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## COMMENTARY

# The Least Transparent Industry in America

By **FERGUS M. BORDEWICH**

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The scrubby pine forest of East Texas hardly seems the setting for national scandal -- no more than the thousand conservative Baptist members of the Alabama-Coushatta Indian Tribe who live there seem likely protagonists for a shameless circus of gambling-related influence peddling that has echoed through the halls of Congress. But wannabe tribal croupiers became roadkill on "Casino Jack" Abramoff's speedway to wealth when it was revealed that Mr. Abramoff, with his associate Michael Scanlon, scammed their clients, the Alabama-Coushattas, by pretending to lobby the federal government to permit the tribe to build a casino, even as they worked against the casino plan -- for millions of dollars in fees on behalf of rival tribes.


On Tuesday, Mr. Abramoff sent shockwaves through Washington when he pleaded guilty to three felony counts and agreed to testify against his former associates. Like a darkened landscape suddenly illuminated by the sweep of headlights, the flash of the Abramoff scandal has thrown lurid light not merely on K Street, but also on a murky world of tribal "gaming," which in less than 20 years has exploded from a handful of basement bingo operations to a \$19 billion industry involving 228 tribes operating 405 gambling operations in 30 states.

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Seen from one angle, casinos are a dynamic engine of economic development for the nation's most deprived citizens. There is no question that many tribes have benefited from legalized gambling. According to a 2005 study by Harvard economists Joseph Kalt and Jonathan Taylor, per capita income in gaming tribes grew by 36% between 1990 and 2000, compared to 21% in nongaming tribes. Gaming tribes also enjoyed a decline in unemployment two-and-a-half times greater than tribes without casinos. "With gaming tribes, we see a situation where for the first time, tribes have money that they generate themselves, and they're generally plowing it back into their communities, rebuilding water systems, building libraries and ballfields," said Mr. Kalt. "This era of self-determination is finally bearing fruit in terms of sustained economic development for the first time in one hundred years."

Despite the gains made in recent years, many Native Americans still live in appalling poverty. Nationally,

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Indians' per capita income is less than \$8,000 per year, about one-third of the national average.

From the point of view of gaming's beleaguered opponents, however, tribal casinos represent a legal monstrosity that subverts the nation's constitutional order and breeds corruption. "Lobbyists, legislators and inside-the-Beltway lawyers are the real stakeholders in Indian gambling," says Alexis Johnson, a lawyer based in Arizona, who has served as an adviser to campaigns against the legalization of tribal gambling in several states. "Abramoff is just the tip of the iceberg." Mr. Johnson likens casinos to the infected goods that the British distributed to Indians during the colonial period. "This is the new smallpox blanket," he says. "But everyone is enamored of it because it has got dollar signs all over it."

And tribes have powerful friends. Nationally, between 1990 and 2004, tribal political contributions to federal candidates alone have ballooned from less than \$2,000 to more than \$7 million. In California, Native Americans have become the largest contributor to political campaigns: They spent \$70 million on the successful 1998 campaign to require the governor to approve any tribal casino proposal (the requirement was struck down by the state courts a year later). Native Americans also contributed another \$30 million in a similar and also successful campaign in 2000. And nearly one-fifth of all the money that was spent in the 2003 gubernatorial recall campaign came from Native Americans.

To an extent, of course, Indian tribes have merely learned to work the American political system in ways that non-Indians always have. However, tribal sovereignty skews garden-variety self-interest into a phenomenon with constitutional implications.

Tribal gambling may be the least transparent large industry in the United States. Constitutional protections reach only feebly onto Indian land, where tribal governments enjoy a degree of secrecy that would never be tolerated in any other American community. Gigantic sums disappear from public view as soon as they leave tribal gaming tables. This money is shielded from outside regulation by the principle of tribal sovereignty, upheld by the Supreme Court, which regards tribes as autonomous "nations," enjoying self-regulation, immunity from lawsuits and independence from state laws. In practical terms, the casinos are also spared scrutiny by investigative journalism and citizen watchdog groups, which are almost completely absent from Indian reservations. Although some tribes have agreed with state governments to allow oversight of their casinos, the difficulty of penetrating the iron curtain that surrounds the disposition of casino earnings on many reservations offers an open invitation to money launderers of all varieties.

When the Indian Gaming Regulatory Act became law in 1988, no one imagined that it would become a Trojan Horse that would deliver Las Vegas-style casino gambling into communities across America. Having saturated local markets, many tribes are now seeking to acquire land near other, sometimes-distant, population centers, and converting it to "sovereign" territory, in an effort to shoehorn casinos into areas where they're often not wanted by local populations. Once land becomes part of a reservation, it typically becomes exempt from local taxes, state labor laws, municipal ordinances, zoning restrictions and environmental review. In one of the most egregious cases, in 2004, the Cheyenne-Arapahoe Tribes of Oklahoma filed a 27 million acre land claim which included all of Denver and Colorado Springs, but offered to drop it in exchange for the approval of a Las Vegas-style casino near Denver Airport.

"These efforts are being funded by 'shadowy' developers who underwrite the litigation expenses, lobbyist fees and even the cost of land in exchange for a cut of the profits," James T. Martin, the executive director of the United South and Eastern Tribes, told the Senate Committee on Indian Affairs in May 2005. "If even one of these deals is approved, the floodgates for this kind of 'reservation shopping' will open throughout the

country." (Mr. Martin, it should be said, is no opponent of gambling: his organization includes tribes whose main goal is to thwart new competition against their own casinos.)

The dazzling lure of casino profits has inspired hundreds of groups, often with doubtful credentials, to seek federal recognition as Indian tribes. Stringent federal standards have defeated the vast majority of dubious applicants. But some do slip through. For example, virtually all members of the reconstituted Mashantucket Pequot tribe, which was recognized on a technicality in 1983, are related to just two elderly women who lived on a scrap of land in the 1930s. The modern tribe is thus a sort of family condominium that reconstituted itself as an Indian tribe, and which has in turn become a corporation that is also a "sovereign" state. It also operates the largest casino in the world on its ever-burgeoning reservation in eastern Connecticut.

In an age when guilt and romantic fantasy often masquerade as politics, tribal sovereignty has seemed like a cure-all for the genuine wounds of the past. There is no doubt that it has brought self-empowerment and relative prosperity to many tribes that were long paralyzed by federal paternalism. However, without more public debate than it has so far received, tribal sovereignty and the casinos that are its offspring will continue to transform the U.S. in ways that are impossible to predict, and maybe not always for the better.

Many Indians treat scrutiny of the tribal casino industry as an attack on tribal sovereignty, and racist, virtually by definition. Tribal ideologues claim an absolute right to self-government without "interference" from state and federal governments, or any other outside institutions, such as the independent press. This vision of sovereignty serves the self-interest of tribal officials and predators like Jack Abramoff much more than it does the welfare of rank-and-file tribal members, who are the most vulnerable victims of closed-door government and official corruption. Nor should any \$19 billion industry enjoy a "sovereign" protection from regulatory laws that are meant to protect all Americans -- including Native Americans. But without a clear, nationally agreed-upon idea of what tribal sovereignty is really supposed to be, we may one day find ourselves living in a land that has little in common with the goals of today's good intentions, and in which hundreds of "tribes" of Americans are permanently distinguished from their fellow citizens mainly by the special rights that were bestowed on their Indian ancestors, and by the privilege of operating unregulated gambling casinos.

***Mr. Bordewich is the author of "Killing the White Man's Indian: Reinventing Native Americans at the End of the Twentieth Century" (Anchor Books, 1997).***

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