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LUCK OF THE LAND THE GROWTH OF TRIBAL GAMING

Kim Manh

ABSTRACT: In this paper, I examine the factors that influence tribal decisions regarding gaming policy. First, I look into past accounts of the causes of gaming diffusion and attempt to overcome some of their shortcomings. In particular, previous research has neglected the limited role of federalism, geography, and the impact of gaming during undetermined legality. By collecting data from gaming expansion on tribal lands in California, I provide increased nuance to the story of gaming diffusion. I argue that proximity to major population centers will have the strongest impact on the success of tribal casinos. Only when there is an appropriately large population near proposed gaming sights can they maintain larger facilities. Using data from California's Revenue Sharing Trust Fund, I find surrounding population to be the only impactful factor in predicting donor status contradicting many previous conclusions in the extant literature.

Keywords: Tribal Casinos, Indian Gaming, Gaming Expansion, Revenue Sharing, IGRA, California

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Introduction

Since the arrival of settlers on Native American lands, location has played an important role for the health and well-being of the Native American populations. Due to a combination of exposure to disease, technological inferiority, and a lack of adaptable hierarchies, Native Americans were unable to halt aggressive European settlement (Trigger, 1991). During this time of initial settlement and conflict, Native American tribes

benefitted from being further away from European settlements. Their autonomy as tribes was protected by the relatively minimal interaction with the new settlers. Modern relations between non-Native Americans and Native Americans are more commercial than the past. Since the passage of the Indian Gaming Regulatory Act of 1988, I will illustrate that Native Americans have increasingly benefited from their proximity to larger populations of non-Native American populations in the

United States. As casinos continue to be the revenue lifeblood of many tribal economies, this financial benefit to the tribe has allowed them to improve conditions on the reservation; however, not all tribes have benefited equally (Akee et al, 2015).

Using California as a case study, I examine the relationship between tribal gaming revenue and the population of surrounding areas. I find that casinos near larger populations of non-Native Americans are associated with more expensive operating agreements (tribal compacts) with the state. These tribal compacts are only feasible for casinos that are bringing in large numbers of visitors and considerable gaming revenue. By studying California's data regarding its Revenue Sharing Trust Fund, I am able to quantify the relationship between casino success and distance to population centers. The following sections of this paper describe the background literature, followed by a review of the literature specifically pertaining to the diffusion of tribal gaming policy. I then demonstrate that geographic location plays an important role explaining a tribes' decision to expand gaming. To do so, I look at the different types of compacts negotiated between tribal and state leaders. I posit that being located near densely populated non-tribal cities increases the likelihood of tribal gaming success measured as their contribution to Revenue Sharing Trust Fund. To test this hypothesis, I use a logistic regression.

Indian Gaming Regulatory Act – Balancing tribal sovereignty and states' rights

Congress passed the Indian Gaming Regulatory Act (hereafter: IGRA) in 1988 after court issues arose between tribes and their respective states. The act was implemented to balance the rights of sovereign tribes with state rights regarding their gambling laws (Mason, 2000). Tribes had full authority over traditional ceremonial gaming (class I) but were also legally allowed to run bingo type games and non-banked card games on tribal lands (class II). In order to run class III games (banked table games, slot machines, high dollar jackpots), tribes were supposed to enter into agreements known as Tribal Compacts with the state (Gover, 2010). IGRA also created the National Indian Gaming Commission to administer and advise tribes on how to navigate their gaming endeavors. The responses by different states were divergent. Some states, such as Michigan and Minnesota, quickly entered tribal-state compacts with variation in how much revenue sharing took place. Other states, like Texas and Alabama, have

refused to enter any negotiations with tribes. These states do not recognize the tribes' sovereignty rights and continually consider challenging the legality of gambling implementations through the court system. Similar to diffusion in other policy areas, patterns began to emerge as to which states were more cooperative with tribal innovations.

Overall IGRA is an essential time point for my analysis as it allowed the State of California to enter into agreement with the numerous tribal governments in the state. California's specific revenue-sharing plan will be discussed in further detail, but suffice it to say for now, the ability for tribal governments to weigh the pros and cons of gaming expansion was the direct result of IGRA and decisions by the voters of California who passed policies favorable to tribal governments, which encouraged gaming expansion if it could be considered profitable.

