

MORAL POLICYMAKING AND INDIAN GAMING: NEGOTIATING A DIFFERENT TERRAIN

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Abstract

As the fastest growing segment of the legalized gambling industry in the U.S., in just two decades Indian gaming has become a \$25 billion industry. Approximately 230 tribes own and operate some 400 casinos in about 30 states. Tribal gaming is transforming the quality of life on many reservations. Yet the spread of Indian gaming has given rise to contentious and polarizing debates over its policy rationale, socioeconomic impacts, and morality. The moral policymaking landscape for Indian gaming is largely uncharted. In this Paper, we explore that terrain and map its contours. We argue that Indian gaming requires adjustment to the models typically used to explain or guide morality or social regulatory policymaking concerning gambling. Indian gaming is distinct from other forms of legalized gambling for three fundamental reasons: (1) Indian gaming is an exercise of tribal sovereignty, which reflects tribes' unique status in the American political system; (2) conducted by tribal governments, Indian gaming is public gaming; and (3) Indian gaming is an effective means to address continuing socioeconomic deficits in many Native communities. We conclude that regardless of the substantive policy outcomes, policymakers have an obligation to take these differences into account in the *process* of developing morally sound public policy on Indian gaming.

INTRODUCTION

Histories of gambling indicate that risk-taking and faith in luck are part of the shared human experience (e.g., Schwartz 2006). Varying degrees of moral objection to gambling have co-existed alongside gambling throughout history and across cultures. In modern times, the tension between gambling's popularity and moral objections to the same have greatly influenced how government treats gambling.

Debates over the morality of gambling are fairly predictable. Some people oppose gambling on religious principles, as the concept of "luck" may be inconsistent with divine power or gamblers may exercise poor stewardship of godly gifts. Others believe that gambling is harmful, emphasizing that it undermines a societal work ethic, leads to crime, or creates human and economic costs related to problem and pathological gambling. Still others argue that the costs of gambling fall disproportionately on the poor. On the other side are arguments related to economic development, "voluntary" taxation to benefit worthy causes or subsidize the public fisc, or the state's appropriate role in maximizing individual freedom.

At different times and in different jurisdictions, government responses to gambling have run the gamut from enforced blanket prohibitions to nominal prohibitions to regulation of select games to state-sponsored lotteries to full-scale casino gambling with the market as the primary constraint. Skolnick (1988) notes that the moral ambivalence toward gambling makes law and policy governing gambling dynamic, unpredictable, and less tethered to either consensus or evidence. As a morally and politically contested "normal vice,"¹ many object to gambling while many more enjoy it.

Collins (2003a, p. 23) wryly notes that an individual's perspective on gambling policy "will depend on whether you think gambling is most relevantly similar to going to the movies, ingesting cocaine, watching soap operas, eating candy, playing golf, consuming pornography, smoking, having a massage, attending a ball game, visiting a brothel, riding a roller coaster, shopping, or having a drink." All such activities result from individual choices, whether based on free will or on compulsion or addiction. All may afford pleasure, require some form of payment, result in overindulgence, or cause harm to the individual or others. The aggregate effects of each behavior affect society to varying degrees and with disparate results. Given their potential harms to individuals or to society, some such behaviors suggest the need for stringent government regulation or even outright prohibition.

Morality or social regulatory policymaking involves the "use of authority to modify or replace social values, institutional practices, and norms of interpersonal behavior with new modes of conduct based upon legal proscriptions" (Tatalovich & Danes 1984, p. 207). Gambling regulation invokes elements of social regulatory policymaking in which the state redistributes values, but that is not its only rationale. The public policy concerning legalized gambling also involves the goal of facilitating the purposive allocation and reallocation of economic resources to different populations and economic sectors. In other words, gambling regulation also involves

¹ Skolnick (2003, pp. 313-19) characterizes gambling as a "normal" rather than "deviant" vice. Normal vices are those practiced widely by ordinary people, without requiring interaction with criminal organizations and, for most individuals, without experiencing impairment of life style through addiction or abuse.

the type of distributive and redistributive governmental outputs described in the classic formulation of political scientist Theodore Lowi (1964, 1972). The result is the distribution of policy outputs (gaming operators' licenses, for instance), or the upward or downward redistribution of wealth, property, or power to different populations (e.g., commercial gaming conglomerates like Harrah's or MGM Mirage, or impoverished American Indian tribes in the Northern Plains).

A regulatory scheme should ensure that those who benefit from the distribution and redistribution of gambling revenue and other valuable resources (e.g., jobs, political clout) are those whom the government intends to benefit (Collins 2003a, p. 11; Cabot 1996). As a basis for informed public policy, moral convictions concerning gambling should be defended with rational argument and empirical evidence (Collins 2003, p. 4). Oftentimes, however, impassioned debates over the appropriateness of state sanction for legalized gambling and the extent to which it should be regulated turn on intense preferences rooted in values-laden ideology, presupposition, and overgeneralization (e.g., NGISC 1999).

A thorough examination of the problems and promise of the legalized gambling industry writ large in the U.S. is beyond the scope of this paper. Others have tackled the general morality of gambling policy and social regulation from the vantage point of law (Skolnick 1988, 2003), political theory (Collins 2003a), economics (Walker 2003; Eadington 2003); public health (Blaszczynski, Ladouceur, & Shaffer 2004), public affairs (McAulliffe 2006), and research imperatives (Borrell 2003). Relying on at least one overriding point of consensus among diverse accounts, we take it as a given that the gambling industry raises special or even unique legal and policy concerns requiring comprehensive and multi-layered government regulation.

While some of the literature on social regulatory policymaking and moral governance nods at the burgeoning Indian gaming industry, there has been virtually no in-depth or systematic analysis of whether regulatory and other legal and policy issues are any *different* in the context of Indian gaming, and if so, how they do or should inform policymaking.² Once the question is asked whether the tribal gaming industry elicits its own unique concerns, it gives rise to the possibility that the answer should guide how federal, tribal, and state authority over Indian gaming is allocated; how and what public policy should be developed and implemented; and how that public policy should be evaluated to determine if it is serving its intended purposes.

In this Paper, we argue that Indian gaming is in fact different than legalized gambling generally, for three fundamental reasons: (1) Indian gaming is an exercise of tribal sovereignty, which reflects tribes' unique status in the American political system; (2) conducted by tribal governments, Indian gaming is public gaming; and (3) Indian gaming is an effective means to address continuing socioeconomic deficits in many Native communities. These differences create an imperative that regardless of the substantive policy outcomes, governments and policymakers at the local, state, federal and tribal levels are obligated to take account of Indian gaming's distinct characteristics when engaged in the law- and policymaking process.

