented in OFM publications (Office of Financial Management, March 8, 2000). We, therefore, conducted our own analysis of the OFM data set. Tiller and Chase reported that for employees of Tribal Enterprises, average wages were \$18,783 versus the statewide average wage of \$31,073, suggesting tribal employees earn about 60 percent of the state average wage. Because we were looking at OFM numbers as opposed to numbers supplied by the tribes, we were unable to exactly duplicate the income numbers presented in the Tiller and Chase report. We ultimately decided we would estimate, based on our reading of the OFM data, that Native Americans in Washington State earn seventy percent of the statewide wage average, with an average household income of \$32,803.

Chapter II

Literature Review

This review is meant to be broad in nature and to capture the nuances that contribute to understanding the value of tribal economic activity and its relationship to tribal tax revenue.

The review of the literature regarding the general topic of economic development and tax revenue may be undertaken by relying on multiple headings that all directly or indirectly create greater understanding of the significance of tribal tax revenue, tax laws, and the value in knowing the extent to which tribes contribute to the Washington State economy and the state treasury. They include economic development, sovereignty, gaming, and taxation.

A. Economic Development

Economic development is associated with taxation issues because the evolving economies of tribes have been changing the amount of revenue that tribes provide to state treasuries. These changes have the potential to influence state tax laws, cause legislatures to look to tribal businesses for revenue, and modify how tribes have been viewed in judicial decisions regarding economic development and tax law. We reviewed a wide range of perspectives about the kinds of economic development tribes are engaged in within Washington State and nationally.

The literature on economic development has been replete with varying opinions about the relationships between the tribes and federal and state governments. Additionally, there has been considerable discussion about the best ways to create tribal economic activity and about a continuing need for federal dollars to assist tribes in creating reservation businesses and infrastructure and building self-sustaining tribal businesses. Cornell (1999, p.1) suggested that, “we are witnessing a significant change in the balance of power between the federal government and the states. The key word here is ‘devolution’: the effort to

devolve power downward from Washington to state and local governments” (Cornell, 1999, p.1). This process of devolution is of concern to Native Americans because their “trust” relationship has always been with the federal government (Cornell, 1999).

Cornell, in part, was reacting to trends that began with the Reagan administration. Cook related the Reaganomic “wisdom” that precipitated some of the original private tribal business ventures. He described the conservative position that tribes have too long received a sort of “charity” (Cook, 1984, p.1). He quoted Robert Robertson, who was the co-chairman of a Presidential Commission on Indian Reservation Economies: “The Reservations are the single most regulated part of our total economy. All the good social intentions in the world apparently have not worked” (Cook, 1984, p.1) Cook (p.2) reinforced the view that many reservations:

have no true economic base. Insofar as the reservation economies rest on anything at all, they rest, on the one hand, on the influx of government moneys (\$2.5 billion worth annually) to support health, housing, education, welfare or the reservation bureaucracy, and on the other hand, on the rising royalty and investment income (\$1.7 billion) generated by the tribes’ oil and gas, metals, timber and land holdings.

Cook (1984) explored the strain between the need to develop businesses on the reservation and the continued need for federal funding. He articulated the struggles tribes went through during the 1980s. As tribal businesses were formed, self-determination became a watchword and tribes persevered in maintaining cultural integrity. He stressed the tension between cultural integrity and the need to develop tribal-owned businesses.

Cornell (1999) contended that he knew many of the answers to questions about successful tribal economic development that Cook raised. He described the relationship between states and tribes as one where states have “resented the presence of Indian Nations within their borders” and have “done all they could to limit the powers of those nations.”(p.2) He pointed out that sovereignty is clearly a major issue in economic development. A central argument has been that devolution in and of itself is not necessarily the danger. According to him, the

major concern would be a Congress or states or a judicial system that ignored or disregarded the sovereignty of Indian nations. His interest in sovereignty was impacted by his research experience while helping to complete an extensive tribal study referred to as the Harvard Project on American Indian Economic Development. Their research indicated that tribal sovereignty and strong internal governments that reflect individual tribes' value systems are essential to effective economic development (Cornell, 1999).

The story of the Mashantucket Pequots would seem to illustrate Cornell's point. The Foxwoods Casino Resort in Connecticut is owned by the Mashantucket Pequots. By 1988, the Indian Gaming Regulatory Act (IGRA) was passed and this opened the door for tribal-run gaming businesses (d'Hautesserre, 1998). With the passing of the IGRA, Native Americans began opening up lucrative gaming businesses across the country. However, several factors influenced the success of the Pequots. The author pointed out, "The location of the Mashantucket Pequots in Southern New England benefited their new economic venture: more than 10 percent of the U.S. population live within 160 kilometers (100 miles) of the reservation" (d'Hautesserre, 1998, p.2). Today the Foxwood Casino Resort is one of the largest casinos "in the Western world" (d'Hautesserre, 1998, p.1). The Pequots fought "to obtain federal acknowledgment of their status as a sovereign nation" (p.2). At the same time, they gained an historic land settlement amounting to \$900,000 with which to buy their land back. All these circumstances allowed Pequots' success in gaming. Changes in the laws and the other circumstances, including land settlements and a good location allowed the Mashantucket Pequots to have a hugely successful gaming operation. To some extent, the Pequots illustrated how changes in laws, concepts regarding sovereignty and self-determination, and strong tribal governments have changed the economic landscape for some tribes since a trend toward tribal-owned business began in the 1980s.

The Pequots are among a whole host of tribes nationwide who have developed very successful businesses. Ray Halbritter, National Representative of the Oneida Indian Nation, described how the success of New York's Oneida tribe

has helped them to develop significant infrastructure. Gaming has moved the Oneidas toward self-sufficiency and an infrastructure that includes “a cookhouse, a health services center and museum, a recreational center, a swimming pool, a bathhouse, a childrens’ playground, a gymnasium, and a lacrosse box” (Halbritter, 1996, p. 7).

A concern has been that New York State may threaten the Oneida’s success by asking the Oneida to collect cigarette and fuel taxes, and that this policy may lead to general revenue collection on gaming enterprises. This could be damaging to tribal economic development and is considered by Halbritter to be “taking of property without compensation in violation of the 5th amendment” (p. 9) of the U.S. Constitution, and a violation of “fiduciary obligations to Indian nations” and of “numerous treaties.” He emphasized that tribal owned businesses brought jobs and tax revenue to the state, but direct taxation could cause closure of many of these businesses, thereby eliminating the source of economic independence for tribes like the Oneida.

Great emphasis has been placed on entrepreneurial endeavors in all the literature on economic development. As early as 1987, Schifrin wrote, “Bear, Sterns, and E.F. Hutton in April [of that year] underwrote 61,000,000 in tax-free bonds to help Arizona’s Salt River Pima-Maricopa Indians buy a cement plant” (Schifrin, 1987, p.1). Schifrin described a developing relationship between tribes and commercial interests in the 1980s. Grebler (1996) also emphasized the value of creating business partnerships on reservation lands (Grebler, 1996). He pointed out that “tribal owned corporations are not subject to federal income tax for on-reservation joint businesses” (p.1). He also emphasized that “federal excise taxes may be sheltered for the [joint business] venture” (p.1). He suggested that businesses on reservations may “benefit from accelerated depreciation for facilities and incremental wage credits against income tax for certain wage-earners and insurance costs” (p. 1) and that businesses “may be exempt from state and local gross-receipt taxes.”

However, Serwer & Woods (1993) explained that, because reservation land is held in government trust, difficulties may arise regarding business

insurance and collateral; this has sometimes dissuaded banks from lending to tribes. The complications concerning tribal law have concerned banking institutions, and this has led some tribes to draw up detailed business codes to make lending arrangements easier for banks and insurance companies.

Serwer and Woods (1993) also emphasized the value of Native American participation in the private sector and the importance of healthy internal tribal governments. They described an industrial park, including a shopping center, hospital, and other infrastructure created by the Choctaws. They also illustrated the value of an Ak-Chin tribe agribusiness. The business irrigates 16,000 of its 22,000 reservation acres using water from the Colorado River; the predominate crop is pima cotton. Revenues of almost \$10 million dollars from this business have allowed the Ak-Chin tribe to be almost completely independent of need for sources of other income. White was quoted by Serwer and Woods; he stated that the "KEY" (p. 4) ingredient in tribal business successes is a "strong and stable" tribal government. They were among many authorities on tribal economies who argued that internal tribal conflicts impact tribes' ability to develop businesses in Indian Country.

In a similar vein, Bandow (1998, p. 1) criticized the "paternalistic" role of the federal government. He described the economic successes of many tribes, such as the gaming successes of the California Cabezons, Minnesota's Mille Lacs Chippewas, and New Mexico's Sandias. He also listed the successes of other tribes who control resources in oil, gas, hydroelectric dams, banking, cement plants, medical products, auto parts, and other businesses. He suggested that taxation had the power to destroy the budding successes these and other tribes enjoy. He was, to some extent, referring to the fragility of developing tribal economies. However, both Williams (1999) and Wadzinski (1999) elaborated more broadly on the ways in which taxation can be economically destructive. Tribes often must impose their own retail sales taxes to support infrastructure, housing, government, law enforcement, and many other collective needs just as states do (Williams, 1999). When states compound those costs by imposing state taxes on tribal businesses, tribes face the problem of dual-taxation (Williams,

1999). Most tribal economies can ill afford the impact of dual-taxation. In fact, Wadzinski pointed out that “in several states, tribal members are forced to pay the excise tax for purchases they make on the reservation and do not have an effective way, and in some cases have no way, to obtain a refund for those taxes” (Wadzinski, 1999, p. 1).

Tribal sovereignty and its businesses-related benefits have been controversial subjects among some members of the public. One example of this controversy has been Washington’s Muckleshoot Indians and their amphitheatre project (“Tribes Unite Against Taxes,” 1998, p. 1). Some Washington State citizens have questioned whether it is fair that the Muckleshoots are exempt from King County land use codes that others in the area must follow. Washington State Senator Slade Gorton has been a prominent figure in this criticism (“Tribes Unite Against Taxes,” 1998).

Gorton is not alone in his criticism of tribal business ventures. Cook described many failures in government subsidized Indian enterprises such as the Blackfeet tribe in Browning, Montana (Cook, 1987). Just having plentiful natural resources as the Blackfeet do, was often not enough (Cook, 1987). Cook wrote, “There is oil and gas on the reservation yielding maybe \$3 million a year, some timber and cattle ranching, a fair amount of farming (barley, wheat, and hay)—at least when water is plentiful—an industrial park and even a major tribal enterprise” (p. 1).

He blamed the failure of the Blackfeet pen and pencil company on an internal tribal government “run by a committee” (p. 2). The Salish and the Kootnai tribes also experienced business failures. Cook suggested that tribal governments must format the way they conduct tribal government to fit the industry they decide to promote. This perspective was quite prominent in the literature on economic development. Kalt, Begay, and Horn (1999) expressed similar views concerning tribal government structures.

They indicated that cohesive tribal values and goals and functional tribal governments were more important than any other elements in creating economic success on reservations. The authors emphasized the value of tribal sovereignty

and self-determination. They looked to internal, rather than external, structures for economic success and legitimacy. This study was the result of "systematic fieldwork on a sample of twelve reservations, case analysis of economic development on several additional reservations, and statistical analysis of data for a sample of over seventy American Indian Nations" (p. 1). The authors concluded that control of economic decisions and resources through tribal sovereignty and self-determination was one of the "crucial pieces in the development puzzle" (p. 1). Other crucial elements outlined were the internal structures that guided decision-making for the tribe/s. Questions that arose concerned the type of tribal government and its suitability for the culture and resources of the tribe/s. Some tribal governments were formed around federal institutions and guidelines rather than internal values or structures. A final strategy discussed was to find economic projects that both "pay attention to the culturally derived norms and preferences of the community" (p. 54) and to the "realities of the outside market." The researchers tended to reject many outside forms of political legitimacy. They stated:

The reason why tribal sovereignty is so crucial to successful development is clear. As long as the BIA or some other outside organization carries primary economic responsibility for economic conditions on Indian reservations, development decisions will tend to reflect outsiders' agendas. (p. 14)

Cook (1987) suggested that capitalism and tribal values sometimes clash. He stated that "Even the timber operations so important to the Yakama, Colville and Warm Springs reservations prosper in part because the Bureau of Indian Affairs absorbs the costs of managing the businesses" (p. 3). He suggested that tribal governments can sometimes be part of a bureaucratic roadblock for tribal-owned businesses and that government-imposed business ideas and dollars may meet with a kind of passive/aggressive response on reservations. Margolis stressed the tensions between capitalism and "America's new entrepreneurs," (p. 1) and articulated innovative approaches to the subject of economic development in Indian Country.

Margolis quoted Sitting Bull: “My grandchildren, you are living in a new path. In the future your business dealings with the whites are going to be very hard. Try to make a mark for yourselves. Learn all you can” (Margolis, 1987, p. 1). His writing showcased the work of “First Nations Financial Project” (FNFP) (p. 2). Described as supporting “microenterprises” (p. 2), the FNFP helps small tribal enterprises get started every small step of the way (Margolis, 1987). For example, a commercial rug-weaving enterprise asked FNFP’s help and “First Nations helped arrange for basic instruction for employees in sheep-shearing, woolgathering, carding, and designing”(p. 3). Margolis indicated that the work of the FNFP was very effective in helping small tribal businesses to get a successful start.

The review of the literature on economic development demonstrated a strong trend toward entrepreneurial business ventures on the part of tribal governments. In many cases business ventures have proved to be very successful and clearly helped to grow tribal and local economies. Tribal economic development also created a stronger tax base. However, it’s valuable to view tribal businesses within historical context. Many of tribal businesses developed within the last 10 to 15 years. Previous to their development, many tribes faced serious issues of unemployment and poverty. Many tribal business ventures were fragile, but growing. Direct taxation or dual-taxation of tribal businesses was described in much of the literature as potentially threatening to long-term tribal self-sufficiency.

We conclude from the literature reviewed on tribal economic development that three major issues influence tribes’ ability to develop strong business enterprises. The first is tribal sovereignty; tribal nations must have the ability to make independent decisions about the business ventures they choose to undertake. The most successful business ventures will adhere to tribes’ cultural norms and values. Secondly, tribes must have strong internal governments capable of carrying out long-term business plans and creating tribal membership “buy in” to business projects undertaken. Lastly, tribes must not be overburdened with taxes as they struggle to develop new businesses. Dual-taxation creates a heavy burden

for tribes as they seek to strengthen budding business ventures that could lead to greater self-sufficiency.

B. Sovereignty

The concept of tribal sovereignty has long been understood to be the cornerstone of Indian tribal law. Understanding sovereignty has been the key to understanding some of the foundational concepts that have impacted federal and state laws relating to Indian reservations, Indian peoples, and issues of taxation on tribal lands. Some scholars have argued that the United States has many individual Indian governments residing within its borders. More accurately, tribes are sovereign nations within the United States, with rights, responsibilities, laws and legal relationships specific to their status. Therefore, to understand laws regarding tribal tax revenue, one must understand the origins and implications of sovereignty. Without sovereignty, tribes might simply be considered bands of native peoples living in or assigned to geographic areas in the United States. Perceptions about the rights tribes have or should have are often hotly debated.