Diffusion and tribal gaming

Policy diffusion is the process by which an innovation is communicated through certain channels over time among the members of a social system (Rogers 2010). While there is abundant literature on policy diffusion, the current landscape of research specifically on the diffusion of gaming policy is quite sparse, particularly in the realm of tribal gaming. Regarding legalized gaming compacts, Boehmke and Witmer (2004) differentiate considerations for states to adopting versus expanding tribal gaming policies. The authors find evidence that social learning influences adoption, but not policy expansion; meanwhile, economic competition is relevant for both expansion and adoption. Yet, they consider tribal compacts as potentially possible in all 50 states, while 14 states do not have federally recognized tribes. They included all states claiming the land-in-trust process allows for tribes to open casinos in states where they do not reside.

This claim is problematic on two fronts. First, opening a casino with trust land is a procedure with complicated criteria consisting of several factors such as tribal best interest, detriment to surrounding area, and proximity to reservation boundaries (Staudenmaier 2003). The examples given by Boehmke and Witmer (2004) of potential casinos in non-tribal states were of tribal compacts for casinos on land adjacent to tribal territory. Second, the United States Supreme Court determined in *Cacieri v Salazaar* that land-in-trust transactions were only applicable to tribes that were federally recognized in 1934 as part of the Indian

Reorganization Act (*Carcieri v. Salazar*, 555 U.S. 379 (2009)). That restricts the ability of roughly one third of the tribal nations located within the lower 48 to participate in this process. An additional issue with the article is that Boehmke and Witmer (2004) consider the decision-makers of the tribal compacts to be the state officials, failing to account for the role of tribal nations as negotiators and their impact on policy diffusion.

Connor and Taggart (2013) find that per capita income and length of time that a gaming compact has been signed will lead to greater likelihood of adopting a revenue allocation plan with the Bureau of Indian Affairs. A revenue allocation plan (hereafter: RAP) is a requirement for tribes that intend to make financial disbursements of casinos revenue to tribal members. According to IGRA (1988), casino revenue is intended for economic development, funding tribal government, making charitable donations, assisting local government agencies, and providing for the general welfare of tribal members. RAP proposals are sent to the Bureau of Indian Affairs for approval by the appropriate bureau official and are supposed to be implemented only after sufficient demonstration that casino revenue has been used for its other intended purposes (Office of Inspector General, 2003). While Connor and Taggart (2013) argue that economic and social conditions among RAP adopters are more favorable compared to nonadopters, there are multiple areas of concern regarding how they reached that conclusion and whether it should be considered robust.

First, they cannot account for tribes that have been operating casinos illegally prior to signing a compact. Prior to the passage of IGRA, many tribes operated gaming during a legal gray period (Light and Rand, 2005) and data on those operations are difficult to come by. Second, Connor and Taggart assume the Bureau of Indian Affairs' process of approving Tribal RAPs to be much more rigorous than it is. An investigation by the office of the inspector general (Office of Inspector General, 2003) concludes that the RAP approval process was broken, with 73 plans approved out of 75 submissions. Of those approvals, only five had any relevant information about operation budgets, tribal enrollment, and gaming profits. Additionally, tribes can choose not to apply for a revenue distribution for reasons unrelated to financial capability.

To overcome the problems identified, this paper re-examines the impact of population density on the success of tribal casinos, measured by their fee contribution status. First, I limit the scope of the analysis to

California, because it is a state where gaming compacts are possible for all tribes; thus, limiting my analysis to a place where all tribal governments are actually capable of expanding gaming. Second, my choice of dependent variable (Revenue Sharing Trust Fund donor status) is an improvement for measuring tribal casino success over the RAP adoption status, because it has a substantive impact and is a more accurate measure of tribal gaming prosperity. I have also added vital control variables that have yet to be analyzed, such as true length of time a tribal casino has been in operation, which allows me to better analyze the role of illegal and semi-legal gambling pre-IGRA. Finally, I add context by using less aggregated and more localized data from areas surrounding tribal casinos. This way, I can more appropriately determine the relationship between those statistics and tribal casino success.

Why California?

California has the largest Native American population in the country with 109 federally recognized tribes (Judicial Council of California, 2018). There are currently 63 casinos in California (second only to Oklahoma); however, California is home to the largest number of gaming machines and gaming revenue of any state in the United States. California's position as the most successful state in the Union for tribal gaming policy makes it likely to be emulated by others and especially relevant for academic study.