² Elsewhere we have argued that Indian gaming is different than any other form of gambling in the U.S. (Light & Rand 2005) and is subject to a uniquely complex regulatory scheme (Rand & Light 2006a). We also have proposed specific reforms in Indian gaming law and policy (Rand & Light 2006a).

Several caveats are in order about what we are and are not attempting to accomplish in this account. Let us first be clear in drawing the distinction between individually held moral beliefs and moral or ethical law- and policymaking. Individual preferences are at least one step removed from government action; however, individuals do formulate opinions, make decisions, participate in public debate, and behave in accordance with public policy. We leave the exploration of important questions related to individual morality to others. We also recognize the importance of ongoing social-psychological research into addictive behaviors, such as problem and pathological gambling and their attendant social costs, that may stem from legalized gambling. Yet gambling addiction and its mitigation or prevention are beyond the scope of our inquiry.

Here, we concern ourselves not with individual moral or ethical principles reflecting the place of gambling in society, or to the linkages between legalized gambling and addictive behavior, but with the question of how tribal, state, local, and the federal government should conduct themselves concerning Indian gaming. How should governments approach issues related to gambling? What is the ethical public policy for governments to enact in a society where individuals hold different preferences at different strengths concerning legalized gambling? And does Indian gaming present different issues that should inform policy specific to that field? We wish to be clear that our focus is on identifying those potential differences, not on drawing moral conclusions about gambling or Indian gaming itself.

Our ultimate conclusions in this Paper are easily summarized: there indeed are salient differences between commercial and other forms of legalized gambling and Indian gaming, and policymakers should—indeed, are morally obligated to—take these differences into account in the policymaking process. To evidence its distinctive qualities, we begin with the question of what “Indian gaming” actually is.

WHAT IS INDIAN GAMING?

As defined by federal law, “Indian gaming” is gaming conducted by an “Indian tribe” on “Indian lands” in states whose public policy allows for such gaming (25 U.S.C. §§ 2703(5), 2703(4)). Codified in the Indian Gaming Regulatory Act of 1988 (IGRA) (*ibid.* §§ 2701-21), these legal requirements create the outer boundaries of a regulatory framework that has facilitated exponential industry growth.

In 2006, some 400 gaming establishments, operated by about 230 tribes, earned over \$25 billion in gaming revenue, more than quadruple the \$5.4 billion earned in 1995 (NIGC 2007; Meister 2007). Tribes use Indian gaming revenue to provide basic government services and to fuel economic development that is fundamentally changing the quality of life for many Native Americans across the U.S. The rapid growth of Indian gaming mirrors or even exceeds the exploding legalized gambling industry in its many forms—today all but two states, Utah and Hawaii, permit some form of legalized gambling, including gaming in riverboat or land-based casinos, racetrack pari-mutuel wagering, charitable gaming, and state-run lotteries.

Although popular media accounts tend to lump tribes together, providing a pan-Indian narrative of tribal gaming, there is considerable variation among tribes and tribal experiences

with casino-style gaming (Light & Rand 2005, pp. 9-11). Some tribes have decided *not* to pursue casino-style gaming or, in some cases, any form of gaming; for a few tribes, gaming is not feasible either because their reservations are located in states that disallow any form of gambling,³ or because isolated locales or lack of financial resources restrict their ability to open or sustain a casino. For tribes with gaming operations, casinos located in or near large metropolitan areas, with ready access to literally millions of customers, earn more than those in rural locales. Tribal gaming operations near population centers in California and Connecticut can earn as much as \$1 billion in annual revenue. More typical, though, is annual revenue that amounts to a fraction of such figures. In 2006, under 6% of tribal gaming operations earned more than \$250 million, accounting for nearly 45% of the total industry revenue, while more than half earned \$25 million or less. One out of every five tribal casinos earned less than \$3 million, often just enough to keep the casino doors open and to provide some modest tribal government revenue (NIGC 2007).

Indian gaming is subject to a complex regulatory scheme that in some ways reflects the public policy goals embodied in the regulation of legalized gambling more generally. The purpose and role of the state in regulating individual behavior and serving the public interest varies depending upon the type of gambling that is the subject of government intervention.

THE REGULATION OF LEGALIZED GAMBLING

The explosion of legalized gambling in the past few decades has engendered critical questions and ongoing controversy about the appropriate role of the state. Should government permit or prohibit gambling? What public purpose would either stance serve? If permitted, what games should be allowed and why? How should government regulate gaming to maximize its benefits while minimizing its harms?

In its 1999 *Final Report*, the National Gambling Impact Study Commission (NGISC) outlined the policy rationales and challenges for government regulation of legalized gambling generally:

In addition to . . . relatively well-defined policing functions, a broader and far more important role for government regulation is determining the scope and manifestation of gambling's presence in society and thus its impact on the general public. In this sense, regulation can be broadly defined to include the political process by which the major decisions regarding legalized gambling are arrived at, the corresponding legislation and rules specifying the conditions of its operation, and the direction given to regulatory bodies. Through such means as specifying the number, location, and the size of gambling facilities; the types of games that can be offered; the conditions under which licensed facilities may operate; and so forth, governments have considerable control over the benefits and costs legalized gambling can bring with it. These measures can be as

³ As discussed in the next section, under IGRA, Class II and Class III gaming are allowed only in those states that "permit . . . such gaming for any purpose by any person, organization, or entity." 25 U.S.C. § 2710 (b)(1), (d)(1). In some states, Indian gaming is limited to bingo and similar games because state public policy or other law prohibits casino-style gaming.

simple and straightforward as attempting to prevent underage gambling or as ambitious and contentious as promoting traditional social values.

If this basic responsibility is to be adequately met, government decisions regarding the introduction and regulation of legalized gambling would best be made according to a well-defined public policy, one formulated with specific goals and limits in mind. . . . Generally, what is missing in the area of gambling regulation is a well thought-out scheme of how gambling can best be utilized to advance the larger public purpose and a corresponding role for regulation. Instead, much of what exists is far more the product of incremental and disconnected decisions, often taken in reaction to pressing issues of the day, than one based on sober assessments of long-term needs, goals, and risks (NGISC 1999, pp. 3–1 to 3–2).