In part because of what has come to be thought of as the “Federal-State-Tribal triangle”(National Gambling Impact Study Commission, 1998 p. 1), federal court rulings have shaped the gaming industry. The public debate about the value of assimilation of tribes into the broader societal structure continues; many have strongly opposed such a notion. In the aforementioned triangle of governments, the federal government’s role generally has been to protect tribal sovereignty (NGISC, 1998). However, there has also been debate about the status of tribes in this regard. Are they *sovereign* nations based upon the fact that they occupied American soil before Europeans came to America, or are they essentially “wards” (NGISC, 1998 p.1) of the federal government?

Sovereignty has been considered not only a legal status by many tribal members; it has also been used as a synonym for autonomy, authority, and self-determination (Harjo, 1998). Harjo expressed the views of many Native Americans when she stated, “sovereignty is about our histories, our languages,

our religions, our elders, our ancestors, our children, our future, nationhood” (p. 1). She covered several different topics regarding issues of sovereignty, but in particular recounted a struggle over taxation. She related the story of the Windfall Profit Tax Act of the 1970s. She explained how the Senate “already provided for an exemption for Indian Nations” (p. 1), but the House “was silent on the issue.” A staffer tried to split the difference and suggested a 15 percent tax that would have set a “precedent” (p. 1). Harjo and another person representing the Indian lobby “went to the Senate and House Conferees and stated succinctly, ‘Indians not taxed’” (p. 1). Her reasoning was that a 15 percent tax would have meant that a percentage of sovereignty would be lost; she worried about a loss of sovereignty and was concerned about the insidious losses that can take place even in changes of semantics.

Vizenor (1992) expressed a very different perspective from Harjo’s on the nature of sovereignty and how it can be maintained. He wrote of Luther Standing Bear, a member of the Lakota tribe and an activist and author, who suggested that there is a tension between sovereignty and gambling on reservations. He described Standing Bear’s experiences traveling with members of the Carlisle Indian School in Pennsylvania. Standing Bear’s memory of having the train stop in Sioux City and how the white people would “throw money” (Vizenor, 1992, p. 1) at the Indian children in the train is recounted in juxtaposition with large tribal-owned casinos. In Standing Bear’s youth the older children would tell the younger children to throw the money back at the white people. The author suggested that Native Americans should consider doing the same with casino money by providing moneys to the states. Standing Bear seemed to be suggesting that throwing money back at white society was a sign of pride and strength. Perhaps he was suggesting that it also provided a measure of safety.

Vizenor (1992) argued that tensions between the state and tribes over money made by the larger casinos could cause Congress to dissolve sovereign rights. Vizenor wrote: “To endure the adversities of political lobbies the tribes must do more for others in the world than the government has done for them in the past. Otherwise, the unresolved issues of state taxation and the enforcement of

criminal statutes on reservations could cause more contention between the tribes and state governments” (p.3). Monette (2000) described a very different vision of sovereignty. He wrote of a young “Anishabe” lawyer, who when pressed about sovereignty, was unsure how to define it. Monette described what happened when the young lawyer took his question back to tribal elders:

A grandfather drew a line in the sand and, pointing to one side of the line then the other, declared, ‘That’s the state of North Dakota, and this is Indian Country. And that’s sovereignty.’ A grandmother arose, pressed the nails of both hands against her chest, and said simply, ‘This is sovereignty.’ (p. 2)

Monette suggested that the young lawyer was learning that sovereignty is both about land and about the peoples that inhabit that land. He explained that the idea of “overlapping spheres of sovereignty” (p. 2) was not unique. Federal courts have often treated the federal-tribe relationship in the same way that they have treated the federal-state relationship. Tribes were sometimes treated like a “federalism football” (p. 2). The federal government has appeared to treat tribes as “subordinate” to states. Monette has suggested that tribes be “recognized under the democratic principles that guide America’s federal republican democracy” (p. 2).

Jacob Lone Tree made several points about gaming and taxation based on the logic of Monette and others who have advocated that tribal sovereignty is a little different than state sovereignty. Lone Tree was opposed to the ideas of politicians who would like to impose taxes and heavy regulation on gaming in Wisconsin. The Ho-Chunk nation there “contributed heavily to the economy through several thousand jobs, \$90 million in annual state and federal tax revenue, [and] \$150 million in annual purchases of goods and services” (Lone Tree, 1998, p. 1). He emphasized that in trying to tax tribes, the state government is ignoring their right to govern themselves. His concern has been that only tribes themselves have the right to tax their people, and he added that moneys received from the federal government are not in lieu of tribal independence and sovereignty, but a compensation for land the tribes have been forced to give up or have been poorly compensated for.

Another area of concern expressed in the literature on sovereignty was the dichotomy between plenary power and tribal sovereignty. Wilkins discussed the various interpretations of sovereignty such as the definitions of tribes by Justice John Marshall, in *Worcester v. Georgia* as "distinct peoples, divided into separate nations, independent of each other, and of the rest of the world, having institutions of their own, and governing themselves by their own laws" (Wilkins, 1994, p. 1). Wilkins defined tribal sovereignty as "an understanding that every tribal person has the right and the responsibility to be an actor, not merely an object, in decisions affecting his or her community" (p. 1).

Plenary power was used by the federal government as a means to assimilate Native Americans in the late 19th and early 20th Century. Interpretations of tribal sovereignty and plenary power have implications for current tax law. Questions have arisen regarding the rights of states to tax citizens of sovereign nations or to ask them to act as tax collectors for the state (Wilkins, 1994). The courts, Congress, and the federal government have generally been very "protective" (American Indian Lawyer Training Program [AILTP], 1988, p. 44) of tribal interests regarding issues of taxation. An exception to this policy has been "*Washington v. Confederated Colville Tribes*, 447 U.S. 134" (p. 44). This decision "allowing the tribes to collect state cigarette taxes on sales to non-Indians" varied from the norm because "no tribal natural resources were involved and the Court feared that a contrary result would allow the tribe to 'market' an exemption from state taxation" (p. 44). We will return to this discussion later (pp. 35-42).

We conclude that sovereignty is a broad and complex topic, as the literature on the subject has indicated. For some, sovereignty is a sometimes hotly contested legal definition. In early Supreme Court decisions, the *trust relationship*, designated Indian Tribes as "distinct political communities" dependent upon the U.S. government as "a ward to a guardian" (AILTP, 1988, p. 6). However that definition is not accepted by most tribes, and tribal members are more likely to view sovereignty as a statement about nationhood, self-determination, pride, heritage, economic opportunity, and many other important

cultural and governmental issues. Much of the literature we reviewed places sovereignty at the heart of economic opportunity and self-sufficiency. A number of authors indicated that successful tribal business ventures generally require tribal “buy in” and investment in ventures that are culturally accepted and match shared goals and values. Today’s tribal governments are often less interested in government “programs” and more interested in government-to-government partnerships.

C. Gaming

The subject of gaming is directly related to tribal tax revenue because much of this new-found revenue comes from gaming. In chapters IV and V we calculate revenue derived from wages from tribal-owned businesses. Much of this revenue is derived from tribal-owned gaming operations. However, with successful gaming operations have come some social concerns regarding gambling, and, in some states, debates over how much revenue tribes “owe” state governments. Tribes have asserted that states are receiving a generous amount of “indirect revenue,” that tribes are contributing through several means: through sales tax on purchases they are able to make because of wages paid by tribal-owned gaming businesses, sales tax paid on purchases of business-related goods and services for tribal-owned casinos, through jobs for many non-Indians, and through the “multiplier effect” from these businesses that has stimulated regional economies.

Native American attitudes toward gaming have not historically been the same as those of Europeans (Winchell, et al, 1997). Native Americans have historically held games such as “stick games, foot races, and ball games” (Winchell, et al, 1997, p.3). Northwest Indians held potlatches (Winchell, et al, 1997). When Europeans arrived in America many native people quickly picked up European games as well (Winchell, 1997). Ideas about the evils of gambling were also brought with the Europeans and it was the European influence that promoted restriction of Indian gaming (Winchell, 1997).

The National Indian Gaming Association's (NIGA, 1994) has traced the origins of Indian Gaming. Three historical periods of legalized and popular gaming have been identified:

The first wave of gaming began in the colonial era and lasted through the Civil War. The second wave began after the civil war and lasted through the early twentieth century when most forms of gaming throughout the U.S. were banned. The third wave began in 1964, with the passage of legislation legalizing a lottery in New Hampshire. (p. 1)

Gaming, in one form or another, has now become legal in nearly every state, with the exception of Utah and Hawaii (NIGA, 1994). As of 1992, Gaming on Indian reservations made up about 5 percent of the gaming industry revenue market share (NIGA, 1994). Total gaming in the nation in 1992 was estimated at "\$29.9 billion"(p. 4). Gaming is said to have "replaced the buffalo as the mechanism used by American Indian people for survival" (p. 9). Now, the authors stated that gaming is "used by Indian nations for subsistence, cultural preservation, and to replenish impoverished economies" (p. 9). Some opponents of Indian gaming have made allegations of criminal improprieties and economic corruption. However, Department of Justice officials, during 1992 hearings on the issue, uncovered no such improprieties. The Indian Gaming Regulatory Act (IGRA) was the statutory authority for Indian gaming. Its intent was to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments" (p. 9). Under the IGRA, revenues were used to provide needed "infrastructure; schools, hospitals, roads, sewers, and water systems and to fund health care and education" (p. 9). The NIGA reported "the poorest counties in the United States are located on Indian Reservations" (p. 10). Tensions between state government and tribal governments reflected in the broad range of literature regarding relations between the tribes and the states relations were very evident in states' response to the IGRA. The intent of the IGRA was to create a reasonable balance between states to protect overall public interests and rights of the tribes to conduct gaming in Indian Country. The IGRA "created three classes of gaming and allocated

regulatory jurisdiction over each class among tribal, federal, and state sovereigns” (p. 12).

Under IGRA, tribes must negotiate with state governments to enter into gaming compacts. States have been required to negotiate with tribes in “good faith” (p. 13). Lawsuits were initiated because some states refused to negotiate with the tribes according to IGRA specifications. As with other regulatory issues between the tribes and the states, constitutional law and decisions by the judiciary have guided arguments and outcomes. States used both the tenth and eleventh amendments to defend against tribal lawsuits alleging states were not negotiating in good faith. The tenth amendment stated that “powers not delegated to the federal government by the constitution are reserved for individual state governments” (p. 16). The eleventh amendment stated that individual states are immune to lawsuits brought by persons “based on federal legislation” (p. 16) unless Congress abrogated “state immunity.” However, the tribes argued that the IGRA does just that.

Kalt, in testimony before the National Gambling Impact Study Commission (NGISC, 1998), cited operations from small reservations such as Pine Ridge Reservation to large-scale resorts such as Fondulac in rural Minnesota, to illustrate the economic importance and positive impact on tribal communities. Kalt indicated that the impact of gaming was to steer Indian communities away from the age-old “problems of poverty and associated social ills in Indian country” (p. 1). He envisioned the “institutional” (p. 1) impact of gaming as a clear sign of tribal independence and an opportunity to break away from federal institutions. He defended Indian sovereignty as essential to economic prosperity, and stated, “We cannot find a single case in Indian country where federal planning programs and management of the reservation economy have produced sustained economic development and social well being” (p.1).

Kalt (1998), who testified before the NGISC, emphasized that revenue and economic opportunity provided by gaming can only be measured within the context of the severe economic and social deprivation experienced historically by Native Americans. Native Americans, described by Kalt as being statistically

“America’s poorest population” (p.1), have experienced extreme unemployment compared to the U.S. as a whole. He emphasized that “Unemployment on reservations pushed over 40 percent on average, when the national economy showed only six percent unemployment. In fact, right now, in the late 1990s, unemployment on many reservations exceeds 50 percent and some places real joblessness pushes above 90 percent” (p.2).

In the midst of this staggering economic crisis, gaming has provided a method for tribal governments to obtain significant revenue for meeting the many and diverse needs of reservations. He pointed to states such as Wisconsin that have added jobs for “approximately 18,000 workers” (p. 2). With regard to social impacts, Kalt emphasized, “Finally multiple studies consistently find that crime is reduced with the advent of tribal gaming, apparently, from what we can tell, correlated with the improvements in employment and income” (p. 2).

Huebsch, who expressed a perspective different from Kalt’s, wrote, “The rapid rise of legalized public gaming in the U.S. created a rush to attract wagers, a scramble to collect taxes, and worries about resulting social ills” (Huebsch, 1997, p. 1). He noted that Americans have become much more complacent about the morality of gambling and casino gaming has become one of the most popular types of gambling (Huebsch, 1997). In 1996, 56 percent of Americans gambled at least once, and spent \$44.4 billion on gaming in 1995 (Huebsch, 1997).

The popularity of gaming in the U.S. has been enhanced by two factors; one is the “sanitized” (p.2) version of gaming seen in state lotteries, the other is the “increased exposure” due to increased opportunities to gamble, such as in the 24 states where gaming is available on Indian reservations. In spite of Americans’ increased tolerance of gaming activities, communities are still ambivalent in their attitudes about its impact on neighborhoods (Huebsch, 1997). According to a 1996 Roper survey, 42 percent of those polled felt that allowing more casinos to open “threatens our values” (p. 2) and 41 percent say that casino openings threaten the quality of life in the areas where they are opened. A Gallup poll has shown that two thirds of people think legalization of gambling encourages the poor to spend a disproportionate amount of their income on

gambling, although statistics support the view that “gambling of all types typically increases with income” (p.3).

However, tax revenue is often the deciding factor for local communities. Huebsch (p.3) argued, “Many localities that face diminishing state and federal money, rising property taxes, and sluggish economies eye casinos as welcome sources of revenue.” States reduced property or other unwelcome tax collection means with a specific casino tax. These localities collected, “an estimated \$16 million in gambling privilege taxes in 1995.” (p. 3). Nevada was very dependent on gaming, and gained a large share of its tax revenue (about 40 percent) through gambling.

Regions dependent upon gaming for tax dollars were concerned about decreasing market share. Many casinos have been enlarging and adding other amenities, such as adjoining hotels or theme parks to maintain their market share. Casinos continue to be controversial and “a legislative measure that would have allowed private casinos outside of Indian reservations in New York State failed” (p. 7) in 1997. Huebsch suggested that acceptance of casinos depends on their ability to responsibly handle issues of crime and gambling addiction and the public’s perception that they are providing valuable tax revenue and economic prosperity.

Somewhat in contrast to the views of both Kalt, who testified before the NGISC, and Huebsch, authors Anders, Siegel, and Yacoub (1998, p. 1) suggested that “the introduction of Indian casinos caused a structural change in the formation of Arizona state revenues.” The authors stated, “With 21 reservations, Arizona has one of the largest concentrations of Native Americans in the United States” (Anders, et al, 1998, p. 1). However, financial information on Indian casinos has only been available by estimate; it has not been revealed to the public. After having suggested several models for analysis, the authors stated that, due to losses of assessment taxes, the state may want to re-negotiate compacts for profit-sharing. Native Americans have not been required to report to the state, making it difficult for researchers to obtain data for more accurate policy decision-making.