The state of California is the ideal location to study the diffusion of gaming policy because it boasts one of the most comprehensive processes for state/tribal gaming compacts. In March 2000, California voters passed Proposition 1A to amend the California Constitution to allow the state to be sued if it does not agree in good faith to negotiate with the tribes (Koenig, 2001). While most of the provisions of Proposition 5 in 1998 were nullified by the California Supreme Court one year later, one remained as California waived its right to State Sovereign Immunity and has become the only state (to date) to do so in regard to tribal gaming policy (Light et al, 2004). This law essentially allows tribes in California to negotiate as sovereign nations. In other states, the United States Supreme Court struck down the enforcement mechanism of IGRA that forced states to negotiate in good faith with tribes because it violated the 11th Amendment (*Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996)).

These unique conditions allow for an examination of the considerations of tribal leaders that lead them

to the negotiating table with the state. California as a case study offers the opportunity to see what tribal leaders choose for their tribe as sovereign nations with autonomy, whereas other states' sovereign immunity makes tribal leaders considerably less important in negotiating. In these states, the government can choose to violate IGRA and not show up to the negotiating table without fear of any legal consequence.

Another reason California is an important case study is because of the state's unique Revenue Sharing Trust Fund (hereafter: RSTF). Tribes with casinos pay into a fund through a combination of fees and revenue cut – and from that fund, each non-gaming tribe receives four payments per year totaling \$1.1M (Meister, 2003). The twist is that included in the non-gaming tribes category are tribes with casinos that have less than 350 slot machines. Tribes with larger, more lucrative operations, are used to subsidize the tribes with less lucrative operations. To use a baseball analogy, it's akin to the Cubs, Red Sox and Yankees supplementing the operating budgets of smaller market teams – and there's significant variation among the tribes in this category: about 40% are receivers, 25% are former receivers who have transitioned to becoming donors, and the remaining 35% have always been donors to the fund (California Gambling Control Commission, 2017). What accounts for this variation? What conditions lead to tribes deciding that it's in their best economic interest to forego \$1.1M per year and instead pay additional taxes and share casino profits with the other tribes? The answer to these questions hinge on the calculations of tribal leaders in determining the potential revenue their tribe would receive under different classifications in the Revenue Sharing Trust Fund.

Tribal gaming expansion: the economic trade-off

Casinos share many characteristics with other entertainment-based businesses. For this reason, I believe factors relevant for the success of businesses are important indicators of successful casinos. Like businesses, casinos frequently incorporate 'gravity models' to calculate the likelihood of success (Barrow and Borges, 2014). While these models vary, they mainly capture population within range, per capita income, and the distance of the nearest competitor, because these metrics are generally the best predictors of business potential. As stated, California's process for negotiating gaming compacts has set up a tribal fund, which takes money from Indian gaming once