In the last 50 years, three distinct regulatory models have accompanied the expansion of legalized gambling in the areas of commercial casinos, charitable gambling and state lotteries, and Indian gaming. The modern gambling industry is subject to intense government scrutiny through extensive regulations governing many aspects of gaming, including what forms of gambling are allowed, where and when games may be conducted and under what conditions, who may work for or own a gambling establishment, and who may gamble. Gambling regulations generally share two key social-control functions: ensuring the integrity of the games and preventing the infiltration of organized and common crime. Regulatory schemes also are intended to facilitate common economic development goals related to gambling enterprises, such as revitalization of local and regional economies, job creation, and government revenue generation. The three regulatory models are determined by both the scope and purpose of the gaming.

Commercial Casinos

The model for regulating commercial casinos has its genesis in Nevada's and New Jersey's casino industries. Nevada legalized "wide open gaming" in 1931, but the state legislature adopted the current regulatory model in the late 1950s in the wake of the Kefauver Commission's investigation of organized crime and its ties to Las Vegas casinos. The scope of essentially unlimited high-stakes casino games required aggressive government regulation; the purpose of encouraging strong industry growth (and indirectly, of increasing the state's "take" through taxation) further shaped Nevada's regulation of commercial casinos. Nevada's approach "seeks to maximize economic benefits of gaming, and allows the industry to meet market demands with little regulatory involvement" (Aronovitz 2002, p. 190). Indeed, the state legislature's statement of Nevada's public policy toward gambling begins, "The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants" (Nev. Revised Stat. § 463.0129(1)). Business decisions concerning the size of a casino and which and how many games are offered are left to the casinos themselves; consumer demand and development of "niche" markets, rather than regulatory constraints, determine the scope of the gaming industry in Nevada.

When New Jersey became the second state to legalize commercial casinos in 1976, the regulatory model adopted by the state legislature sought foremost to minimize gambling's

negative externalities, even at the expense of economic growth, by limiting the size and scope of gaming. The state's comprehensive regulatory scheme "strictly governs virtually every aspect of the business" (Aronovitz 2002, p. 190). For example, New Jersey law sets limits on a casino's square footage, and further restricts the space that may be allocated to slot machines or high-stakes games. As one commentator noted, the New Jersey model produced a highly controlled casino industry, and paid for it through comparatively stunted economic impacts (see Harrison 1998).

Nevada's and New Jersey's regulatory schemes serve as somewhat divergent prototypical models for state regulation. Variants of these models govern the proliferation of most legalized gaming conducted by private industry, particularly riverboat and other commercial casinos, across the U.S.⁴

Charitable Gambling and State Lotteries

Beginning in the mid-20th century, several states relaxed stringent bans on gambling to allow religious and civic organizations to conduct church bingo games, charity raffles, and "Las Vegas nights" fundraisers. It was a short step from gambling for a "good cause" to gambling to contribute the public fisc in lieu of raising taxes. In a trend started by New Hampshire's institution of a state lottery in 1964, 40 states and the District of Columbia currently operate lotteries (e.g., Dense 2007). State lotteries and charitable gambling gave rise to a second regulatory model with a more limited scope, in terms of the types and circumstances of permitted games, and that has as its focus gaming for worthy or public purposes.

In contrast to a commercial, "for profit" gambling enterprise, charitable gambling typically contributes to non-profit organizations, while a state lottery directly raises public funds (sometimes called a "voluntary tax"). Lottery revenue usually is earmarked for a particular purpose, often public school funding.

State lotteries and charitable gambling are the least regulated forms of legalized gambling, in large part because of the limited scope of the games (charitable gambling, for example, generally has strict limits on jackpot and bet size, and often is limited to specific games that may be offered only occasionally). State lotteries are, of course, regulated by the state (often, the regulation is essentially "built in" to the operation of the lottery); in addition to ensuring fairness and preventing related crime, state lottery agencies also are responsible for marketing lottery products.

Indian Gaming

The third regulatory model governing modern legalized gambling was created through IGRA. With similarities to the scope of commercial casinos, the "good cause" of charitable gambling, and the public nature of state lotteries, Indian gaming regulation is in notable ways an

⁴ A notable exception is the racing industry, which has a regulatory model influenced heavily by pari-mutuel wagering as the dominant form of gambling as well as the need to protect the "sport" of animal racing.

outgrowth of the prior two models. Unlike most legalized gambling, which is authorized and regulated by state law, the Indian gaming industry is a product of federal and tribal authority. Importantly, IGRA's regulatory scheme is most markedly influenced by tribes' status as governments.

In the late 1970s and early 1980s, a number of tribes opened high-stakes bingo palaces as a means of tribal economic development. Because federal Indian law generally precluded state regulation of tribes, tribal bingo operations frequently did not comply with state restrictions on jackpot amounts and use of gaming profits. In California, the Cabazon and Morongo Bands of Mission Indians operated bingo halls and a card club on their reservations. When the state threatened to shut down the tribes' gaming operations, the tribes challenged the state's enforcement of its gaming regulations on the tribes' reservations, and the case culminated in the U.S. Supreme Court's landmark 1987 decision in *California v. Cabazon Band of Mission Indians* (480 U.S. 202 (1987)).

Congress had granted California criminal and some civil authority over the tribes within its borders through a federal statute known as Public Law 280.⁵ In the state's view, this authorized application of California's bingo regulations on the tribes' reservations. In an earlier case, the Supreme Court had ruled that Public Law 280's civil provision conferred only adjudicatory authority, rather than general regulatory jurisdiction.⁶ Accordingly, the *Cabazon* Court explained, while Public Law 280's broader grant of criminal jurisdiction would allow California to enforce state criminal prohibitions against gambling on tribal lands, the state did not have authority to enforce its civil gambling regulations against the tribes.

Relying on this "criminal/prohibitory-civil/regulatory" distinction,⁷ the Court examined the state's public policy concerning gambling, noting that California operated a state lottery and permitted pari-mutuel horse-race betting, bingo, and card games. "In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery," the Court reasoned, "we must conclude that

⁵ Public Law 280, enacted in 1953, gave certain states, including Florida and California, a broad grant of criminal jurisdiction and a limited grant of civil jurisdiction over tribes within their borders. Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (codified as amended at 18 U.S.C. § 1162, 28 U.S.C. § 1360 and other scattered sections in Titles 18 and 28, United States Code (2000)). In Public Law 280 states, state governments exercise some power over tribes; in non-Public Law 280 states, the state has less authority over tribes within its borders.