Mason and Stranahan (1996) emphasized evaluating the impacts of casino gambling on state revenue gains and losses. They wrote that "very few studies have evaluated and systematically analyzed the net revenue gains associated with gambling"(p. 1). They urged that we "consider the cross effects on other sources of tax revenue. Due to the cross-price effects of gambling, tax revenues will likely decline in states that introduce nontaxable casino gambling on Indian reservations" (p. 1). They used a mathematical model to test the influence of casino gaming using a cross-price framework assuming the goods are nontaxable, but contribute indirectly to corporate tax collections. They concluded that, based on their calculations, "the model indicates that employment effects are not the key component to revenue enhancement and should not be given significant consideration in the decision-making process." (p.7). In looking at Native American casinos, they concluded that after tourism and employment effects, there was no additional tax revenue, and in fact a significant decline after casino adoption (Mason & Stranahan, 1996).

On the other hand, statistics from studies of six Indian-owned gaming facilities, including those of the Sycuan Gaming Center in East San Diego county, eleven tribes in the state of Minnesota, tribes in the state of Wisconsin; ten tribes in the state of New Mexico, seven tribes in the state of Michigan, and the Foxwoods High Stakes Bingo & Casino in New London County, Connecticut have shown a reduction in the use of public assistance, reduced unemployment, job creation and increased growth in surrounding economies, and increased infrastructure on reservations (NIGA, 1994). One study showed that "each new Foxwoods job, supported 1.107 additional non-casino jobs in New London County" (NIGA, 1994, p. 28).

In many cases, Indian gaming employed many people in the region that are not tribal members—as well as many members of the individual tribes (University Associates, Michigan Indian Tribes, 1993). Often, "Indian Gaming enterprises are major employers within their counties" (p. 4). Importantly, such enterprises have not been subsidized with "public tax dollars, but in fact, generate large tax payments" (p. 4).

Michigan Indian Gaming Enterprises reported that over a period of 12 months, 8 of its gaming enterprises “paid a total of \$5,726,929 in state and federal taxes” (p. 4). Much of data in this report substantiated the view that gaming enterprises supported local economies, moved tribal members from welfare to work, and strengthened reservation businesses, services, housing and other infrastructure on isolated reservation lands.

In Michigan, tribal enterprises “are major employers within their counties” (p.8). Gaming in Michigan State in 1993 was estimated at \$70 million. In many cases these were new dollars coming into the state and they generated a tax base that had not previously existed. The economy was stimulated by purchases of supplies for the gaming industries, by use of local service industries (motels, restaurants, gas stations) by gaming patrons, and through the expenditure of gaming employee wages in the local economy (University Associates/Michigan Indian Tribes, 1993). For example, “Overall, Indian Gaming accounts for \$16,525,534 in expenditures for related goods and services. It is particularly important to note that 88 percent of these funds are directed toward Michigan suppliers” (p.17). For every one new job created in the gaming industry, the induced affect is the creation of 2.5 supporting jobs. Gaming strengthened tourism in Michigan. Dollars brought into local communities from outside the region or from Canada added to the economic strength of the community. Tribal infrastructure is strengthened because “Federal law dictates all profits from Indian Gaming must be reinvested in tribal operations/programs, provide for general welfare of the tribe and its members, promote tribal economic development, be given to charities or to reimburse local communities for expenses incurred in supporting Casino operations” (p. 27). The surrounding community may also be supported by contributions to clubs, organizations, shelters, pre-schools, and the like.

Overall, there was much evidence that gaming provided jobs, supported sovereignty, created jobs without touching public tax dollars, provided full-time employment and benefits to many employees, supported the local economy, supported reservation infrastructure, moved people from welfare to work,

attracted investors, and increased overall prosperity (University Associates/Michigan Indian Tribes, 1993).

However, the value of gaming was questioned in a number of different ways. Gambling is often criticized as a false solution for long-term economic problems on reservations (“The Politics of Chance,” 1998). There was a growing concern that competition between gambling establishments might create a flooded market and squeeze tribal revenues (“The Politics of Chance,” 1998). In Connecticut, Governor Lowell Weiker made a deal with the Mashantucket Pequots that proved to be valuable both to the Pequots and to the state of Connecticut as it brought “\$150 million” (Sileo, 1995, p. 2) into the state’s treasury in 1996. Governor Weiker allowed the tribes to bring in slot machines and the state treasury continued to receive a proportion of the take through a compact with the tribe. In 1996, the U.S. Supreme Court had as many as 10 cases waiting to be heard involving Indian tribes suing over state gaming restrictions (Sileo, 1995). In 1996, Arizona Senator John McCain and Hawaiian Senator Daniel Inouye sponsored an updated version of the Indian Gaming Regulatory Act. They received correspondence on this Act from the National Governor’s Association. The NGA was concerned about weakening state sovereignty by giving tribes too much authority.

Regardless of what perspective was expressed on gaming, there was no question that the industry has continued to grow. In 1996, \$600 billion was spent on gaming, “an increase of over 54 percent from 1993,” and “Indian gaming increased over 125 percent in this three year period” (Winchell, Lounsbury & Sommers, 1997, p. 1). One of the controversial issues that created tensions between states and tribes was the fact that at least 37 states have state lotteries, and that Indian gaming has sometimes pulled money away from these lotteries—which have often been “earmarked for education” (p.2). The success of Indian gaming also impacted policy around the acquisition of land to be given "trust" status. The 1998 Congressional testimony of Minnesota Governor Arne Carlson shed light on states’ worries about land the Shakopee Mdewakanton tribe wished to have held in trust:

The tribe, surely recognizing the suburban development potential of the land, included within its own trust application a plan for retail, light industrial and housing development. We estimate lost tax revenues of \$97 million over a 12 year period. Due to significant revenue loss, local governments would be forced to raise taxes or cut services to non-tribal residents. (Carlson, 1998, p.1)

Carlson pointed out that the Shakopee Mdewekanton reported an annual income for tribal members of \$600,000. Although he didn't indicate the source of their income, he did indicate that he had seen Indian gaming as having created an unfair imbalance between tribes and that this disparity was a cause for bitterness about Indian gaming. He cited the Mashantucket Pequot tribe as an example of the way unfair trust practices have been carried out by the BIA. In 1995, the Pequots asked that land be held in trust for additional parking lots and a "buffer zone" between other tribal land and the parking area. The Pequots were granted the trust by the BIA even though Carlson stated there would have been "significant adverse economic impacts" (Carlson, 1998, p. 3) on the local area. Carlson's complaint stemmed, in part, from the fact that the Pequots were very successful with gaming. Carlson, in fact, described them as having "the most successful, largest casino in the world" (p. 3). The success of some Indian gaming businesses caused the BIA, the DOI, and the 8th Circuit Court of appeals to take a second look at tribal requests to have land held in trust. Previous decisions had been based on whether tribes had adequate land base for economic success, but current decisions have pitted state economic considerations against tribal economic considerations (Carlson, 1998). A final word on gaming comes from Washington State Senator Dan Evans :

In the market for gaming, as with other markets Indian tribes must accumulate wealth, develop track records and make financial and market connections to succeed in our economic system. When any non-Indian entity or regions succeed in these endeavors, we proclaim it to be a booming economic sector ripe for productivity, employment, and financial opportunity. Unfortunately, when Indian tribes and reservations succeed in these endeavors, the surrounding communities often shrink into a shroud of protectionism and isolationism, accusing Indians of gathering the benefits which rightfully belong to the non-Indian community(U.S. Senate, 1999, p. 7).

Our conclusions on this topic are quite similar to Senator Evans.’ Although some communities have voiced concerns about the possibility of increased gambling addiction or criminal activity associated with gambling ventures, the literature indicates that authorities have found few (if any) improprieties associated with tribal gaming. Instead, we find that tribal nations are strengthening local economies by bringing in much needed tax revenue through local purchases of supplies for casinos, wages for both tribal and non-tribal employees, increased tourism, and much needed tax revenue from sales tax. Tribal gaming does indeed seem to be the “new buffalo.” Our review of the literature on gaming shows that gaming presents the opportunity for new economic beginnings for tribal nations. Senator Evans’ statement suggests that tribal nations must accumulate some level of wealth in order to invest in a brighter future. We conclude that tribal gaming is not an end in itself, but rather, an opportunity to create enough capital for business and services expansion. After experiencing many years of pervasive poverty, we view gaming as an unparalleled opportunity for tribal nations to improve living conditions of Native Americans, including health care, housing, schools, and many other vital social needs and services.

D. Taxation

Taxation itself is a multi-thematic and complex issue. Concerns included the following: tax compacting; direct and indirect revenues paid by Indian tribes; state and federal tax law; judicial decisions that have shaped tax law and policy impacting Indian tribes, states, and the federal government; tax base protection; double taxation in Indian Country; the cost of enforcing collection of gas, cigarette and other taxes on reservations; and much more.

Much of the literature on taxation has formed the same connections mentioned earlier in this paper in regard to the push and pull of federal-state-tribal authority and the resulting judicial decisions made, in large part, in the Court of Appeals for the Ninth Circuit. The court has drawn a distinction between the

power to tax and the power to adjudicate (Canby, 1998). Senior Judge William C. Canby, Jr. explained that these jurisdictions (i.e. jurisdictions over taxation versus jurisdiction over adjudication) are not always “co-extensive” (Canby, 1998, p. 6). The right to adjudicate meant that tribes had their own laws and administered them on reservations. That right was generally protected, regardless of the state’s concerns. With issues of taxation, the courts have tended to place less emphasis on “sovereignty” per se and looked instead at “applicable treaties and statutes” (p. 6). In matters of taxation, a “preemption” (p. 6.) test was sometimes applied. Preemption suggested that the state’s concerns preempted tribal concerns, if not specifically barred from doing so by federal law or policy. However, in these cases, much “fact-finding” (p. 7) and balancing of state and tribal interests took place. Therefore, outcomes varied, and it could be difficult to get a sense of precedence.

Federal taxation of tribes and tribal land was straightforward, with a couple of exceptions. Indians were not exempt from federal income tax (Canby, 1998). No capital gains tax was paid on tribal land held in trust. This applied to capital gains, rents, royalties, and compensation for crops or minerals coming from land held in trust (Canby, 1998). However, hotels and smokeshops were said to derive income from both labor and capital improvement and had, therefore, been taxed. When land was no longer held in federal trust, it became fully taxable (Canby, 1998).

Generally speaking, states were not able to tax tribes in Indian Country. Congress had the power to change these rules of taxation but generally chose not to do so (Canby, 1998). The origins of the legal precedent against state taxation did not come from “federal-state intergovernmental immunity” (Canby, 1998, p. 8). Rather, each case involving Indian policy was evaluated on its particular merits. Without Congressional authorization, states have not been able to tax property—even if it is non-trust property when a tribal member owned the property and it was located on the tribe’s reservation (Canby, 1998).

Supreme Court decisions moved toward a slightly more liberal view of state authority as in *Washington vs. the Confederated Tribes of the Colville*

Reservations 447 U.S. 134 (1980). In the Colville case, the court made its decision based on a concern that paying less per pack on cigarettes was drawing non-tribal members to tribal smoke-shops and creating price imbalances from the perspective of the larger business community. The court said that the tribes should affix cigarette stamps to the packs of cigarettes and should maintain records of sales to non-tribal members to the state. However, while the state was granted taxation authority it was not granted adjudicatory authority. So, in essence, because of sovereignty, the tribes could not be sued. And although Washington State might try to sue individual officers of the tribe, they were not likely to reap much financial benefit from doing so (Canby, 1998).

Because of changes in the economic landscape, both due to gaming and to other innovative business concepts, many Indian tribes have shown concern about issues of taxation (“Tribes Unite Against Taxes,” 1997). A group of “26 American Indian tribes has created an alliance to resist federal regulation and potential taxation” (“Tribes Unite Against Taxes,” p. 1). Their idea was to form a lobbying organization that would have clout in defending tribal interests, tax compacting interests, and resisting states’ taxation efforts. However, Will E. Haslam, President of the Pilot Corporation and speaking “on behalf of the National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America” (Haslam, 1998, p. 1), in his testimony before Congress took a different stand on taxation issues. Haslam said, “Not only do tax free sales give Native American retailers an unbeatable price advantage over retailers who collect taxes, they deprive states of as much as a billion dollars in tax revenue every year” (Haslam, 1998, p. 1). Haslam mentioned Washington State as one of the eight states listed as losing significant tax revenue due to non-collection of cigarette taxes (Haslam, 1998).

On the other hand, Susan Williams’ testimony before Congress suggested a “broadening” of the “scope” of the debate. Williams suggested that the problems of tax collection were less severe than some business representatives made them out to be. Williams was more concerned about “overlapping tax jurisdiction (s)” and the problem of “dual taxation.” She was concerned that dual

taxation had damaged tribal economies. As Williams explained it, tribes must fund infrastructure and internal government just like any other nation. The Supreme Court has said that tribes must make “reasonable efforts to assist” (Williams, 1999, p. 2) in tax collection for the state. But many tribal governments disagreed with the court’s interpretation on this issue. From the tribal perspective, this judgement interfered with the sovereign government’s revenue stream. Many states decided not to try to collect taxes through tribes, but instead to allow the tribal government to collect any applicable tax so that price competition remains relatively fair (Williams, 1999).

She also made the case that tribal members make most purchases off-reservation because of the lack of infrastructure on reservation land. In this way, tribes have been contributing tax dollars to state government, but have not been receiving the same state services that persons dwelling off-reservation received (Williams, 1999).

She suggested both “pre-collection” of taxes and “Intergovernmental Compacts for Tax Collection” (pp. 3-4), and that cigarette gas and other such taxes could and should be collected at the wholesale level. She also pointed out that in “a report issued by the Arizona Legislative Council, . . . in 1995 more than 200 tribes in 18 states had created successful state-tribal compacts . . .” (p. 4). Williams did not feel that a federal solution was necessary. She suggested that a federal solution was an intrusion on the tribal/state relationship (Williams, 1999).

Williams has not been alone in believing that states and tribes may need to work out complex taxation issues without federal interference. It appears that “the number of conflicts over collecting sales tax could grow as state government leaders face pressure to gather as much revenue as possible, and to balance the competition between merchants on and off reservations” (Loudon, 1997, p. 1). Johnson stated that what is happening in New York state “could be a study for the devolution of federal control over Indian policy in the states” (Loudon, 1997, p. 1). New York, Oklahoma and many other states were experiencing conflicts around gaming, fishing rights, and taxation issues. Theresa Lombar, who is the Native American Journalists’ Association projects director in Minneapolis stated

that there were “probably hundreds” (p. 1) of such disagreements taking place nationwide. Freemantle (1998, p. 1) suggested that “Since cigarettes and motor fuel are an important, lucrative source of revenue for most states, the losses nationwide from this “loophole in the tax system amounts to hundreds of millions of dollars each year.” Both Slade Gorton (R-Washington) and U.S. Representative Ernest Istook (R-Oklahoma) have introduced legislation they say will close tax loopholes (Freemantle, 1998).

However, Wadzinski, in Congressional testimony negated claims of lost tax revenues by stating that tribal sales to non-tribal members are minimal, and that, in most cases, tribes were purchasing these goods tax-paid and later applying for refunds (Wadzinski, 1999).