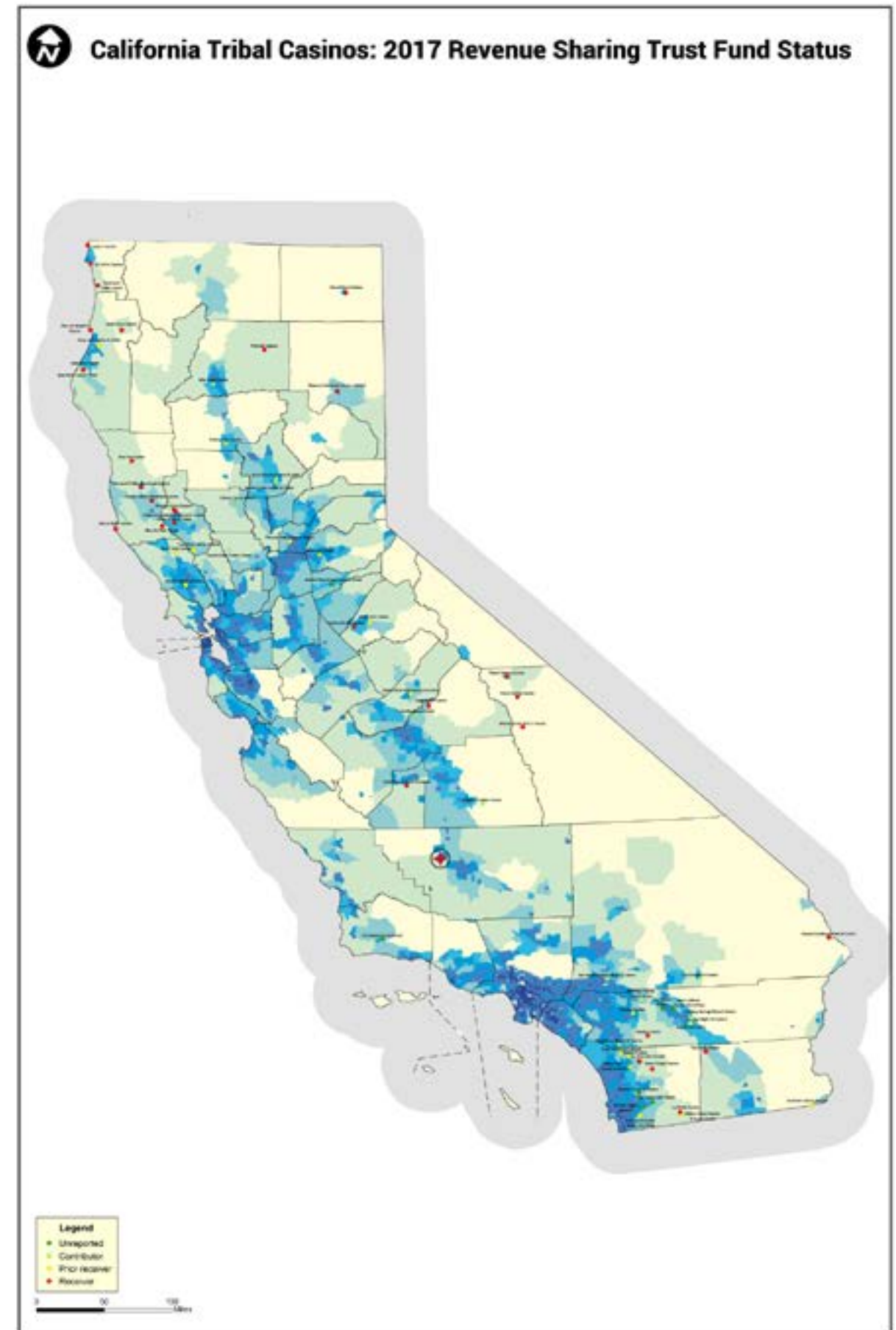
it surpasses a certain threshold of machines and revenue. Tribes with smaller casinos will benefit from the fund and are only required to pay into the fund when they have lucrative gaming compacts for large casinos. Logically, tribes with land closest to major population areas will receive more traffic, greater amounts of revenue and more prosperity overall than their counterparts farther from population centers. Since the rewards of building the large casinos in these locations will be greater than the mandatory donation to the tribal gaming fund, these casinos pay into the fund or choose to expand into fund payment criteria despite the contribution requirement.

Potential Revenue Hypothesis: Tribes with the highest potential for increased revenue from their local environment (surrounding population, surrounding affluence, and attraction variety) will be more likely to hold the status of donor to the RSTF.

As shown earlier, California gives tribes significant autonomy in gaming policy. This allows for self-interest-based cost/benefit calculations by tribal leaders as the significant criteria in determining whether to expand gaming. Assuming the tribal leaders are rational actors and costs can be outweighed by potential revenues, the role of nearby populations becomes an important factor in determining the earning potential for proposed casinos. Tribes further from population centers will recognize the limited potential for revenue due to lack of a population base and will choose to simply take their share of the allocation from the state tribal fund. Meanwhile, tribes near population centers will seek to open new and large casinos (despite the mandatory payments to the state tribal fund) due to the potential for massive amounts of revenue.

Population Hypothesis: Receiver tribes near larger population centers will be more likely to adopt donor status relative to other receiver tribes.

The conditions in the state of California provide perfect testing grounds for considering the role of population density in the development of larger gaming facilities. Since amendments and propositions have given tribes significant power, they can reflect more on their economic interests in considering whether to build larger gaming facilities. Given that they can also accept revenue without any costs incurred (except potential revenue lost) by simply not building large facilities, this test allows us to see how the geographic constraints of nearby population density impact the decision to build larger facilities and adding machines. The revenue that tribes are



guaranteed provides a strong incentive to only enter into more expensive agreements when they are certain that the probability for even greater revenues occur. In an ironic twist, the proximity of tribes to non-Native populations provides serious benefits in the twenty-first century; however, the same conditions have frequently been incredibly detrimental to Native populations in the past (Trigger, 1991).