⁶ *Bryan v. Itasca County*, 426 U.S. 373 (1976) (holding that Public Law 280's grant of civil jurisdiction applied only to private civil litigation in state court).

⁷ The *Cabazon* Court's interpretation of Public Law 280 was based on its reading of congressional intent not to grant states broad regulatory authority over tribes, as that "would result in the destruction of tribal institutions and values." *Cabazon*, p. 208. Thus, the Court distinguished between state laws that are "criminal/prohibitory" and "civil/regulatory":

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.

Ibid., p. 209. According to the *Cabazon* Court, the doctrine's "shorthand test" is whether state public policy condones the conduct. *Ibid.*

California regulates rather than prohibits gambling in general and bingo in particular” (ibid., pp. 210-11).

In its decision, the *Cabazon* Court noted that the relevant federal interests in the case were “traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its ‘overriding goal’ of encouraging tribal self-sufficiency and economic development” (ibid., p. 216). The tribes’ own interests paralleled those of the federal government:

The Cabazon and Morongo Reservations contain no natural resources which can be exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal governments and the provision of tribal services. They are also the major sources of employment on the reservations. Self-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members (ibid., pp. 218-19).

In the end, *Cabazon* was a victory for tribes, as the Court held that tribal gaming was a manifestation of tribes’ governmental authority and thus states could not regulate reservation gaming enterprises. Rather than resolving the issue, though, the Court’s decision raised the stakes of the contest between tribal and state interests and power; the next year, Congress struck a compromise through IGRA.

Congress’s declaration of policy in IGRA reflects its intent to create a comprehensive regulatory framework that ostensibly balanced tribal sovereignty and reservation economic development with state interests in controlling the crime assumed to be associated with high-stakes casino gambling. Thus, the congressional purposes served by IGRA were to codify tribes’ right to conduct gaming on Indian lands as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments, while providing sufficient regulation to ensure legality and to protect the financial interests of the tribes (25 U.S.C. § 2702).

IGRA’s key innovation was its categorization of three classes of gaming for regulatory purposes: Class I, or social or traditional tribal games, to which IGRA does not apply; Class II, or bingo and similar games as well as non-house-banked card games, which are regulated primarily by tribal governments with federal oversight; and Class III, or casino-style games, which requires both tribal regulation and a tribal-state compact (ibid. §§ 2703(6)-(8), 2710(b), (d)). Class II and Class III gaming are legal only in states that “permit such gaming” (ibid. §§ 2710(b)(1)(A), 2710(d)(1)(B)). For Class III gaming, Congress intended the tribal-state compact requirement to encourage states and tries to negotiate, on a government-to-government basis, issues related to the regulation of casino-style gaming on tribes’ reservations.

Indian gaming, then, is regulated by three levels of government: tribal, state, and federal. Depending on state law, its scope may include full-scale casino gambling or may be limited to bingo. Like state lotteries, Indian gaming is public gaming, and tribal gaming revenues must be used for specified purposes related to the welfare of the tribe and its members. Indian gaming’s primary purpose is to promote tribal economic development, self-sufficiency, and strong tribal governments. As discussed below, this purpose is the product of tribes’ unique status in the American political system as well as the legacies of colonialism and tribal-federal-state conflict.

MORAL POLICYMAKING AND LEGALIZED GAMBLING

Moral policymaking can be examined on two levels: process and outcome. As observed by political scientists, the process for considering and adopting policy regarding issues of morality is distinct from that of economic policy. Citizens' involvement in the process of morality policymaking reflects heightened interest in the outcomes, which can be informed by public policy goals (as discussed in the preceding section on gambling regulatory models) as well as principles of moral governance.

Explaining the Process

Lowi's (1964; 1972) landmark insight into the policymaking process was that different types of policy generate different types of politics.⁸ Pierce & Miller (2004) explore the evolution of Lowi's policy typology, which although strong in its explanatory force seemed to be missing an essential policy type: what Tatalovich & Daynes (1984, 1988) labeled "social regulatory policy" (also known as morality policy). Lowi accounted for the regulation of economic or market-based activity, but not necessarily for the state's regulation of individual moral behavior. Hence social regulatory or morality policies came to be identified as value-based forms of social regulation undergirded by moral arguments to support a policy position (Gormley 1986; Hunter 1991, 1994; Meier 1994; Mooney and Lee 1995; Haider-Markel & Meier 1996; Mooney 2001; Patton 2007). Morality policy or social regulation issues include abortion, capital punishment, gay and lesbian rights, euthanasia, gun control, obscenity and pornography, religious free exercise or establishment matters such as school prayer and the teaching of intelligent design, and, of course, gambling.

As the conception of morality policy was refined to encompass the state's redistribution of social values (Meier 1994), the key variable in the politics of morality policy emerged as core values, often rooted in "first principles" with strongly held or even uncompromising religious underpinnings.⁹ Morality policy issues tend to be non-technical; an individual can develop a substantive opinion without much specialized knowledge or expertise. Undergirded by expressions of individuals' core values or first principles, morality policy issues reflect intensely held preferences. The policy questions that give rise to the politics of social regulation generate high degrees of citizen interest and participation (Carmines and Stimson 1980) and interest-group activity (Mooney & Lee 2005; Haider-Markel & Meier 1996; Meier 1994, 2001; Gormley 1986; Patton 2007; Pierce & Miller 2004). The policymaking process concerning morality issues falls under intense public scrutiny as elected officials face electoral imperatives or seek to be responsive to their constituencies (Mooney 2001). Public opinion, which may be mediated by such factors as religious affiliation or religiosity, partisanship, and ideology, influences the type

⁸ Lowi (1972) categorized policy as constituent, distributive, regulatory, and redistributive.

⁹ Pierce & Miller (2004, p. 32) argue that Lowi's typology, into which he later attempted to "squeeze" morality policy, overlooked the essential points that individuals' core values define morality policy, and such policy generates unique costs and benefits.

and scope of public policy outcomes (Mooney & Lee 1995; Haider-Markel 2001; Haider-Markel & Meier 1996; Smith 2001; Norrander & Wilcox 2001; Pierce & Miller 2004).