Taylor (1999) echoed Judge Canby’s earlier statements on the subject. Taylor wrote, “the Supreme Court reiterated the now venerable legal principle that states cannot impose their taxes on tribes (or their members) for activities within Indian Country” (p. 2). “In the case of state taxation of non-members, the Supreme Court has held that states may impose their taxes on transactions occurring within [Indian Country] unless the tax is preempted by federal legislation” (p. 2). Taylor continued, saying that he has known of “no concrete evidence showing that substantial amounts of tax revenue are being lost by states due to tribes’ non-payment of valid state taxes” (p. 2).

Taylor stated, “Most of the claims I have heard concerning lost revenues involve state taxes that are not actually imposed, are not valid, or are legally questionable given substantial ambiguity in the federal and state law” (Taylor, 1999, p. 3). In several instances, supposed substantial sums of lost revenue (such as cigarette taxes in New Mexico) have been found invalid because federal law exempts tribes from such taxation.

In Congressional testimony on collection of taxes by tribal retailers, Keller George (1999), President of the United South and Eastern Tribes (USET) spoke in defense of the Indian Sovereignty with regard to the sovereign taxing powers of the Indian nation. He advocated government-to-government contact to establish and maintain tax agreements between states and Indian nations. George

went on to explain that the gas station/convenience store industry did not want tribal/state agreements, but instead favored federal intervention. He believed they were attempting to strip tribes of their sovereignty by forcing them to serve as tax collectors for the state (George, 1999).

Istook (1998, p. 1) argued that tribes have “exploited this exemption, leading non-tribal purchasers to believe they do not owe the sales, fuel, or excise taxes on these transactions, since the tribes do not charge them. Istook’s major argument was that tribal discounts eliminate competition and deplete the tax base that localities use for financing infrastructure. Istook stated:

The problem is rapidly getting worse. Currently the State of New York estimates tax losses at \$65 million for untaxed cigarettes and \$35 million for untaxed motor fuels, Washington State is losing \$63 million per year on untaxed cigarettes, Michigan is losing \$103 million per year in cigarette, motor fuel, and general use taxes, Oklahoma is losing \$27 million per year in cigarette taxes, California is losing between \$30 to \$50 million per year in cigarette taxes, Kansas is losing \$3 million per year in cigarette and motor fuel taxes, New Mexico is losing \$4.3 million in motor fuel taxes and Wisconsin is losing \$6 million. (p. 1)

In February 2000, Washington State’s Governor Gary Locke dealt with similar matters (Zimmerman, 2000). He helped to institute an annual state tax credit that would have been equal to the amount of tax the Confederated Tribes and Bands of the Yakama Indian Nation were imposing on liquor sales. The issue of sovereignty was again at the center of the controversy. The tax amounted to about \$2.40 on a six-pack of beer and went into effect January 4, 2000. The tribes’ decision created tension in Olympia, and Locke sought a compromise (Zimmerman, 2000).

Reasons for the imposition of the tax were controversial. Tribes had cited concerns about the destructive force of alcohol use, concerns that date back as far as 1855. But some legislators believed the Yakamas were trying to exercise their clout in light of recent seizures of untaxed cigarettes. The Yakamas saw these seizures as illegal, because they believed that officials had been trespassing in Indian Country. Locke was in the somewhat uncomfortable position of trying to find an area of compromise on this issue. Cases like this one have often wound

up in the 9th U.S. Circuit Court of Appeals. This was another instance where tribal, state, and federal laws differed. Clearly though, the Yakamas remained convinced of their sovereign right to tax tribal members (Zimmerman, 2000).

In March, 2000, taxation issues again became prominent because of proposed law HB 3128 (Galloway, 2000). The proposed law would have allowed Governor Locke to sign tax compacts with the Muckleshoots, the Tullalip, the Squaxins, and the Nisqually tribe (Galloway, 2000). The proposed legislation required that smokeshop retailers charge their customers 82 cents per pack. This would have created parity with other local non-tribal retailers. Rather than going to the state, the tax would have gone directly to the four tribes. Such a compact would have brought Washington State in step with other states that have at least 200 tax compacts with tribes (Galloway, 2000). Representative Brian Thomas, a Renton Republican who sponsored HB 3128, stated, “This bill is about trust and friendship between two governments” (Galloway, 2000, p.1).

Many Washington tribes were pleased with compact proposals such as HB 3128; however, the Puyallups expressed concern that such an agreement threatened tribal sovereignty. They did not believe that it is the state’s business to ensure “price parity” (Galloway, 2000, p.2).

The literature on taxation emphasized several concerns; one major issue was the question of whether sovereign tribal governments should be held responsible for collecting taxes for state governments. Another major concern was dual taxation of tribal sovereign nations, and similarly, a concern that taxation had the power to destroy budding tribal entrepreneurial efforts that could lead to greater assertion of tribal self-sufficiency. We conclude that bills such as Representative Thomas’ provided some solutions to this difficult problem that allow both states and tribes to “win.” In general, tax compacts between tribal and state governments have provided real solutions to issues of both market price parity and tribal sovereignty.

Tax laws regarding Indian tribes evolved from a legal history that recognized tribal sovereignty to some extent, yet was, at core, an outgrowth of colonialism. This complex mixture created legal dilemmas; for instance, state

governments were given the power to require tribes to collect taxes for them on cigarettes sold in Indian Country, but were generally prohibited from taking legal (adjudacatory) action against tribal nations for noncompliance.

When we view all four sections of the literature review comprehensively, we see tribal nations striving to succeed and, in some cases succeeding very well, in the contemporary economy. However, many tribal nations are still struggling. Decisions made in America's historical past placed Indian peoples on remote reservations and sometimes removed them from traditional hunting, fishing, and agricultural resources. Federal policies regarding Indian nations have been uneven and, in some cases, insensible or diametrically opposed to each other.

One example of how these uneven federal policies impact contemporary perspectives is that, while retailers complain of price advantages at tribal smokeshops, they say little about the losses tribal nations have sustained, or their sometimes remote locations. In many cases, small price advantages (when they have actually existed) have been the only draw to tribal businesses in remote locations. Our review of the literature suggests that we need to take a closer look at a not-so-distant past in Washington State and in America as a whole. We cannot make sound policy decisions with the intent to create a more positive future for the citizens of our state without clearly understanding America's past.

Therefore, in Chapter III of this report we explore America's colonial past. We provide an historical backdrop in order to frame present-day policy-making regarding Indian nations. We ask whether state and federal governments will continue to respond within the old colonial paradigms. Today's Indian nations are working hard to create exciting entrepreneurial business ventures and to become self-sufficient. Will today's leaders in government meet the challenge of recognizing, empowering, and becoming partners in these vital and innovative efforts?

Chapter III

History

Why have we included a chapter on history in this report? George Santayana said that those who fail to learn the lessons of history are doomed to repeat them. Members of the American Indian Lawyer's Training Program (AILTP, 1988, p. 3) wrote, "History is the essential foundation for an understanding of American Indian law and policy." Today, as with every day, governments, including tribal, state and federal governments continue to make history, and in some cases, repeat history. Perhaps if we better understand our past, future government-to-government relationships will be more productive.

Native American history, like American history in general, has been profoundly impacted by the concept of "discovery." To understand the notion of discovery we must revisit a time before the first treaty was signed. We must recall how the European culture and imagination embodied in and symbolized by men like Cristobal Colon (better known in American culture as Christopher Columbus) impacted the land and the native peoples of America. Colon's discovery of a raw and beautiful land, rich in natural resources, and already occupied by generous peoples, who were living according to rhythms of the natural world, is pictured by Sale (1990) in juxtaposition with the European consciousness. He wrote of European psychology during the age of Colon's voyage:

This separation from the natural world, this estrangement from the realm of the wild, I think, exists in no other complex culture on earth. In its attitude toward the wilderness, a heightening of its deep-seated antipathy to nature in general, European culture created a frightening distance between the human and the natural, between the deep silent rhythms of the world and the deep recurrent rhythms of the body, between the elemental eternal workings of the cosmos and the physical and psychological means of perception, by which we can come to understand it and our place within it. (Sale, 1990, p. 78-79)

Sale has made the argument that European fear of the natural, the rugged, the elemental quality of nature itself created a need to "subdue" (Sale, 1990, p.81) nature. He quoted the medievalist A.R. Hall, who wrote, "The world . . . existed

simply to be cooked, or distilled, or mutilated in man's service." It seemed clear that Europeans were well on their way to *mutilating* much of Europe. Sale wrote, "All the great forests with which it had been blessed—an essential energy resource denied, incidentally, to the civilizations of the Middle East and much of Asia—were steadily and recklessly depleted to serve that civilization . . ." (p. 84). This was a civilization focused on the need to "expand and accumulate" (Sale, 1990, p. 90).

This backdrop, which described the European character, set the stage for Colon's insistence on taking "possession" of the land that he believed he had "discovered." The concept of taking possession of "nature" was a foreign concept to many Native Americans. A few hundred years after Colon's famous voyage, American Indians were still mystified by European behavior. As recently as the 1870s, the individualistic ways of the whites perplexed them. Sitting Bull of the Sioux said, "The white man knows how to make everything, but he does not know how to distribute it" (Freeman, et al, 1992, p. 48).

Colon's voyage and subsequent discovery and possession of American soil brought with it a wake of violence (murder, mutilation, rape), disease, and the environmentally destructive, as well as the constructive, forces of the European culture. Colon's so-called "New World" was already occupied by "perhaps more than seventy million people" (Levine, Brier, Brundage, Countryman, Fennell, Rediker, 1989, p. 9) when he arrived. In essence, colonialism somewhat systematically, over a period of a few hundred years, destroyed cultures that had existed in America for thousands of years before Colon's arrival.

A. Colonialism and its Impact on Native Peoples of the Pacific Northwest

The native peoples of the area now known as the American Pacific Northwest experienced the colonial presence of several nations. As early as 1527 Spain's galleons sailed between Mexico and the Philippines (Findlay, 1998). In 1579 Sir Francis Drake sailed to the Northwest coast. In 1707 a Spanish galleon known as the San Francisco Xavier shipwrecked on the Oregon coast. Later,

there were many expeditions by Spain's Juan Jose Hernandez, (1774, 1775) and Britain's Captain Cook (1776-1794), and by the newly formed United States beginning in 1788, when Robert Gray and John Kendrick set sail. These expeditions soon began to impact the native populations in the Pacific Northwest (Findlay, 1998).

Between the 1740s and the 1840s several nations competed to take control of the area now known as the Pacific Northwest. While Spain was more interested in recovering gold bullion and in claiming the territory for its own, the British sent as many as 25 vessels in the decade between 1785 and 1794 (Findlay, 1998). The British were interested in the maritime fur trade. They sought the rich natural resources and the excellent harbors. Competition over the area led to the Nootka Sound conflict (1789-1794). Spain tried to defend its claim to the territory by capturing British trading vessels. The incident nearly led to war and brought about the Nootka Sound Convention (Findlay, 1998). Britain's perspective was that all Europeans should have access to what they considered to be relatively "unoccupied" lands if they could make economic (productive) use of the land. The new rules of the Nootka Sound Convention favored the British. The Spanish sought bullion in the old mercantilist fashion, but the British were pursuing a new "capitalist" approach with intent to create trade, manufacturing, and other commercial enterprises. While American Robert Gray was exploring the mouth of the Columbia, the British government assigned George Vancouver to find a north-west passage through British North America (Findlay, 1998).

Many events took place that began to impact Native Americans. The United States gained independence from Great Britain, and Robert Gray began to trade furs in the Northwest; the Lewis and Clark expedition explored the Columbia River and the began to stake claims for the United States; John Jacob Astor established a fur trading company along the Columbia River, and American citizens were encouraged to move west to settle and develop business in the region.

Astor's company and the British Hudson's Bay Company brought many colonists to the area. With them they brought disease. Findlay writes, "Epidemics

such as smallpox, measles, and influenza did not strike Indians once; rather they recurred over the decades, meaning that groups of Indians who were recovering from one epidemic would likely be hit by another” (Findlay, 1998, L. 7, p. 2). Sometimes mortality was as high as 90 percent or more (Findlay, 1998). Catholic and Protestant Missionaries, British and American fur traders, and American settlers of all kinds began to impact the everyday lives of Northwest Indians, bringing with them European or Eastern American values and their own religious views. Fur traders were almost always males and generally single men. They often married or set up unofficial homesteads with native women, and in many cases pressed Indian women to give up their own culture and replace it with European values. But more invasive than British influences were those of the United States. Findlay writes,

19th –century America was an achieving, acquisitive, non-pluralistic, and ethnocentric society. It had tremendous confidence in its way of life, and particularly its political and economic systems, and it aspired to disseminate its ways to those who seemed in need of them or able to benefit from them—including Indians (and Mexicans and, at times, Canadians). (Findlay, L. 11, pp. 3-4)⁴

By 1819, Spain had given the United States all rights they had once claimed to the area that came to be known as the Oregon Territory. The Oregon Territory was created when Great Britain finally agreed to the 49th parallel as a permanent U.S. boundary. Washington State (originally a portion of the Oregon Territory) didn’t achieve statehood until November 11, 1889. However, the Washington Territory, now separate from Oregon, was established by 1853, and Isaac Stevens elected as territorial governor. Stevens became entrenched in a political system that pressed him to meet the demands of “white male settlers who could vote and perhaps even advance the governor’s political career” (Findlay, 1998, L. 11, p. 10).

As settlers invaded the Pacific Northwest, they began drawing “lines on the land” (L. 10, p. 3). The international boundary settled on between the United

States and Great Britain had already created artificial boundaries for native peoples. But these were only the beginnings. As Findlay states,

Lines drawn for political or governmental purposes possessed enormous economic consequences. They determined, for example, how and by whom taxes would be levied and collected, and which regulations governing banking and trade would apply. But even more importantly, they determined private property. (Findlay, 1998, L. 10, p. 4)

As these lines were drawn, native peoples were often simply moved out of the way, either through treaty, or in many cases, through force. This was not an auspicious beginning for relationships between the colonial forces and the native population. The laws (including tax laws) that formed around this relationship were necessarily awkward, as the following history indicates.

B. Sovereignty

Tribes were treated as sovereign nations even prior to the forming of United States Constitution. Cohen wrote:

Our Indian law originated, and can still be most closely grasped, as a branch of international law, and ... in the field of international law the basic concepts of modern doctrine were all hammered out by the Spanish theological jurists of the 16th and 17th century. . . (AILTP, 1992, p. 4).

Ownership of certain lands by Indians was established by the fact that both the American colonial government and the British Crown negotiated with and formed treaties with Indians (AILTP, 1988). However, confusion about rights and obligations between Indian tribes and state governments developed early on. The Articles of Confederation themselves used ambiguous language (AILTP, 1988). The Articles of Confederation "gave the federal government *sole and exclusive* authority over Indian affairs, *provided that the legislative right of any State within its own limites (sic) be not infringed or violated*" (AILTP, 1988, p. 4) (emphasis in original).

⁴ Note: "L" indicates "Lesson." Findlay's University of Washington history course is outlined on-line in the form multiple lessons. Each lesson begins with page 1; therefore it is necessary to indicate the lesson number as well as the page number.