Sparse Population Hypothesis: Receiver tribes farther from population areas will accept the limited potential for casino profit and will instead choose to avoid donating to the tribal fund.

Data and Model Specifications

For this project, I am using self-collected data from the Eugene Martin Christiansen Papers at Special Collections at the University of Nevada Las Vegas. These files collected by the esteemed career gaming consultant and advisor give a detailed account of various gaming activities (both legal and illegal) that were being conducted across the United States. With particular focus to reports from the time period before and after the passage of IGRA, this collection allows me to better track the development of tribal casinos and how early and previously unanalyzed factors can affect modern conditions.

The dependent variable is a binary variable that indicates if the tribe is a RSTF donor. If yes, the tribe is coded as 1; if the tribe is a RSTF receiver, the tribe is coded as 0. The distribution is shown on Table 1. Data on RSTF was collected from the California Gaming Control Board, which is the only government entity to officially report on the agreements. These agreements give a good account of the category of gaming.

Figure 1 shows the geographic distribution of RSTF donors in comparison with RSTF recipients. Given the dichotomous nature of the dependent variable, a logistic regression model is the appropriate method of analysis (Dayton, 1992). While this analysis can be considered quite rudimentary, it offers the first attempt to include the role of existing illegal gaming, RSTF status, and detailed descriptions of the actual gaming facilities. I include a battery of control variables to work against the possibility that the effect of demographic density is spurious and to account for previous explanations in the gaming expansion and policy diffusion literature.

Table 1			
Number of RSTF Donors vs. Recipients	Current Donor	RSTF	Current Receiver
Tribes	37		26

Key Independent Variables

In this analysis, I have included three variables of special importance. First, I have created a variable measuring semi-legal and illegal gaming prior to IGRA. Second, I've included a measure of population density in surrounding areas, which I predict will be the most impactful on the choice of states to adopt RSTF donor status. Finally, I have created an attraction variety index to measure the other different types of entertainment available on the grounds of the tribal gaming facilities. Together, these three variables offer a substantial improvement over previous analysis which frequently overlook the importance of the existence of semi-legal casinos pre-IGRA, surrounding population, and surrounding attractions available to tourists.

Early Mover is the binary variable indicating whether or not a casino existed prior to the passage of IGRA. It is a well-established concept in business that early entrants create long-term competitive advantages (Kerin et al, 1992). In addition to the theoretical market advantage, many modern tribal casinos may have also benefited from belonging to tribes that had won in pivotal court battles impacting tribal gaming rights. By tracking this previously unavailable data regarding casinos in operation pre-IGRA from internal reports and correspondences with the Bureau of Indian Affairs, I am able to test the theoretical portability of this concept from business to tribal casino gaming.

To capture the population surroundings of tribal facilities (Surrounding Metro Area), I use the Missouri Census Data Center, which generates demographic information with its Circular Area Profile application using 2010 Census data. I record population data of a 75-mile radius from each tribal casino in California, which is consistent with, but more precise than the collection methods that Christiansen used in his pre-IGRA report on tribal gaming's impact on the gaming industry commissioned by Mirage Resorts International in 1986. Back then Christiansen aggregated the population of all counties within 75 miles of tribal gaming facility.

Finally, I attempt to capture the additional accommodations (Variety Index), which tribal leaders may see as assets in drawing in casino guests by creating

an index measure of attraction variety by collecting data from the various casino and tribal information websites. Not everyone enjoys gaming, but frequently trips to the casino are social affair. The existence of golf courses, theme parks, spas, live entertainment, race tracks and shopping can help push tribal leaders toward expansion by offering a greater gravity effect and drawing in more guest.

Control Variables

Separate from the three independent variables I predict to be of most impact are a variety of control variables. County Per Cap Income is the per capita income of the surrounding county in 2010, which accounts for the affluence of a tribal casino's most likely customers. Given the potential for increasing revenue for the tribal casino facility, this variable is predicted to be positively associated with RSTF donor status. Years Open is a separate measure from early mover advantage because many tribal casinos were opened after IGRA. This variable measures the experience factor and is expected to be positively associated with RSTF status.