As the product of core values concerning vice, sin, or just deserts which frequently are rooted in religious teachings or other moral and ethical world views that generate intense policy preferences, gambling policy is a paradigmatic example of morality policy (Pierce & Miller 2004). Gambling policy is generated by political (Lindaman 2007) or economic variables (Meister 2007) that shape legal, regulatory, and other policy outcomes (Light & Rand 2005). Although the policy debates over the state's appropriate role in sponsoring or promoting gambling are intense and even volatile (Pierce & Miller 2004, p. 1), outright prohibition seems not to be on the table; instead, gambling in its many manifestations is subject to regulatory schemes generally designed to mitigate negative externalities and restrict market expansion while maximizing individual freedom and benefits to the state.

Informing the Outcome

As Skolnick (1988, 2003) notes, the policy outcomes on morality issues vary widely over a “normal vice,” such as gambling. Because there is no clear moral consensus on gambling, results of moral policymaking are inconsistent, unpredictable, and highly dynamic (see also Eadington 2003, pp. 40-41). Lowi (2007, pp. vii-viii) observes that “the politics of gambling is only one of the more recent morality plays” in which morality is pitted against utility in a contest “between the angels and the agents.”

One option to resolve such contests—or at least stake out a position—is to retreat to unyielding principles of political theory that rest on an underlying premise that the goals of moral statecraft and moral governance are the appropriate determinants of moral law- and policymaking. The moral or ethical high ground can be achieved by marrying Western political thought to empirically rooted assertions.

Collins (2003a, pp. 28-42), for example, categorizes arguments in favor of government prohibition as grounded in enforcement of morals, paternalism or protectionism, human and social costs (particularly of problem and pathological gambling), democratic consensus or majoritarianism, and practical difficulties of effective regulation. The answer to a pivotal question—“What should the law be regarding gambling?”—stems from a “combination of normative and empirical judgments” dependent upon both the “political principles and social ideals to which we subscribe” and “what we think as a matter of fact will be the likely consequences of adopting one policy rather than another” (pp. ix, 26). Collins sets forth why gambling should be legal and regulated based on “a number of value judgments to which I subscribe and which inform my conception of how a morally attractive society will be governed” (p. 29). He summarizes and responds to the case to be made based on utilitarianism (what will be the greatest good or happiness for the greatest number of people) and the moral principles of justice (retributive or just deserts versus distributive or social justice). Informed by John Stuart Mill's *On Liberty*, Collins concludes that the right to liberty (government should leave individuals alone to make their own decisions about their own lives) compels the maximization

of individual freedom; however, this principle is not incompatible with subjecting legalized gambling to special regulation (pp. 42-51).¹⁰

When it comes to morality policymaking and legalized gambling, however, well-thought-out and articulated theoretical positions may not actually inform policy in the “real world,” and as Collins notes throughout his arguments, sound application of moral principles may require better and more complete information on gambling’s impacts (Collins 2003a, 2003b). Some observers have criticized the fact that gambling policy outcomes result from a process that privileges emotion or strongly held convictions rooted in individual moral beliefs and world views over soundly gathered and analyzed information and evidence. The NGISC, for example, cited the “lack of reliable information” as one of legalized gambling’s defining characteristics: “On examination, much of what Americans think they know about gambling turns out to be exaggerated or taken out of context. And much of the information in circulation is inaccurate or even false, although loudly voiced by adherents” (NGISC 1999, p. 1–6). The NGISC’s caution is not limited to conventional wisdom; some research is intended to promote one partisan view over another (see, e.g., *ibid.*; Pierce & Miller 2004, pp. 160-61). With gambling as in moral policymaking generally, the quality of the information unfortunately tends to be less important than whether the information aligns with individual beliefs and research designs.

THE DIFFERENT TERRAIN OF INDIAN GAMING

Tribal Sovereignty

Tribal governments may conduct gambling on reservations not because a state or Congress has authorized them to do so, but because Indian gaming is an aspect of tribal sovereignty. Tribal sovereignty—a historically rooted concept recognizing tribes’ inherent rights as independent nations, preexisting the U.S. and its Constitution—informs the primary legal and political foundation of federal Indian law and policy and thus, Indian gaming. Yet tribal sovereignty is perhaps the most misunderstood aspect of Indian gaming.

The legally protected political autonomy of Indian tribes is a peculiar tenet of federal Indian law. The contemporary legal doctrine of tribal sovereignty essentially means that the United States recognizes tribes as independent sovereign nations whose location within the boundaries of a state does not subject them to the application of state law. At the same time, as “conquered” or “discovered” nations, tribes retain only the political and legal authority that Congress has not expressly abrogated under its asserted plenary power pursuant to the U.S. Constitution’s “Indian Commerce Clause.” The federal legal doctrine of tribal sovereignty effectively means that tribes, in fact, are “semi-sovereign.”¹¹

¹⁰ McAuliffe (2006, pp. 376-74), on the other hand, relies on similar principles to reach a dissimilar conclusion. She summarizes five moral frameworks or decision standards for ethical decision making and applies them to assess what she sees as the failure of state lotteries as moral policy: teleology and utilitarianism (promotion of greatest happiness); deontology (means rather than consequences); virtue theory (judge acts based on character); intuitionism (internal ethics); unified (combination).

¹¹ The federal legal doctrine of tribal sovereignty is far from unproblematic and its legal foundation as well as its application have been roundly criticized by scholars of federal Indian law (e.g., Wilkins 1997; see also Light & Rand 2005, pp. 18-37).

Nevertheless, tribal sovereignty is the defining characteristic of tribal governments. Tribal governments and tribal members maintain deeply held convictions about the origins, meaning, and immutability of tribal sovereignty (which often are at odds with the federal legal doctrine). As one tribal leader put it, sovereignty is “the heart and soul” of Native people (Coffey & Tsosie 2001, p. 191).

Both the U.S. Supreme Court in deciding *Cabazon* and Congress in enacting IGRA recognized Indian gaming as an exercise of tribes’ inherent governmental authority. Although often erroneously identified as the source of tribes’ right to conduct gaming, IGRA actually is a set of limitations on that right. In particular, under IGRA, in order to exercise their sovereign right to operate gaming, tribes are required to submit to federal and, for casino-style gaming, state regulation (Light & Rand 2005, p. 36).