Federal law regarding native Americans was formed in great part by three major court decisions written by Chief Justice John Marshall. These decisions were *Johnson v. M'Intosh* (1823); *Cherokee Nation v. Georgia*, and *Worcester v. Georgia* (1832) (AILTP, 1988, p. 5). The original emphasis was on Congressional power and regulation between the U.S. and other nations and the U.S. and Indian tribes (AILTP, 1988).

The first comprehensive act to set a pattern of legal precedent was the "Indian Trade and Intercourse Act of 1790" (AILTP, 1988, p. 1). This act was the formal assertion of Congressional power over Indian affairs, including federal control of treaties, commercial trade, and criminal code violations. A key provision stipulated that federal permission was required in order for tribes to sell Indian land. This provision was also applied judicially by the Supreme Court in *Johnson v. M'Intosh*, 1823. The court ruled that the U.S., by virtue of "discovery" of tribal lands, nullified "native" or "aboriginal"(AILTP, 1988, p. 6) claim on these lands. Discovery, as defined by this ruling, implied a preference for European nations' claims over the native people's, in the race for appropriation of new world territories (AILTP, 1988). This philosophy became the underpinning for today's federal trust relationship between the United States government and American Indian tribes.

Speaking about the original American inhabitants, Justice Marshall elaborated:

They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it (AILTP, 1988, p. 103).

This precedent set the tone for the next 100 years. As late as 1955, in *Tee-Hit-Ton v. United States*, it was determined that "Congress may extinguish aboriginal title without compensation" (AILTP, 1988, p. 6). Early cases show how treaties were used to establish the fundamental principles guiding federal

oversight of Indian tribal law. These precedents established by treaty can be summarized into five overarching themes (AILTP, 1988).

The first, the *trust relationship*, designated Indian tribes as "distinct political communities" dependent upon the U.S. government as "a ward to a guardian" (AILTP, 1988, p. 6).

The second, *tribal governmental status*, awarded Indian Tribes sovereignty within reservation boundaries, and required Congressional approval before state or federal law could interfere (AILTP, 1988).

Third, tribes also preserved their land rights and ability to self-govern through the *reserved rights doctrine* (AILTP, 1988).

Fourth, judicial decisions affecting tribes were interpreted through the lens of the *Canons of Construction* (AILTP, 1988, p. 6) which "favors" or "broadly interprets" treaties or other government orders to the benefit of tribes.

The final and fifth theme is that Congress may exercise *plenary power* which can authorize abrogation of native rights established by treaty (AILTP, 1988, p. 6).

C. Eras in Federal Government Policy-Making

1. The Reservation System

The reservation system, beginning in 1830, was facilitated by "removal" of tribes from native lands to "Indian Territory;" at times these lands were far removed from their original homelands (AILTP, 1988, p. 7).

The U.S. formally ended treaty-making, still acknowledging previous rights enacted by treaty in 1871 (1988). However, the reservation system remained intact using "statute and executive order. Indian law and policy continues to focus primarily upon the reservation system" (AILTP, 1988, p. 7). The lands owned and bordered by reservations became known as "Indian Country" (AILTP, 1988, p. 7-8) which is the area subject to Congressional statute and provision.

One way of carefully following how the eras in government policy-making impacted Native Americans and their ability to survive is to simply

follow policy-making in Washington State and its impact on a single Indian Nation. The Spokanes, for instance, have a long history that has been carefully documented. Ruby and Brown (1970, p. 88) wrote the following about the impact of Governor Stevens' decision to place the Spokanes on a reservation:

On his return to Olympia, capital of Washington Territory, Stevens wrote to the commissioner of Indian Affairs about a matter destined to change the Spokane way of life more than any white man had been able to do before. Having been influenced by the thinking of Joel Palmer, his Oregon counterpart, Stevens recommended that the land title of Indians inhabiting the vast area between the Cascade and Rocky Mountains in his territory be extinguished and its aboriginal inhabitants placed on reservations. In Stevens' recommendations, the Spokanes, in the very heartland of this domain, would be placed in a central agency, with a subagency established somewhere in their lands.

The Spokanes (and other tribes in the Northwest territories) did not give up their land without a fight. Throughout the 1850s and beyond there were a number of skirmishes and "wars." In truth, the land the Spokanes gave up was both figuratively and literally taken at gunpoint (Ruby & Brown, 1970).

2. Allotment and Assimilation

A landmark act, which radically impacted Indian landholdings, was the "General Allotment Act" (AILTP, 1988, p. 8). This statute authorized the Bureau of Indian Affairs (BIA) to parcel out lands to Indian and non-Indian families. This served to disperse communal landholdings, and although "surplus lands" (AILTP, 1988, p. 8) were paid for, "Indian landholdings decreased from 138 million acres in 1887 to 48 million acres in 1934, a total loss of 90 million acres." Another effect was the "checkerboard" (AILTP, 1988, p. 9) pattern of ownership by tribes, individual Indians, and non-Indians, which caused serious jurisdictional and management problems.

The BIA, both by official acts and social controls, began the process of "assimilation" (AILTP, 1988, p. 9), an attempt to limit Indian sovereignty, jurisdiction, and traditional cultural customs. Indians were made citizens in 1924,

serving the dual purpose of raising Indian status, but also furthering the government's goal of assimilation (AILTP, 1988).

For the Spokane Indians, the era meant the loss of even more landholdings. Ruby and Brown wrote of the actions of Congressionally appointed commissioners, including John V. Wright who, in 1887, conducted proceedings pressing the Spokanes to accept allotments:

Wright explained how a law had been made to give the Indians land which would not be taxed, a reference, no doubt, to the allotment of reservation lands in severalty to Indians. The commissioners did not explain that the allotting system would destroy existing tribal concepts by doing away with communal ownership of Indian lands, for it gave each Indian up to 160 acres. With Wright's assurance that the system would prevent the corruption of their wives and daughters, the Indians did not divine that, after allotments were made, unclaimed reservation lands would be available to whites (Ruby and Brown, 1970, p.191)

3. The Indian Reorganization Act of 1934

Attempts on the part of the federal government to improve the lot of Indians proved ambiguous, as they encouraged self-government, but only according to Department of the Interior (DOI) and BIA terms and organizational structures (AILTP, 1988). The primary example of this trend was the "Indian Reorganization Act of 1934. The Act sought to promote tribal self-government by encouraging tribes to adopt constitutions and to form federally chartered corporations" (AILTP, 1988, p. 10). Self-government was encouraged, although traditional leaders were, at times, left out of the process; it has continued to be the political framework for tribal sovereignty and governance (AILTP, 1988).

For the Spokanes this was another era that turned their world upside down. They were just beginning to experience some level of economic recovery when the stock market crashed in 1929. Part of the New Deal recovery package was the Wheeler-Howard Act, or the Indian Reorganization Act of June 18, 1934 (Ruby & Brown, 1970). The authors explained that the act "sought to reverse governmental repressive policies, which over the years had banned the Indian languages, tribal organizations, religions, and family life, and also had caused the

destruction of the Indian land estate through the system of forced land allotments” (Ruby & Brown, 1970, p. 277).

Reorganization, although well-intentioned, was pressed on the Spokanes in much the same way other policies relating to Indian tribes had been forced on them. They were pressured to form a constitution and bylaws, and a governmental system that was developed by the white culture (Ruby & Brown, 1970). Another interesting phenomenon of this period was that, at the same time white society was conferring some level of “legitimacy” upon the Spokanes, Congress made the decision in 1935 to take whatever tribal land it required, through the office of the Secretary of the Interior, to build the Grand Coulee Dam. Clearly, the federal government was continuing its paternalistic policies toward Indian Nations.

4. The Termination Era

Right to redress of federal actions seen as damaging to tribes was limited to a Congressional "Court of Claims" (AILTP, 1988, p. 11) which could award financial damages to offended tribes. In 1946 Congress created the "Indian Claims Commission" (AILTP, 1988, p. 11), a tribunal expressly set apart to decide claims in lieu of ability to sue for damages. There was no provision for recovery of lost tribal lands except for financial remuneration (1988).

Acts which further limited native sovereignty and increased state authority were the "Termination Acts" and the "Public Law 280" (AILTP, 1988, p. 12-13). Tribal land was transferred to third parties and was subject to state jurisdiction and taxation (AILTP, 1988). Many of these tribes have regained their official federal recognition (AILTP, 1988). According to the AILTP (1988, p. 13) "Public Law 280 provided for state jurisdiction on specified reservations."

For the Spokanes policies surrounding land and remuneration for their losses seem less well-defined than the descriptions of these periods would suggest during the years between “termination” and “self-determination.” Although the era of “self-determination” was heralded by an emerging civil rights movement,

the years between 1928 and 1967 proved difficult for the Spokanes. Ruby and Brown wrote of how some twenty-two years after the ratification of the agreement made in 1887, the Chief of the lower Spokanes, Jim Sam, walked into the Federal Building in Spokane and asked Superintendent Webster why the tribes he represented (the Upper, Middle, and Lower Spokanes) had never received proper monetary compensation for the land that the bustling city of Spokane was now located on.

In 1928, the Spokanes and Kalispels, through Congressman Sam B. Hill, introduced a bill asking for compensation for fishing rights on the Columbia river, hunting rights (loss of access to game) and common hunting grounds, and, in particular, for the 6, 500,000 acres of land taken from them (Ruby & Brown, 1970). Although the Senate eventually approved the bill, and it would have been sent on to the Court of Claims, President Calvin Coolidge vetoed the bill. The Spokanes went through years of struggle, employing various legal methods to receive some level of compensation for their land; finally in 1967 they received only \$6.7 million dollars for the land they had either been forced or deceived into giving up (Ruby & Brown, 1970).

In the meantime, termination policies had forced many members of the Spokane tribes to abandon tribal life and seek employment outside the reservations (Ruby & Brown, 1970).

5. The Self-Determination Era

The most recent decades have been described as the "self-determination era (1961 - present)" (AILTP, 1988, p. 14). This current era has been "characterized by expanded recognition and application of the powers of tribal self-government, and by the general exclusion of reservations from state authority" (AILTP, 1988, p. 14). This era began with a series of legislative acts and judicial decisions benefiting Indian tribes and individuals (AILTP, 1988).

One important legislative act that needs to be highlighted is the groundbreaking Indian Civil Rights Act of 1968 (AILTP, 1988, p. 14) extending

the provisions of the Bill of Rights to Indian tribes. In Washington State, this era of activism was heralded by events such as the 1964 rally at the Washington State Capitol (one of the largest ever assembled) of Washington State and other Indian tribes. This rally, the central purpose of which was to promote American Indian fishing rights, was provided even greater notoriety by the presence and advocacy of actor, Marlon Brando; the event was also supported by Native Americans and activists from other states. These kinds of events took place all over the country and were the harbinger of an emerging civil rights movement that included support for Native American rights and what came to be known as “Red Power”(Rosellini, 1964, Champagne, 1994).

Another important act is "the Indian Self Determination and Education Assistance Act of 1975" (AILTP, 1988, p. 15), which enabled tribes to take on responsibility for administering federally funded programs. On an executive level, hiring preference was given to Indian people for BIA positions; this allowed additional opportunity for Indian self-administration (AILTP, 1988).

Litigation was also resorted to in order to clear the path for increased Indian jurisdiction over lands and civil matters (AILTP, 1988). Landmark judicial decisions in the current self-determination era include *McClanahan v. Arizona State Tax Commission*, establishing the precedent that state tax laws do not apply in Indian Country; *Bryan v. Itasca County*, which states that Public Law 280 does not authorize states to tax Indians or reservation properties; *Werrion v. Jicarilla Apache Tribe*, “upholding a tribal severance tax on mineral companies and expounding at length on inherent tribal sovereignty”(AILTP, 1988, p. 17), and *California v. Cabazon Band of Mission Indians*, which referred to Public Law 280, and ruled that the state cannot regulate gambling operations.

Tribes have become increasingly aware of their rights to structure their own civil government and laws as well as their ability to lobby state and federal governments. They have sought to inform policy as well as self-govern.

Some states have specific federal policies governing their unique situations and needs, such as Alaska and Hawaii (AILTP, 1988). Federal Indian policy has continued to seesaw between an assimilative view, emphasizing state

law and economic self-sufficiency, and that of viewing tribes as sovereign governments with some level of federal support (AILTP, 1988).

D. Reviewing the Lessons of History

Research in the Washington State Archives in the office of the Secretary of State allowed us to gain perspective on issues of tribal taxation, economic development and the complexities of the relationship between Washington's Indian Tribes and the state government. On March 4, 1976, James Dolliver, Administrative Assistant to Governor Daniel Evans, testified before Congress. He quoted the American Indian Policy Review Commission:

There exists between the United States and the Indian tribes within its boundaries a unique relationship for which there is no exact counterpart in the history of international law. It is a relationship which has its roots in the European exploration and settlement of the North American Continent. It is a relationship which is firmly based in the Constitution and which has been erratically clarified or confused by treaties, statues, court decisions, and administrative policies and regulations over the years.

The federal policy implementing this relationship has shifted and changed with changing administrations and passing years. These policies have included peacemaking; diplomacy; armed conflict; tribal removal; subjugation; extermination; concentration; assimilation; termination; and self-determination – not necessarily in that order. Laws were piled upon laws without regard to the effect of the one upon the other. Programs have been begun, terminated, replaced, and re-instituted without apparent rational design.

In short, there exists a unique relationship between the United States and Indian tribes which has never admitted of an exact definition and which has never been implemented by a coherent, consistent policy (Dolliver, 1976, p. 2-3).

Dolliver's decision to quote the American Indian Policy Review Commission clearly indicated the complexity of the relationship between Indian nations and federal and state governments. More importantly, in quoting the Commission, Dolliver, who spoke as a representative of Washington State, endorsed its contents. We think that the concerns voiced by Dolliver raised important questions. Have we as a nation and as a state continued to repeat

history? Have we continued to build on a past of inconsistent policy-making, or have we now begun to learn from our past?

A 1974 letter (from the Evans files, Washington State Archives) sent by the Washington State Food Dealer's Association to Senator Warren G. Magnuson, expressed concern about cigarette taxes. The Association wrote, "For a number of years we have had a problem with Indians selling cigarettes on reservations throughout the state without collecting the State Sales Tax. There has been much to-do about curtailing this, but really nothing has been accomplished. Indians are still operating their 'Smoke Shops'"(McCowan,1974, p.1).

It appears from this and other letters we reviewed that the concern over cigarette taxes has been with us for longer than a quarter of a century. Such issues have often been characterized as critical and momentous in Congressional testimony. But history has shown us that this has been an ongoing debate. While there is no question that the debate over cigarette taxation is important, one wonders how long we will continue to repeat history on this subject. Recently, for instance, legislation supporting a tax compact that would have allowed cigarette taxes to be used to support tribal community ventures and infrastructure was introduced. Many tribes, legislators, and Washington State government officials supported this new approach.

The Quinault Indian Nation addressed many of the revenue related issues faced by tribes today in a 1987 letter to Senator Melcher and the Senate Select Committee on Indian Affairs. The letter read in part:

Tribes face many of the same financial problems as State and local governments. Declining Federal revenues have forced State and local governments to increase the taxes and fees they impose upon residents and non-residents. State sales and income taxes have risen. Cities have increased fees for services and amenities such as garbage collection or park usage.

Some States or cities or parts thereof are as economically depressed as some reservations. Yet, no one has suggested that Congress deprive those cities or States of authority to make revenue decisions because such decisions might be counterproductive for economic activity. It is true that the Federal government has trust responsibilities toward Indian tribes and their people, but trust responsibility is no longer a synonym for

paternalism. Congress should not retreat from the policy of tribes governing their reservations (Quinault Indian Nation, 1987, p. 162).

The Quinaults close their statements on tribal revenue by pointing out the following:

Many Indian tribes, including Quinault, face problems created by the land ownership patterns on reservations. Approximately thirty (30) % of the Quinault Reservation is held in fee status. Land owners owning fee property pay property taxes. Timber owners pay a state excise tax on timber when it is harvested. We conservatively estimate that between \$250,000 and \$300,000 in property tax dollars went into State and County coffers from Quinault Indian Reservation fee land owners in 1986. This figure does not include timber excise tax dollars which are also paid on timber harvested from Reservation fee lands. Very few of those dollars come back to the Reservation in the form of services (Select Committee on Indian Affairs, 1987, p. 163).

E. Improving State/Tribal Relationships

Concerns about state and tribal issues in Washington State have often been recorded in the multiple “accord” documents. The “accord” process was begun in 1972 to assist the executive branch, state agencies, and tribal governments with “formalizing government-to-government relations” (GOIA, 1996, Intro.). These are generally informal documents produced either by various state agencies or by the Governor’s Office on Indian Affairs. The “accords” were not merely documents, they signified commitments, relationships, and implementation plans regarding state and tribal relations. They have accomplished several goals, including identifying parties responsible for specific policies and decision-making at individual agencies, identifying tribal counterparts, a decision-making process, and a “system of accountability” (GOIA, DSHS, 1997, p. 2), a summarization of current issues to be discussed at annual “accord” meetings, procedures for implementation of agreed on policies, and involving the Governor’s office, the Chief of Staff, and the Governor’s Office on Indian Affairs in facilitating a “government-to-government” relationship with Washington’s tribes (GOIA, DSHS, 1997).

Issues identified in 1996 included the following needs: state/tribal partnerships to enhance tribal business projects; partnerships in law enforcement; state-tribal economic planning; media coverage and recognition of tribal economic contributions; joint committees on taxation and economic development; state recognition of tribal laws and legal systems in Indian Country; and increased communication between the state and tribal governments (GOIA, 1996).

Regarding governance, taxation, and legislation the question of whose authority shall prevail has led to a number of conflicts (GOIA, 1996). One solution suggested has been cross-cultural education and the need for a committee or group to work on taxation issues that would include tribal members and representatives from the Department of Revenue. Possible topics might include cigarette sales, Rule 192, and the expansion of tribal economic enterprise.

The 1997 “Centennial Accord” focused on Department of Social and Health Services administrative policies as they apply to tribes and between the tribes (GOIA, DSHS, 1997); President Clinton’s Executive Order regarding *Consultation and Coordination with Indian Tribal Governments* (GOIA, DSHS, 1997); and a policy document from the Office of the Attorney General in Washington DC outlining *Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes*.

The Leavenworth Tribal/State Summit in 1999 emphasized encouraging the Washington State legislature to develop a structure that would specifically address issues of concern to both tribes and state government. Although the accords have been valuable in tracking the concerns faced by both Washington tribes and Washington State government, they might go further in implementing real partnerships in economic development.

Records from the Evans administration in 1975 show there were many social assistance programs in effect that were instituted to help Washington’s Native Americans with economic development at that time. These included the following: Indian Economic Employment Assistance Program, Law and Justice Planning programs, Head Start Indian Migrant Programs, the Comprehensive

Employment and Training Program (CETA), Economic Assistance Authority, State Highways Department, and assistance from the Department of Ecology (The Research Group, Inc., 1975). However, the contemporary economic picture for Washington's 29 tribes is much brighter. We know that tribes have run successful and productive entrepreneurial ventures that have contributed significantly to the state's tax base. Tribes have been recognized as sovereign nations and are involved leaders in government-to-government cooperation and collaboration. In this sense, both tribal and state governments have begun to learn from each other, and may have entered a new era of governmental and economic partnership. The future of the relationships between tribes and the state, of course, not be without conflict, nor without cooperation (Mason, 1998). This is an era of self-determination and with growing successful tribal business operations, tribal sovereignty has been recognized by many as a tool for economic success and greater self-sufficiency.

Recognition of the need to develop cooperative relationships with tribes was made clear in President Clinton's recent executive order regarding consultation and coordination with tribal governments. This is a new era in tribal/state/federal relationships. In this new era there is a trend toward tax compacting, recognition of tribal contributions in economic activity, tax revenue, and jobs for both Indian and non-Indians. These changes have the potential to create solid recognition of tribal governments as sovereign nations and valuable institutions within the broader systems of federal, state and tribal governments (Mason, 1998). The time has come to develop new relationships and partnerships between Washington State's tribal nations and Washington State government and to usher in an era informed by a history we have learned from and do not wish to repeat.

In Chapters IV and V we illustrate the value of Native American entrepreneurial efforts to the State of Washington. We wish to note that many of the tribal owned businesses in Washington State are relatively new, somewhat fledgling efforts. Casino gaming, for instance, has only really developed in this

state within the last decade. And we suggest that our estimate of tribal revenue is a conservative one.

We see the potential for significant growth in many tribal industries, including gaming in the next several years. This growth has the potential to increase tourism, strengthen local economies, and provide a valuable source of revenue to Washington State.

Chapter IV

Calculating Tribal Contributions to Washington Tax Revenue

A. Surveying for Native American revenue modeling systems

The Washington State Department of Revenue (DOR) relies on an extensive input-output model which it calls IMPLAN to produce tax revenue projections that are ultimately used by state legislative leaders in budget preparation. Utilizing the vast data resources that the state accumulates through business tax reports, the IMPLAN model is constructed to perform economic impact analysis on the state as a whole, and in terms of entire industries or large urban centers. Smaller communities, or predominantly rural areas, are not so easily represented by a system as large and complex as IMPLAN. Projecting the revenue contributions of the state's Native American population is likewise difficult as the numbers DOR works with have no way to identify economic enterprises as "Native American" in affiliation, and the data set available to us which was identified as Native American (information found in the Tiller and Chase (1998) report), was too limited to be reliably used by the Department of Revenue (DOR) analysts.⁵

In our search for an alternative revenue model, we benefited greatly from the Prairie Research Associates (PRA) discussions of multipliers, input-output matrices, and mathematical models; key elements of economic impact analysis. Working on the premise that smaller urban communities and rural areas have limited access to the accurate input-output tables (of the sort generated by a major government's central statistical agency such as DOR), PRA described how to more simply model economic impacts when highly sophisticated means are not available (Prairie Research Associates, 1996).

Economic impact analysis is a tool regularly used by policy makers to help predict the effects of changing business conditions on the greater community.

⁵ This information was communicated by Robert Smith and Skeets Johnson on April 4, 2000. All future references refer to this conversation.

Dynamics in employment levels, personal income, community investment and tax structure can alter the economic landscape of a village, town, city, or, in this case, Indian Country. Communities, and to the extent they are responsive to public interest, policy makers, routinely try to use economic impact analysis to answer questions such as “how many jobs will the new processing plant create?” and “how much new spending will that new activity create in the community?” and “how much tax revenue will that level of economic activity generate ?”

Conducting a small case study on a theoretical town, PRA outlined the process of estimating both direct and induced effects of new expenditures on a local economy. As PRA defined them, “direct effects” are total payments made to suppliers of labor, equipment, and operation and maintenance supplies and services required for a particular economic enterprise. “Induced effects,” on the other hand, include all the secondary changes occurring in the economy as a result of that same economic enterprise. Since our project intended to estimate revenue entering the State General Fund, we were primarily looking for direct effects of wages and expenditures on tax collections.⁶ Germane to our discussion of direct effects, the PRA case study utilized Statistics Canada consumption patterns to estimate relative spending in eight categories: food, shelter, clothing, transportation, services, reading material, tobacco and alcohol, and personal taxes. They then applied coefficients to estimate how much of each dollar of spending stays in the local economy as part of a multiplier analysis. PRA provided the means to make simple but reasonable estimates using a limited data set, and a rough estimate of household spending patterns.

We also found several studies of economic impacts resulting from Native American enterprise on the economies of other states. Each of these reports were examined for methodologies, and in each we found useful concepts and specific values utilized in our subsequent calculations. By far the most helpful was the work of the Arizona Legislative Council which produced a report specifically on state-tribal approaches to taxation and economic development (Sheane, et al

⁶ We briefly discuss induced effects in Chapter V.

1995). They were charged, in part, with “examining and quantifying in dollars the economic impacts of Indian reservations and Indian country economies on the aggregate economy of [Arizona]” (p. 51), under the title of a legislative proposal. For the purposes of their calculations, they looked at economic impacts and fiscal impacts independently. For FY 1993:

[T]he economic *and* fiscal impacts were measured using (1) consumer spending by on-reservation Indian and non-Indian household; and the *fiscal impact only* was measured for (2) reservation-based economic enterprises (includes businesses owned by Indians and non-Indians), (3) tourism (generated due to the presence of reservations in the state), (4) tribal government expenditures, and (5) federal employees’ in-state household expenditures (i.e., consumer spending) (p. 51) (Emphasis in original.)

It is important to note that Arizona State government leans heavily on a transaction privilege tax (TPT) for revenue, and their study (Sheane et al., 1995) measured the impact of “Arizona reservations’ aggregate household income on the state general fund by calculating the TPT derived from reservation-based income spent in-state on consumer goods and services” (p. 55).

As in Arizona, we used an estimate of household aggregate consumer spending and imputed the tax ultimately collected through the retail sales mechanism. We also used a measure of “reservation-based economic enterprises,” the Tiller and Chase accounting of tribal economic enterprise (TEA). Unlike Arizona, we made no accounting for tribally generated tourism, believing such economic activity was included in the Tiller and Chase report of aggregated tribal industry, and our careful reading of Tiller and Chase also lead us to believe that the last two categories Arizona used, tribal and federal government wage earnings, were likewise included in the aggregate accounting of TEA. We further assumed that tribally-related tourism in Washington’s economy is balanced by the tribally related tourism of the neighboring states and province (i.e. Oregon, Idaho and British Colombia); in other words, imports equal exports. We, therefore, did not attribute any additional benefit to the state accruing from a significant out-of-state tourist influx.

The University of Michigan Associates and the Michigan Indian Tribes compiled a report on Michigan Indian gaming enterprises and the economic impact of Michigan's Indian gaming on the state economy (University Associates/Michigan Indian Tribes, 1993). Primarily, they reported on payroll payments made by Indian gaming, the payroll tax on those earnings, the demographic make up of gaming employees, and the total gaming receipts reported by the seven tribes included in their study.⁷ They also assumed a high local economic impact from tourism (resulting from Indian gaming) and calculated statewide benefits owing induced effects of that tourism activity.

In New York, the Oneida Nation, a six tribe Iroquois Confederacy, calculated taxes on a per job basis, and assumed that Indian country (Oneida County) jobs paid 70 percent of the statewide average (Coopers & Lybrand, February 1995). Tribal population and household surveys were then used to calculate total revenues. "When the total number of jobs created directly and indirectly by the Nation (3,966) is multiplied by the State's fiscal return for each job (\$2,524), and an inflation rate of 3% is taken into account, the approximate fiscal returns to the State of New York for 1994 totals \$11 million" (p. 7).

B. Selected revenue modeling systems and calculations

When we first approached the problem of estimating the tax revenue generated by the Native American population living in Washington State, we primarily focused on the methodology used by the researchers in Arizona (Sheane et al., 1995). We therefore considered a series of four economic and population classifications, and made revenue projections for each, very much after the fashion of the Arizona report. However, we also determined that there were two other, still simpler models we could use to make revenue estimates, which, as we demonstrate below, provided us with similar results. We, therefore, begin with a

⁷ 39% (N=1,046) were local Tribal Members, 13% (N=348) were Native Americans who were not members of the local tribe, and 48% (N= 1,287) were other racial/ethnic groups, including White, African American, Hispanic, or Asian (University Associates/Michigan Indian Tribes, 1993).

discussion of our Arizona-inspired analysis, and then conclude this chapter with a presentation of the two additional revenue calculation models.

Our first model examined estimates of economic enterprise spending and aggregated population wage earnings, and then calculated the portion of those dollars which were spent in taxable transactions. Given the central importance of the Tiller and Chase (1998) report to our work, the first of the four categories we considered was drawn directly from their report of tribal economic enterprise wages. We then considered taxes paid on tribal economic activity business expenditures. The third and fourth categories in this particular economic model used numbers from both Tiller and Chases' report and the Washington State Office of Financial Management (OFM) to define the categories: the population of tribal enrollees not employed by TEA, and the population of Native Americans living in Washington State, but also not employed by TEA.

We learned from Tiller and Chase that total TEA was approximately one billion dollars (\$1.003B), and of that, \$270 million went to wages and payroll taxes. Those enterprises employed 14,375 people, who collectively paid \$5.3 million in state employment taxes (Tiller and Chase, 1998, p. 18). As was done in the Arizona report (Sheane et al., 1995), we then estimated the percentage of TEA wages that were spent on consumables, the percentage of that spending that was done off reservation, and then the average state and local sales tax rate, and thus determined the direct effect revenues generated. In Arizona, they determined that 60 percent of the wages earned by Indians living on reservation were ultimately expended for consumer goods and services off the reservation, and 85 percent of the off reservation spending was taxable.⁸ In Washington, sales tax rates vary from county to county, and we used a estimated statewide average sales tax rate of 8 percent.⁹ Then, using Arizona wage to spending ratio assumptions, we calculated sales tax revenues attributable to TEA wage expenditures as follows:

⁸ For comparison sake, PRA estimated that 55 percent of wages goes for consumer goods.

⁹ Washington has a base sales tax rate of 6.5 percent, and local governments can increase that rate to support their own programs, so that the sales tax rate varies from county to county and city to

\$270M (in TEA wages)
x 60% (portion of wages spent on consumables)
x 85% (portion of consumer spending which is taxable)
x 8% (average sales tax rate)
\$11M in sales tax (paid on \$270M in TEA wages).

To the sales tax figure of \$11 million, we added the \$5.3 million paid in state payroll taxes (Tiller and Chase, 1998). This brought us to **\$16.3M** in total state and local taxes paid on TEA wages.

Next, we attempted to calculate the sales tax that goes to the state and local governments as a direct result of spending on things other than wages that comes from TEA. The balance from the total of Tribal Economic Activity (\$1.003B [total TEA] – \$270M [TEA wages] = \$733M) certainly had revenue implications for the State of Washington, but given our limited knowledge of the nature of those expenditures, our calculation required that we make difficult assumptions. We know from Tiller and Chase that much of that balance is reported as business expenditures, and presumably a large part of those expenditures were sales that, due to a lack of reservation infrastructure, occurred necessarily off reservation and were, therefore, subject to the sales tax. What we did not know was what portion of that \$733M was actually spent on goods and services (and hence potentially taxable), and what portion was spent on non-taxable items such as service on debt, as such information was considered proprietary by the tribes and was not available to us. Whereas Tiller and Chase indicated TEA expenditures of \$865.8M in 1997 when total TEA equaled \$1,003 million, that left an unlabeled balance of \$137.2M, unexplained in the Tiller and Chase accounting of tribal economic activity. We, therefore, made the (possibly weak) assumption that approximately 14 percent of TEA was spent on neither taxable expenditures nor wages, and therefore calculated 86 percent of non-wage

city. While these tax dollars are returned to the local tax districts, they are collected by and processed through the state revenue system.