Debates over legalized gambling generally are internal to a state. That is, a state’s own citizenry and policymakers consider whether and to what extent the state should legalize gambling. State officials in Utah may not agree with Nevada’s gaming policy, but have little if any direct influence over Nevada’s policy choices. As tribal governments are sovereign governments, the decision whether to legalize gambling under tribal law rests with tribal members and policymakers. However, under IGRA, a tribe’s policy decision to conduct gaming can be effected only in accordance with federal and state law. Thus, non-Indian governments exert control over what tribal governments do. What otherwise would be a presumptive right to open a casino is limited by the real-world force of mediated tribal sovereignty.

Indian Gaming is Public Gaming

The fact that Indian gaming is an aspect of tribal sovereignty gives rise to a second fundamental difference. As Indian gaming is conducted by tribal governments, it is “public gaming,” making it distinct from both commercial and charitable gaming, and more (but not wholly) akin to state lotteries.

As public gaming, Congress intended Indian gaming to serve its primary goal of promoting tribal economic development, self-sufficiency, and strong tribal governments. Thus, government regulation of Indian gaming reflects a markedly different intent than does that for the regulation of commercial gaming, which primarily seeks to facilitate revenue and profit maximization while minimizing infiltration of organized crime and other negative externalities. IGRA’s legislative history described tribal bingo operations, even those with only modestly profitable games, as providing the foundation for tribal self-government and self-sufficiency:

[B]ingo revenues have enabled tribes, like lotteries and other games have done for State and local governments, to provide a wider range of government services to tribal citizens and reservation residents than would otherwise have been possible. For various reasons, not all tribes can engage in profitable gaming operations. However, for those tribes that have entered into the business of business, the income often means the difference between an adequate governmental program and a skeletal program that is totally

dependent on Federal funding (Sen. Rep. No. 100-446, reprinted in 1988 U.S.C.C.A.N. 3071, 3072 (1988)).

Congress, as did tribes, saw Indian gaming as a tool for tribal governments. As the legislative history stated, “The Committee views tribal gaming as governmental gaming, the purpose of which is to raise tribal revenues for member services” (ibid, p. 3082).

Generally, the success of legalized gambling is measured by profits. Even state lotteries have as their primary goal raising significant revenue. For Indian gaming, the public policy goals are not limited to profitability. Indian gaming’s role in strengthening tribal governments and increasing tribal self-sufficiency and self-determination is not necessarily reflected in a tribal casino’s bottom line (see Light & Rand 2005, pp. 137-44). For tribes, the role of public gaming is less to supplement a single aspect (such as public school funding) of an otherwise relatively healthy treasury and more to build the infrastructure required by a fully functioning, “full-service” government. Thus, job creation, provision of public services, and economic development are the bedrock economic rationales for tribal gaming.

For many tribes, gaming operations are the primary source of government funding. Tribes use gaming revenue to fund law enforcement, fire, and emergency services, improve public infrastructure, build public housing and retirement or assisted living facilities, provide various social programs to children, the elderly, or those in poverty, and preserve or reinvigorate tribal cultural heritage through the construction of museums, social activities centers, and language retention programs (see Light & Rand 2005, pp. 98-101).¹² Such benefits need not be seen as exclusive to a tribe; a healthy reservation community ultimately benefits both surrounding non-tribal communities and the state.

Socioeconomic Deficits and Reservation Quality of Life

The public nature of Indian gaming and its specific policy goals gives rise to the third fundamental difference: tribal gaming’s role in addressing socioeconomic adversity. Historically, reservations have exemplified some of the most difficult living conditions in the U.S. As many tribes face high poverty and unemployment rates and accompanying social ills, basic quality-of-life indicators for tribal members living on reservations still lag significantly behind those of other racial or ethnic groups. Yet there have been marked improvements for many Native American communities, largely due to gaming revenue or the opportunities it has provided to leverage economic development (e.g., Light & Rand 2005, pp. 98-101; Taylor & Kalt 2005; Harvard Project 2007).

Historically, American Indians, particularly those living on reservations, have been among the most impoverished people in the U.S. The 1990 Census painted a statistical portrait of the extreme poverty on many Indian reservations, with nearly one-third of Native Americans living in poverty and unemployment rates on reservations often exceeding 50 percent. South Dakota’s Pine Ridge Reservation, the poorest locale in the nation according to the 1990 Census,

¹² We detail a number of tribe-specific examples in Light & Rand (2005) and Rand & Light (2006a, 2006b); see also Taylor & Kalt (2005); Harvard Project (2007).

had a poverty rate in excess of 60 percent, an unemployment rate approaching 90 percent, and an average annual family income of less than \$4,000 (U.S. Census Bureau 1990).

Extreme poverty is closely linked to a myriad of social problems, ranging from substance abuse to crime to domestic violence. American Indians have disproportionately high rates of infant mortality, suicide, substance abuse, obesity, and mental health problems (Center for Disease Control Office of Minority Health n.d.). They are more likely to be victims of violent crime than are members of any other racial group in the nation (Greenfield & Smith 1999). Native Americans also have significantly higher mortality rates from illness such as diabetes, tuberculosis, and alcoholism (U.S. Commission on Civil Rights 2003).

There are about 2.5 million self-identified American Indians or Alaska Natives in the U.S., or just under 1% of the population. Forty percent of Native Americans live on reservations, trust lands, or rural areas bordering tribal lands. For these reasons, American Indians are sometimes called the “invisible minority,” reflecting that they are “overlooked and, in the minds of many, forgotten” (U.S. Commission on Civil Rights 2003, p. 9). As a result, tribal governments must (and willingly do) bear responsibility for the welfare of tribal members. As Porter wrote, addressing the federal government on behalf of tribal nations,

[W]e can revitalize our sovereignty and thus ensure the survival of our future generations. In order to do so, we must find ways to generate economic opportunity for all of our people, to preserve our unique languages and cultures, and to develop vibrant tribal governments. Perhaps as never before, some of us currently have resources that might allow us to accomplish these goals and to cast off the hardship associated with the last few hundred years. While we know that much of the blame for our condition can be placed at the feet of your Nation, we fully accept that the burden of safeguarding our future rests on our own shoulders (Porter 1998, p. 899).

The 2000 Census provided a subsequent statistical snapshot of Native Americans and life on reservations, as well as an opportunity to assess the socioeconomic effects of Indian gaming on tribal communities. While poverty is still prevalent on reservations, several of the 25 largest tribes in the U.S. saw improvements in poverty and income rates from 1990 to 2000. Overall, the poverty rate for the Native population decreased to 26 percent and the median household income increased to nearly \$32,000 (U.S. Census Bureau 2000). Some commentators saw these modest improvements as indicative of a turning point in the well being of tribes, likely reflecting the positive impacts of Indian gaming, while critics of Indian gaming saw the changes either as tracking national trends through the 1990s or simply as too small to justify tribal gaming as a foundation for economic development.