TEA “total expenditures” were spent in taxable transactions. Again using an average state sales tax rate of 8 percent yielded the following calculation of revenue attributable to TEA expenditures: $\$733\text{M} \times 86\% \times 8\% = \50.4M in state and local taxes.

A third category of economic activity, effectively unaccounted for in Tiller and Chases’ report, is the earnings of tribal enrollees who are not a part of TEA. We learned from their report that four out of ten TEA employees were non-tribal members. By calculating 60 percent of TEA employees were tribal members, and 40 percent of TEA employees were not tribal members, we determined the following characteristics of Tribal Economic Activity employees:

$$\begin{aligned} 60\% \times 14,375 &= 8,625 \text{ Tribal enrollees, and} \\ 40\% \times 14,375 &= 5,750 \text{ non-Tribal enrollees.}^{10} \end{aligned}$$

We then used the first of these population numbers to determine the number of tribal enrollees not a part of TEA (as reported in Tiller and Chase) by subtracting the number of tribal enrollees employed by TEA from the total number of tribal enrollees: $43,028 - 8,625 = 34,403$ tribal enrollees who are not directly employed by the tribal economic activity. For the purposes of this analysis, we then applied the statewide average of 2.5 persons per household.¹¹ Therefore, we imputed the number of tribal enrollee, non-TEA employee households: $34,403 / 2.5 = 13,761$. The households of 13,761 Tribal enrollees, with an average household income of \$32,803 (Office of Financial Management, March 8, 2000), together earn: $13,761 \times \$32,803 = \451M .

The \$451M earned by enrollees of Washington State tribes not employed by Tribal Economic Activities also generated state payroll taxes. The amounts of these taxes were imputed by using the same wage to tax ratios as we were

¹⁰ Compare to Michigan where 39% of Indian gaming employees were from the local tribe, 13% were Native Americans not of the local tribe, and the balance were non-Native American (University Associates/Michigan Indian Tribes, 1993, p. 4).

¹¹ In Arizona, survey data suggested 4.12 persons per “reservation Indian household” (Sheane et al., 1995, p. 52).

provided in Tiller and Chase. The state payroll tax was therefore determined, by an imputation that used the same payroll tax to wages ratio as follows:

$$\$5.3\text{M} / \$270\text{M} = y / \$451\text{M}; \text{ so solving for } y, y = \$8.9\text{M}.$$

Beyond the payroll taxes, all Washington State residents, including tribal enrollees, end up paying the state sales tax. Using the same assumptions we used in computing TEA wage related sales tax payments, yielded the following:¹²

\$451M (wages earned by tribal enrollees, not TEA employees)

x 60% (portion of wages spent on consumables)

x 85% (portion of consumer spending which is taxable)

x 8% (average sales tax rate)

\$18.4M in sales tax (paid on \$451M on wages of Tribal enrollees not employed by the TEA).

When to this figure we added the \$8.9M in state payroll taxes, we got an amount of **\$27.3M** for the total sales and payroll taxes paid by tribal enrollees, not directly employed by the tribes.

Also unaccounted for in the Tiller and Chase report, were the Washington residents who identified themselves in a census report as Native American, and yet were not enrolled in any tribe in Washington. Tribal enrollment is determined at the pleasure of each tribe, and Native Americans not of, or not enrolled in, a Washington state tribe are still entitled to the same federally guaranteed rights as those who are. From the perspective of both state and federal agencies, the total population of Indians in Washington State, both on and off reservation, is determined by surveys that do not specify tribal enrollment to qualify as Native American. We, therefore, included Native Americans who are non-tribal enrollees, as the fourth major category in our calculations of revenue generated by

¹² Percentage of wages spent off reservation on consumables, percentage of consumable spending subject to sales tax, and average state sales tax rate.

American Indians in Washington. Using 1997 numbers from Tiller and Chase (1998), Native Americans in Washington, less the number of enrolled tribal members the following equation: $100,309 - 43,028 = 57,281$. We imputed the number of households associated with those 57,281 individuals as we did above when we calculated tribal enrollees not a part of TEA, using the statewide average number of persons per household: $57,281 / 2.5$ [persons per household] = 22,912 Native American, non-tribal enrollee households. Using the same Native American, household income figures previously employed, we calculated their total earnings as: $22,912 \times \$32,803 = \$752M$.

As with the wages of the tribal enrollees not employed by tribal economic activity, the \$752M in Native Americans who are non-tribal enrollees' wages included state payroll taxes. Again the amounts of these taxes were imputed by using the same wage to tax ratios as we were provided in Tiller and Chase (1998). Thus the state payroll tax was determined by assuming the payroll tax-to-wage ratio remains constant, so the following simple calculation is used:

$$\$5.3M / \$270M = y / \$752M; \text{ so solving for } y, y = \$14.8M.$$

Again, Native Americans, like all Washington State residents, end up paying the state sales tax. Using the same assumptions we used in computing tribal enrollee wage related sales tax payments, we developed the following computation:

$$\begin{aligned} & \$752M \text{ (wages earned by Native Americans, not tribal enrollees)} \\ & \times 60\% \text{ (portion of wages spent on consumables)} \\ & \times 85\% \text{ (portion of consumable spending that is taxable)} \\ & \times 8\% \text{ (average sales tax rate)} \end{aligned}$$

\$30.7M in state sales tax (paid on the wages on Native Americans residing in Washington State and not enrolled Tribal members.)

As in the previous cases, we add the state sales tax collections to the estimated \$14.8 million in state payroll taxes. That brings a total amount of **\$45.5M** in state and local taxes paid on the \$752M in wages earned by Native Americans who are not tribal enrollees.

In summary, tax revenue associated with the tribal presence in Washington State was estimated based on four discrete segments of population and economic activity. The first two were based on the work of Tiller and Chase (1998) and were calculated using 1997 numbers they presented in their report. In the primary case, we used the wage reports associated with tribal economic activity, and the state payroll taxes paid out of those wages, and then added to that figure the state and local taxes we estimated were paid on those \$270M in wages. Secondly, we looked at the expenditure reports associated with tribal economic activity, and calculated the state sales tax paid on that spending. The last two segments of tribal presence largely fell outside the scope of the Tiller and Chase report: tribal enrollees not employed by tribal economic activities, and Native Americans, not tribal enrollees, and not employed by TEA. Values in 1997 for the number of households and household earnings were used to calculate population-wide wage earnings, state payroll taxes, and finally state and local sales taxes were imputed based on estimates of consumer spending. Adding together all state and local taxes generated by those four groups yielded a total of **\$139.5M**. The following table summarizes those results:

Table 2: 1997 Washington State Native American Revenue Impacts

Economic Segment	Associated State and Local Revenue
1997 Wages paid by Tribal Economic Activity (TEA) in Washington	\$16.3 million
1997 Expenditures of Tribal Economic Activity (TEA) in Washington	\$50.4 million
1997 Wages earned by Tribal-enrollees, non-TEA employees	\$27.3 million
1997 Wages Earned by Native Americans in Washington (non-tribal enrollee/non-TEA employee)	\$45.5 million
1997 Total Tribal and Native American revenue generated in Washington State	\$139.5 million

C. Alternate estimates of Tribal revenue contributions to Washington State

Early in our search for revenue estimation methodologies, we met with S. Johnson and R. Smith, research analysts with the Department of Revenue. From Johnson and Smith we learned that estimating revenue could be a complex and costly process, and they suggested that the numbers we had at our disposal were insufficient for a sophisticated analysis of Native American revenue impacts. In our discussions with Johnson and Smith, we asked if there might not be some kind of simple, back-of-an-envelope calculation that could be used to quickly estimate the revenue arising from a circumscribed segment of economic activity. The answer was yes, simply take GDP (gross domestic product) and multiply by 7 percent. We talked about GDP, and while we were all unclear on the details, we decided it was legitimate to regard the entire TEA amount (\$1B) as an acceptable approximation of the number DOR was looking for, and so projected tax revenues

from TEA: $\$1B \times 7\% = \$70M$.¹³ This amount rather closely corresponds to the state revenue arising from TEA wages and expenditures, which we calculated earlier in this chapter and presented on Table 2: $\$16.3M + \$50.4M = \$66.7M$. To account for the two economic segments not directly dependent on TEA, but rightfully a portion of the Native American presence in the state, we first combined the gross wages figures for Native American, non-TEA employees: $\$451M + \$752M = \$1,203M$. By then subtracting the estimated taxes paid from those wages, a net balance of $\$952M$ was determined to represent potential spending, and therefore might serve as an acceptable substitute for a more accurate GDP estimate.¹⁴ We were then able to project revenue attributable to those wage earners: $\$952M \times 7\% = \$66.7M$. Combining both of the revenue projections (TEA and non-TEA), to include all Native American economic activity yields: $\$70M + \$66.7M = \mathbf{\$136.7M}$.

Subsequent to that calculation, we developed a third way to calculate the revenue generated by Native Americans to Washington State revenue, using numbers developed early in the writing of this report. Knowing the total state revenue for a single year ($\$20B / 2$), the percentage of the general population that is Native American (1.92%), and assuming a ratio of Native American average wages to Washington State average wages of about seven to ten, allows the following quick calculation of revenue from Native Americans residing here:

$$\begin{array}{ll}
 (\$20B / 2) & \text{(total 1997 Washington revenue collections)} \\
 \times 1.92\% & \text{(Native American percentage of State population)} \\
 \underline{\times 70\%} & \text{(ratio of Native American earnings to Statewide average)} \\
 \mathbf{\$134M} & \text{(estimated Native American contribution to 1997 State revenue).}
 \end{array}$$

¹³ “(Gross Domestic Product)... GDP consists of the total expenditures of the four sectors that purchase goods and services: $GDP = C + I + G + (X - M)$, where C represents the expenditures made by consumers, I is the investment expenditures made by the business community, G is expenditures on goods and services by government, and $(X - M)$ represents net exports, or exports (X) minus imports (M).” (Riddell, Shackelford & Stamos 1998).

¹⁴ Tiller and Chase (1998) reported payroll tax to wage ratio ($\$56.3M / \$270M$) was used to calculate the non-tax portion of $\$1,203M$: $\$1,203M \times (1 - [\$56.3 / \$270M]) = \$952M$.

While none of these calculations of tax revenue accruing to the State of Washington are as fully reliable as we would like, we believe they are reasonable approximations of Native American contributions to the state revenue stream. We recognize the potential for inaccurate values and errant assumptions to lead any calculation astray; however, we believe our models were grounded in a careful reading of the facts and legitimate assumptions. The close correspondence in the results of our three (somewhat) independent calculations of revenue (\$139.5M, \$136.7M and \$134M), seem to indicate an acceptable degree of accuracy, in spite of this study's limited resources in terms of both factual data and time.

Chapter V

Beyond direct revenue calculations

Our initial intent was to estimate state and federal taxes paid by Tribal enterprises and tribal members, as a result of living and working within the geographic limits of Washington State. By looking at a few similar studies, we were able to generate three simple methods for calculating state revenue attributable to tribal peoples in Washington. However, none of the comparable models we examined were formulated with exactly the same objectives as our own. We were, therefore, compelled to develop our own approach which focused on direct fiscal impacts and eschewed estimation of the indirect economic impacts associated with the tribal presence in Washington. However, all of the other studies that we examined primarily used such impact analysis to generate estimates of indirect economic impacts, and placed relatively less emphasis on the examination of direct fiscal impacts. In this chapter we will undertake a similar analysis of indirect economic impacts, discuss potential sources of error in all of our economic impact calculations, reflect on tribal sovereignty as lens through which to view Native American economic impacts on Washington State, and conclude with a discussion of tax compacts between the tribes and the state as potential mechanisms for lessening contemporary conflict over revenue collection and distribution.

A. Economic impact models and their use

Generally, economic impact analysis attempts to estimate the amount of change (increase or decrease) that is *multiplied* as dollars move into or out of the local economy. For example, an increase in spending on some goods, such as a new community center, generates a need for additional goods and services. Materials are needed for the construction of a building, wages are earned and spent, and related industries may realize new opportunities and subsequently blossom. On the other side of the good/bad divide, a decline in expenditures has

the opposite effect: causing the economy to shrink more than what might be expected by simply counting the direct jobs lost in the closing of “one factory.” Sophisticated systems for tracking such cascading effects on an economy are known as *input-output* models. Mathematically manipulating input-output tables generates economic *impact multipliers*, which in turn can be used to estimate the total effect of a particular change in a particular economy, either in terms of *final demand* or *direct effect multipliers*. Whereas direct effect multipliers express the total impact relative to a direct change in household earnings or employment, it is direct effect multipliers which most easily could be applied to the wage and earning data we developed in the two prior chapters. Sector-by-sector analysis of the interactions between neighboring businesses might have been used in conjunction with Tiller and Chase (1998) numbers on tribal economic activity, but only with very uncertain results: there were no geographically disaggregated data available, and the data that exist require an essentially unauthorized correction before any reasonably comparable sector-to-sector statistics might be obtained.¹⁵

It was, therefore, with great trepidation that we regarded the calculation of induced effects in economic impact analysis. The Prairie Research Associates (1996) asserted, however, that such effects are real and worthy of consideration. They pointed out that expenditures on wages tend to have a high local impact, while business expenditures on materials or tools tend to have a lesser impact on the local economy. An economist would say there is a high level of “economic leakage” is associated with capital expenditures, so local impacts are low, whereas with wages, the money is spent locally and hence the related local impacts are high. PRA recommended consideration of a series of coefficients to reflect the percentage of spending, in a number of categories, that goes to local producers of particular goods or services. To provide this sort of analysis on the

¹⁵ Once sector percentages are corrected to 100%, there is still a problem comparing the Tiller and Chases’ (1998) eight economic categories to the eight distinct industry categories used by the U.S. Department of Commerce, Bureau of Economic Analysis. Its RIMSII model calculates geographically sensitive multipliers for 39 specific industry aggregations. These categories are 1) agriculture, forestry, and fisheries; 2) mining; 3) construction; 4) manufacturing; 5) transportation and public utilities; 6) wholesale and retail trade; 7) finance, insurance, and real estate; and 8)

expenditures of Tribal Economic Activities, we would have to have considerably more detailed information about the distribution and nature of that commerce. However, PRA pointed out that it is easier to gauge the impact of wages, where patterns of spending can be estimated based on state or national trends, and coefficients for leakage can be developed to reflect the local economic landscape. In an example calculation, PRA postulated, based on an average expenditure pattern of wages, that a local economic multiplier might reasonably equal 0.363, where the total economic impact of additional wage payments (a recursive calculation) equals: $1/(1-r)$, where r is the local economic multiplier.

The reader is reminded that the economic analysis done in Arizona (Sheane et al., 1995) was instructive in helping us proceed with system modeling. Whereas that work was charged by the State Legislature to quantify how, “in-state expenditures by reservation households contributed to Arizona's economy by creating employment and contributing to the state general fund,” their analysis looked at both revenue generation and employment impact multipliers. Working with more detailed information on, among other things, the number of reservation residents, the median size of reservation households, and the number of non-Indian residents of reservations, they calculated aggregated household incomes, much as we have done above for Washington State. We used essentially their calculation for determining estimating taxable spending, and thus computed revenue in a like manner.¹⁶ They, however, put considerable emphasis on projecting induced economic effects by using impact multipliers in their assessment of tribal influence on their state's economy, whereas we did not. Using an average Arizona household's multiplier of 0.3489 applied against their figure for aggregated wages, they concluded that, “for every \$3 spent due to

services (e.g., hotels, amusements, restaurants and, in this case, casinos.) (Sheane et al., 1995, p.53).

¹⁶ In Arizona, there were a reported 4.12 “persons per reservation Indian household” (Sheane et al., 1995, p. 52). The Arizona total reservation Indian household income in FY 1993 was calculated to be \$575M, and the total non-Indian reservation household income for the same year was calculated to be \$77.4M (Ibid., p. 54). Revenue collected on Arizona's total reservation Indian household income that same year, generated by the state's 5% transaction privilege tax (TPT), was \$14.7M, and total reservation non-Indian household income was calculated to generate \$1.97M by the same TPT (Ibid., p. 55).

reservation household expenditures, there was an economic impact on the state of \$1” (Sheane et al, 1995, p. 56).

In the study of Michigan gaming we used for comparison, revenue was simply reported as \$5,726,929 in state and federal taxes, and considerable emphasis was placed on the tourism dollars thought to be associated with such tribal activities. Those authors used economic impact multipliers when they asserted, “the effect of the creation of new jobs is that one new job results in a spin-off creation of 2.5 other jobs. Using this multiplier, the 2,681 Indian Gaming jobs created since 1985, have resulted in employment of an additional 6,703 people in spin-off jobs for a total employment impact of 9,384 jobs. Gaming employees support others and stimulated additional job creation through their increased purchasing power and service demand” (University Associates/Michigan Indian Tribes, 1993, p. 6).

In estimating the fiscal return to the State of New York, the Oneida Nation’s researchers applied multipliers to the jobs created by the confederated tribes. Thus they determined, based on some 1,960 actual tribal enterprise jobs, a total employment of 3,966, regional “jobs created directly and indirectly by the Nation” (Coopers & Lybrand, February 1995, p. 4) Then, based on household earnings figured to be 70 percent of the statewide average, they adjusted the state’s average fiscal return per job to \$2,524 per annum, in 1992 dollars, for Oneida County. While they do not directly explain their job multiplier calculation, it appears that they estimate about one additional job created for each tribal position.¹⁷

Washington State’s landmark study, Tiller and Chase (1998), reported on the level of tribal economic activity and provided records of payroll taxes paid to the state and federal governments. However, their accounting did not attempt to calculate the revenue generated through wage spending, and deferred on the use of economic multipliers. In personal communication with Robert Chase we spoke

¹⁷ Per job fiscal return plus a 3% inflation rate combine to account for \$11M in NY State revenue (Coopers & Lybrand, February 1995, p. 7).

of multipliers and their use in estimating total tribal impacts on the state.¹⁸ While in the 1998 report Tiller and Chase wrote that multipliers were important in gauging the “total contribution of tribal-owned enterprises on the overall state economy,” (p. 22), Chase saw pitfalls in trying to apply multipliers to the data presented in their 1998 study, for reasons related to the lack of geographic area criteria used in the RIMSII and IMPLAN models. He noted that the situations of individual tribes vary greatly, in the least, on a county-by-county basis, and that appropriate multipliers probably require adjustment due to the isolated nature of many reservations. He also agreed that the economic category information available to us (given the agreements that restrict the information that he and Veronica Tiller can share), added to our problem in attempting to apply impact multipliers. The difficulty, he said, is that to use multipliers, one must make too many “heroic assumptions.”

While a skeptical approach to multipliers seemed to be in order, we nevertheless determined we would hazard the following calculations: Using the PRA formula ($1/[1-r]$) and the Arizona average value of 0.3489 for r , we arrived at a multiplier of 1.54, which we then applied to our total wage earnings for Washington State Native Americans (including all employees of Tribal Economic Enterprise):¹⁹

Earnings of tribal economic activity employees	\$270M
Earnings of tribal enrollees not employed by TEA	+ \$451M
Earnings of WA Native Americans, not a part of TEA	+ <u>\$752M</u>
Total earnings of WA St. Native Americans	1,273M

Then $\$1,273M \times 1.54 = \$1,960M$ for a total economic impact. Less the initial wage earnings of \$1,273M gives a projection of induced impacts of an additional \$682M in economic activity. By then using the same tax computation

¹⁸ This refers to a conversation with Robert Chase on April 25, 2000.

¹⁹ This is a more conservative estimate than the 0.363 value for r that PRA uses. Using the PRA multiplier in the same series of calculations raises the subsequent revenue projection by \$5.4M.

methodology as in the previous chapter (imputing both payroll and sales taxes from the reported payroll taxes found in Tiller and Chase), the induced economic impact was calculated as follows:

State payroll tax is determined to be:

$$\$5.3\text{M} / \$270\text{M} = x / \$682\text{M}; \text{ so solving for } x, x = \$13.4\text{M}.$$

In other words, we impute that \$682M in wages would result in a payment of \$13.4M in state payroll taxes.

Then sales tax contributions were then estimated:

$$\begin{aligned} & \$682\text{M} \text{ (induced wage impacts)} \\ & \times 60\% \text{ (portion of wages spent on consumables)} \\ & \times 85\% \text{ (portion of consumer spending which is taxable)} \\ & \times 8\% \text{ (average sales tax rate)} \\ & \$27.8\text{M in sales tax (paid on } \$682\text{M of induced economic activity wages)} \end{aligned}$$

Thus the total induced fiscal impact to the State of Washington would be \$13.4M (payroll taxes) + \$27.8M (sales taxes) = \$41.2M.

A similar impact multiplier methodology was also applied to the \$733M in tribal economic activity expenditures:

$\$733\text{M} \times (1 / [1 - .3489]) = \$1,126\text{M}$ for a total economic impact. Less the initial expenditure figure of \$733M leaves a projection of an additional \$393M in induced impacts. As in the prior calculation of sales taxes resulting from tribal expenditures, we figure that most of that additional money is spent on taxable sales, and use the same average tax rate:

\$393M in additional, induced economic impacts
x 86% for the estimated percentage of spending that is taxed
x 8% for a statewide sales tax average

\$27M in additional state and local taxes resulting from the business expenditures of tribal enterprises.

Thus total fiscal impact on Washington State associated with these calculations of induced economic activity equals $\$41.2\text{M} + \$27.0\text{M} = \$68.2\text{M}$. If the direct and induced 1997 revenue contributions of tribal economic activity and all Native Americans within Washington State are considered together, the total fiscal impact then becomes $\$139\text{M} + \$68\text{M} = \$207\text{M}$.

B. Potential sources of error in our calculations

We recognize that our each of our three calculations of state and local taxes are of necessity simple in their approach, and therefore may be significantly less accurate than what might be generated if more detailed economic information and more sophisticated modeling systems could be employed. Some of the potential error that could result from our assumptions are clear to us, and we wish to share those with our readers. First, note that all our data was dated 1997. Adjustments for inflation would be appropriate in order to approximate FY2000 revenue contributions of Native Americans in Washington State. We also gave no consideration to the overall growth in the State economy during the last three years. The Office of the Forecast Council factors the net effect of “Washington real personal income growth,” to be better than a robust 6 percent per year over the last five years of the millennium (Office of the Forecast Council, February 2000). Population growth was likewise not factored in, and year 2000 projections suggested overall numbers might be up by 6 percent since 1997 (Office of Financial Management, January 7, 1999). Roughly computing those changes over the last three years, economic activity and associated fiscal revenues might now be 25 percent greater than they were in 1997.

Secondly, virtually all the numbers used in this study were in fact estimations, some more sophisticated than others, of population, income, spending, and taxation. Therefore, every value posted essentially overlaid a debatable assumption. We attempted to provide a transparent framework to the cognition which brought us to each and every factor, but arguably every term could use refinement: Census methodologies still resonate from recent changes in the instruments used, with the intent being a better description of the Native American element of Washington State population. The average number of persons per household is on a downward trend, but there are certainly local variations which could impact the validity of our application. Wages may be reported by the individual, or as aggregated household earnings, and we were compelled to harmonize the two. The base payroll tax rate, imputed from Tiller and Chase (1998) wage reports on tribal economic activity, was used to deduce payroll tax rates for all other wage earners in this study and may constitute a weak assumption. Beyond that, the sales tax rates vary from county to county and city to city, and we used a rough average.²⁰ The percentage of earnings spent on consumables, and then the percentage of that activity which is taxable by non-tribal jurisdictions is probably unknowable in absolute terms, but these percentages were estimated in areas outside of Washington State, and may or may not be accurately applied here. We certainly made “heroic assumptions” in estimating the portion of TEA which is equivalent to GDP, and we had to make some rough guesses about where those expenditures go. We consciously chose to disregard any and all tax collections that individual tribes return to the State of Washington under the terms of two party taxation agreements – such information was more difficult to obtain than one might imagine, and currently, we believe, represents a relatively minor component of the overall state/tribal revenue

²⁰ The statewide sales tax rate is 6.5 percent, and local governments add to that for local services. We make revenue projections by using an 8 percent sales tax rate that approximates the various local additions to the state base rate. Thus the money collected is not wholly controlled by the state government, but it is also revenue that is by in large not going to the tribal governments. Essentially we are postulating that an overestimation of state sales tax collections offsets the underestimation of property tax collections on Native American owed homes. Such a detailed analysis would be fraught with difficulty and proved to be beyond the scope of our study.

machinery. We also decided not to look at a host of other potential distortions in the revenue calculations. As an example, it could be argued that due to the relative lack of economic infrastructure in Indian Country, a higher percentage of wages earned their “leaks” to the communities closest to a particular reservations, and hence causes an unusual imbalance in the local ratio of exports to imports in the local economy, and thus significantly alters the induced economic impact we might compute. Collectively, errors in fundamental assumptions have the potential to significantly skew results. However, it is our hope that by fairly and openly making good faith estimates whenever required, our errors were effectively random in nature and, therefore, when regarded in the aggregate, either do not distort the final estimates or do so to an insignificant extent.

C. Tax evasion or disputed sovereignty?

When we met with Johnson and Smith of the Department of Revenue, they shared with us an estimate of state revenue loss to non-taxed Indian cigarette sales (Cigarette tax evasion estimate – FY 1999, October 1, 1999). Using a Forecast Council estimate of Washington per capita cigarette consumption of 76.90 packs per year, as compared to a taxed consumption rate of 53.7 packs of cigarettes per year, they deduce consumption of 23.20 packs of untaxed cigarettes per person, per year.²¹ Then using a state population of 5.757 million people, they estimated a “total Washington loss” of 133.59 million packs of untaxed cigarettes. Accounting for legitimate military and Indian sales of 26.41 million packs, they adjusted that figure to 107.19 million packs, a figure they believe represented cigarette sales that evaded appropriate state and local taxes. They concluded that the total loss to the state and local governments, resulting from such tax evasion on cigarettes, reached \$114.9 million annually, with 60 percent, or \$68.9 million, of that loss attributable to Indian sales (Cigarette tax evasion estimate – FY 1999, October 1, 1999). From the perspective of Johnson and

²¹ The estimated Washington State per capita cigarette consumption rate of 76.90 packs per year compares to the estimated U.S per capita annual consumption of 89.42 packs of cigarettes.

Smith, whatever tax revenues might be attributable to the tribal presence in Washington State, that amount was thus offset by that \$68.9 million in tax evasions.

However, as we continued our research into the issues of taxation and tribal sovereignty, we learned that such a calculation was based on premises that were disputed by the tribes, and thus subject to debate, if not litigation. An alternative perspective was provided by Susan M. Williams (1999) who testified before Congress at about the same time the Washington State Department of Revenue was developing its estimation of tribal tax evasion. In her testimony on behalf of the National Congress of American Indians, she suggested the problem was really one of partially overlapping taxation jurisdictions, and the net result of such overlap was a conflict that threatened to “cripple tribal economies” (p. 1) As characterized by Williams, the problem was the imposition of state taxes on Indian Country sales activity essentially kept tribal governments from collecting their own sales taxes, and thus limited their revenue generating options, and in some cases even resulted in double taxation on some expenditures.

D. Tax compacting: the hope for the future

Williams’ testimony was intended to respond to a proposal being put forth by private retailers (including the National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America) that would make tribal retail enterprises, for the purpose of sales tax collections, agents of the state. If the tribal retailers were to fail to collect the state sales tax, the U.S. Department of Justice would be expected to step in and collect the taxes, and after subtracting administrative fees, return the collected taxes to the state, or the local tribe for its governmental expenditures. Either way, the tribes, according to Williams, found such a proposal reprehensible because the tribes contended 1) that it was legally unclear whether or not Congress could compel the tribes to “act as agents for the state”, 2) the tribes would regard such federal action as inconsistent with the

Congressional goal of tribal self determination, and 3) that it would require a significant expansion of the responsibilities of the Department of Justice.

Concluding that the federal government's role should be to "protect and encourage tribal self government," Williams pointed out that such broad legislation often resulted in undesired complicating results, and besides, many of the issues were essentially of local concern and were therefore best resolved at the local level (p. 5). Noting that each state had the authority to resolve such taxation conflicts with its own tribal governments, she stated that federal intervention would be "inconsistent with the long-standing policy of tribal self-determination." (p. 5). In fact, new legislation in this arena would potentially bring into question the validity of existing agreements between the tribes and the states. She, therefore, recommended that the federal government show restraint in new legislation, and allow the current process of developing local tax compact agreements between the states and the tribes to continue (p. 6).

In the case of Washington State, the taxation disputes between the state and the various tribes are ongoing. However, in the last few years there have been a number of notable attempts to reach accords, and develop a mechanism by which such accords might be more easily achieved. Tax compacts between the state and the tribes would effectively assure uniform, state-wide application of sales taxes and thus promote price parity to satisfy non-tribal retailers. While such an arrangement would satisfy state officials concerned about tax evasion, a significant portion of tax collections in Indian Country would, under the terms of such compacts, be returned to the local tribal government, generally at a negotiated rate intended to approximate the ratio of sales to non-tribal members as it compares to the sales to tribal enrollees.

We view state and tribal tax compacts as only one of many types of economic efforts that could significantly strengthen both tribal economies and Washington State's economy. What is clear is that when tribal economies flourish, they strengthen economic growth statewide. As we developed this report, we determined that two important and historic opportunities were unfolding for state and tribal governments. These efforts can be attained

simultaneously. First, Washington State has the opportunity to correct an antiquated past that clearly damaged tribal self-sufficiency. Secondly, policies that provide opportunities for state and tribal communication, economic partnership, and economic development create situations where both the tribes and for state government benefits. We believe our solid estimates of tribal revenue provide strong incentive for leaders in state government and leaders in tribal governments to take advantage of these historic opportunities for economic growth.

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