MORAL POLICYMAKING AND INDIAN GAMING

Explaining the Process

Observations about moral policymaking become problematic when applied to Indian gaming. As discussed above, moral policy issues generate a high degree of public interest and

participation. Morality policymaking does not require technical expertise to form an opinion; instead, individuals rely on their strongly held core values.

With regard to legalized gambling generally, this explains the inconsistent and unpredictable policy approaches to gambling—Utah’s blanket prohibition against gambling and Nevada’s “wide open” legalization of gambling, for example, or South Dakota’s authorization of limited casino gaming restricted to the town of Deadwood. Though the policy results may be imperfect, there is nothing inherently “wrong” with citizens relying on deeply held convictions to guide their views (and political participation) on moral issues; indeed, some might argue that exactly such convictions should influence state gambling policy.

The three fundamental differences of Indian gaming complicate this view. For many Americans, tribal sovereignty is truly a foreign concept. One cannot understand Indian gaming at the level required for informed and sound policymaking without first understanding tribal sovereignty—in other words, Indian gaming issues require “technical expertise” in tribal sovereignty (Light & Rand 2005). Hence although Indian gaming, like legalized gambling, may generate high levels of citizen participation due to its perceived non-technical nature, federal, state, or local public officials must take care to separate and weigh their responsibility to be responsive to their electorates from the imperatives of acting in accordance with tribal sovereignty as well as federal law. Further, issues related to legalized gambling generally certainly are appropriately influenced by state citizens’ participation in state political processes. In the context of Indian gaming, however, the ordinary state-level democratic process should be perceived as secondary to the imperatives of intergovernmental relations. Through IGRA, Congress explicitly subjected bingo and other Class II games to tribal and federal authority, and intended states and tribes to resolve conflicts over casino-style gaming through government-to-government negotiation.

The public nature of Indian gaming and the socioeconomic realities of American Indian populations also must be taken into account. As “full service” governments facing the challenges of extraordinary and historically rooted socioeconomic deficits, tribal governments use gaming revenue to create jobs, provide government services, and to build strong government institutions. This in and of itself may be both necessary and sufficient to create a moral imperative. As the Evangelical Lutheran Church in America’s Gambling Study noted, “if any groups are justified in using gambling for economic development, it would be the Indian nations” (ELCA n.d.). Despite the continued controversy over Indian gaming, Native Americans remain the “invisible minority,” as public perceptions of tribal gaming work to hide the continuing poverty and unemployment on many reservations and may undermine tribal governments’ ability to respond to the needs of their memberships.

Collins (2003a, p. x) views legalized and regulated gambling industries as partnerships between the public and private sectors in which both share interests in profitability and a positive public image. Similar conclusions could plausibly be drawn for public gaming—a state’s interests in operating its lottery rest on profits and perception. Certainly, then, tribal as well as non-tribal governments also share common ground concerning the policy goals and potential outcomes from Indian gaming. The stakes inarguably are higher for tribes. Yet commercial investors and management companies also may be invested in those goals, as are the vendors who sell their wares to tribes, the state’s regulatory authorities, and those who increasingly rely

on direct or indirect distributions of tribal gaming revenue to fund state and local public policy initiatives. The potential for partnership and cooperative policymaking is clear, yet may be overlooked.

In short, descriptions of morality policymaking in the area of legalized gambling do not readily apply to Indian gaming. Further, tribal gaming's differences make the strong influence of state citizens' moral beliefs more problematic. The process of morality policymaking in the area of Indian gaming needs to be adjusted to account for these important differences as well as any shared interests among political jurisdictions or between the public and private sectors.

Informing the Outcome

Too, principles guiding moral government action do not adequately account for Indian gaming's differences. Here, the public policy goals related to legalized gambling serve as a starting point.

Sound and responsible policy for legalized gambling generally incorporates some balance between individual freedom of choice and the state's interests in raising funds to accomplish legitimate policy goals as well as minimizing social and economic harms to individuals or to the public interest (e.g., Collins 2003a; Smith & Wynne 2000, p. 28). Gambling regulations typically share two key social-control functions: ensuring the integrity of the games and preventing the infiltration of organized and common crime. Although perhaps more pressing in the context of private, for-profit gaming, these functions inform Indian gaming regulation as well. Regulatory schemes also are intended to facilitate the purpose of legalizing gambling in the first place: most often economic development goals, such as revitalization of local and regional economies, job creation, and government revenue generation. Here as well Indian gaming shares a similar purpose.

But as IGRA's statement of congressional purpose reflects, the primary purpose of Indian gaming is to promote tribal economic development, self-sufficiency, and strong tribal governments (25 U.S.C. § 2702). This purpose is firmly grounded in Indian gaming's three fundamental differences.

For nearly all tribes with gaming operations, gaming revenue provides the base for tribal economies. In communities previously often lacking significant business enterprise beyond a local gas station, gaming is an unprecedented opportunity to build functioning tribal economies. Foremost for many tribes is the critical importance of job creation to counter staggering poverty and unemployment rates. Tribes are just beginning to diversify their economies beyond gaming and to facilitate private enterprise on reservations. Economic development on reservations is uniquely tied to tribal self-sufficiency, creating imperatives that stem both from tribes' distinct status and history as well as the practical need to build tribal economies nearly from scratch. Thus, the scope of tribal gaming's economic purpose far exceeds the relatively narrow public policy goals of commercial casinos or state lotteries, such as goals of revitalizing Atlantic City's boardwalk or providing supplemental school funding.

Tribal self-sufficiency is not merely economic in nature; it also is tied to the ability of tribal governments to respond to members' needs. Congress's emphasis on Indian gaming as a tool for tribal governments highlights its role in culturally appropriate institutional capacity building. Obviously gaming revenue can assist tribes in building government institutions; less obvious to many is the role tribal regulation of Indian gaming plays in institution building by making tribes responsible for the legal operation of complex business enterprises and for responding to the multitude of issues that arise from legalized gambling. Finally, strong tribal governments are necessary to meaningfully fulfill what we see as an implicit goal of IGRA: to improve tribal-state relations by encouraging cooperative policymaking between tribes and states (Rand & Light 2006a). Once again, IGRA's public policy goals give rise to a different framework for assessing the morality of policy outcomes than do the goals of legalized gambling generally.

Indian gaming's differences also complicate moral principles of government decision making grounded in political theory. For example, the principles of utilitarianism, moral principles of justice, and individual liberty, on which Collins (2003a, 2003b) relies in making his case for the morality of legalized gambling, operate somewhat differently in the less straightforward context of federal-tribal-state intergovernmental relations. The question of whether Indian gaming does more harm than good must take into account the benefits to tribal communities, and should not ignore the fact of tribal sovereignty by reducing tribal populations to a percentage of the state's electorate (usually small or negligible and easily discounted) or by seeing them as "just" another minority group or a special interest.

With regard to moral or ethical governance, one is reminded of Felix Cohen's famous assertion: "Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall of our democratic faith" (see Pommersheim 1995, p. 51). Cohen was referring, of course, to the unique and complicating fact of tribal sovereignty as well as the history of federal-tribal-state relations. Against the history of the near-eradication of American indigenous nations by colonizers and its continuing legacies, federal and state governments' fair and equitable treatment of both tribal governments and tribal members on issues related to Indian gaming present opportunities to leave the past behind.

Informed Moral Policymaking on Indian Gaming

Systematic inquiry could lead to the development of a principled yet pragmatic "Indian Gaming Ethic" that can guide policymaking and assist people in understanding what their government does, why it does it, and what is "right" for it to do. The result could be a relatively uncomplicated ethic, such as "Indian gaming is in the public interest" or "legalized gambling is in the public interest, so Indian gaming is, too" (or the converse of each); alternative ethics could be considerably more complex. While not rejecting such propositions out of hand, our intent here is neither to prove nor disprove them; nor is it to tackle the development of an overarching "Indian Gaming Ethic." Rather, our project is to develop standards using which others might develop the key normative and empirical policy questions that should—or must—be asked and answered to inform sensible law- and policymaking on Indian gaming. Those standards,

however, are not best implemented in a vacuum—they require sufficient evidence to back them up.

The systematic and scientific study of gambling is relatively new and has yet to reach consensus on how best to specify key questions that need answers, the appropriate research methods to provide them, and the ideal mechanisms to translate those answers into sound public policy. As the NGISC concluded, “what is very clear is that there is still a dearth of impartial, objective research” to guide informed and effective public policymaking on legalized gambling (1999, p. 8–1). Yet as the Commission also noted, the scarcity of quality information has not stopped governments from making policy decisions, many of which likely are informed more by politics (or ideology) than by scientific research.

The NGISC’s observations about the lack of scientific research on the social and economic effects of legalized gambling as well as the fact that policy decisions are made even without the requisite information remain as salient today as they were nearly a decade ago. Indeed, they are more relevant in the area of Indian gaming than ever. Even a cursory examination of the public discourse on tribal gaming might lead one to conclude that the law and policy that govern tribal gaming is developed in more of an information vacuum, and is guided more by the politics of misinformation, than is any other form of legalized gambling.

To ensure the morality of morality policy concerning Indian gaming, it is time for a comprehensive and collaborative effort to harness the experiences of political jurisdictions throughout the U.S. to systematically collect and analyze the relevant data needed to identify emergent best practices in the ideation, development, implementation, and evaluation of tribal gaming law and policy.¹³ Such a weighty mission requires collaboration and cooperation, extensive resources and objective study (Wynne & Smith 2000), and express consciousness and respect for tribal as well as state sovereignty (Light & Rand 2005). Despite the widespread variation in the historical, regional, cultural, and traditional experiences of tribes—as well as those of states and localities—useful generalizations can indeed be drawn if the correct questions are asked and answered.

Moral policymaking concerning legalized gambling in essence poses the question:

What is the moral responsibility of governments to serve the public interest?

However, with regard to Indian gaming and morality policymaking, two questions arise:

¹³ We called for such a national study in Light & Rand (2005). There is ample room for research on the numerous vexing policy questions surrounding Indian gaming. For instance:

- What are the political, economic, social, and legal variables that drive political, policy, or socioeconomic outcomes related to Indian gaming?
- How should the socioeconomic costs and benefits of Indian gaming be measured?
- How should the integrity of the gambling policy process be maintained?
- To what extent is Indian gaming “doing what it is supposed to do”?

For an overview of such questions that have been explored in the literature on legalized gambling generally, see Smith & Wynne (2000).

*What is the moral responsibility of **tribal** governments to serve the public interest?*

*What is the moral responsibility of **non-tribal** governments to serve the public interest, including that of tribal governments and tribal members?*

Each of the three fundamental differences between Indian gaming and legalized gambling that we identify should guide non-tribal governments' consideration and adoption of policy that impacts Indian gaming. Sound policymaking regarding tribal gaming cannot rely simply on moral views of gambling. Instead, Indian gaming requires specialized knowledge of its differences and the particular public policy goals it is intended to serve. The reality of tribes' unique status within and without the American political system means that non-tribal governments must be cognizant of public policymaking that accounts for tribal interests, not just their own.

CONCLUSION

Legalized gambling has always been and most likely always will be a part of America's moral landscape and therefore of American public life. Given the unique policy rationale and regulatory framework governing Indian gaming, one might reasonably assume that that it, too, is around for the long term as the industry matures and tribal governments become increasingly well-equipped to provide for their members, engage in effective tribal-state intergovernmental relations, and deal with the complexities presented by any real or perceived ethical lapses by individual tribes or tribal public officials along the way.¹⁴

The challenge of negotiating the sometimes rocky American moral terrain on Indian gaming requires the threshold understanding that Indian gaming *is* different than other forms of legalized gambling. While the differences between tribal gaming and other forms of legalized gambling may or may not dictate substantive policy *outcomes*, policymakers have an obligation to take those differences into account to inform the *process* of developing morally sound public policy on Indian gaming.

¹⁴ The Jack Abramoff scandal presents one such example, as do recent controversies in Massachusetts over Wampanoag tribal officials. On the latter, see generally the extensive daily front-page coverage by the *Boston Globe* in 2007. Elsewhere we have written about the phenomenon of public discourse on the occasional well-publicized scandal related to Indian gaming and the tendency to view incidents related to a few tribes or a few tribal officials as indicative of all tribes and all tribal governments (Light & Rand 2006).

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