Finally, an important aspect for tribal gaming is the actual composition of the tribe (Tribal Size), competitive tribes in the area, and the number of tables at the casino. To capture the size of the tribe, I include data from the California Indians database at San Diego State University. The literature suggests that smaller tribes are more likely to adopt RSTF donor status, because the distribution of income from the RSTF is based on per capita calculations. The number of people in a specific tribe is important for determining their calculations in the cost/benefit analysis of moving up to RSTF donor status; however, nearby tribes also play an important role.

To capture the competition effects of potential gaming facilities on nearby tribal lands, I incorporate a measure of tribal neighbors. If a nearby tribe exists within a 75-mile radius, they pose a significant risk of reducing the draw from nearby population centers. This is because nearby residents who would be split into smaller radiuses for their 'hometown' casinos in a manner similar to the same drawing in impact from 75 miles. There is also the matter of the number of tables. Under the RSTF agreement, the number of tables for gambling is not strictly regulated (especially in comparison to slots). Since some tribes may seek to maximize non-RSTF eligible revenue through additional gaming tables, I have included the number of tables at each tribal casino.

Table 2	
Variables	RSTF Donor
Surrounding Metro Area	**
Odds Ratio	1.057521
Z-score	1.99
Early Mover	
Odds Ratio	.6557911
Z-score	-0.31
Years Open	*
Odds Ratio	.7943943
Z-score	-1.94
County Per Cap Income	
Odds Ratio	1.00162
Z-score	-3.32
Tribal Size	
Odds Ratio	0.9994149
Z-score	-0.88
Reservations	*
Odds Ratio	.8134814
Z-score	-1.84
Number of Tables	*
Odds Ratio	1.099318
Z-score	1.91
Variety Index	*
Odds Ratio	3.029991
Z-score	1.90
Observations	62

Findings

The results from my logistic regression model (Table 2) provide strong evidence in support of all three of my hypotheses. First, the Potential Revenue Hypothesis is supported by a positive association between population density and the attraction variety index measure. The Population Hypothesis and the Sparse Population Hypothesis are both supported by the strong relationship between population density and adopting RSTF donor status.

The biggest takeaway from this analysis is the population effect. It was found to be statistically significant in the model. It illustrates that an increase in population of 100K in the surrounding 75 mi radius increases the likelihood of the tribe adopting RSTF donor status by 5.75%. The surrounding population

distribution is very wide, and ranges from a low of 35K to over 17 million people. Given the huge range of population, this measure appears to be incredibly robust and offers a good explanation of why some tribes may never seriously consider adopting large gaming facilities with over 350 slot machines.

Two other variables that met the 90 percent confidence level of statistical significance were neighboring tribes and the index measure for variety of attractions. Both provide some preliminary support for the Potential Revenue Hypothesis. Neighboring tribes had a negative impact on the adoption of RSTF donor status.

The number of other attractions nearby had the expected positive impact on gaming expansion. Years open had a negative expected impact. All findings deserve further research but provide some additional level of support for the main arguments of this paper, with the main takeaway being the population effect as the most statistically significant variable impacting RSTF status.

Discussion

It is ironic that for centuries, the luckiest Indian tribes in the country were the ones that happened to be far away from white settlers, and now extreme economic success is dependent upon being closer to non-tribal populations. The relationship between potential revenue sources (in this analysis: population within 75-mile radius) has the strongest and most consistent impact on the likelihood that a tribe will choose to expand their gaming facilities. All of this makes sense for tribal governments in California as they are granted a level of autonomy and respect at the negotiating table that is found nowhere else in the United States. This analysis merely provides evidence that when granted this autonomous power to conduct the business of gaming, tribal leaders choose to expand when the cost/benefit analysis of potential revenue from gaming expansion surpasses the revenue doled out per capita by the RSTF to recipient tribes. Further research should analyze these findings using panel data to more accurately control for time effects. The addition of a time component may provide even more interesting findings about the role of the business cycle, budget crunches and different tribal leaders on the decision to expand gaming. While population near tribal lands seems to be the most important factor, additional research on the value-added from nearby attractions could yield interesting results. This idea of nearby businesses and tourist hot-spots as a way to

generate additional revenue has broad implications for casinos on tribal lands and beyond.

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About the Author

Kim Manh is a Ph.D. candidate in Political Science at the University of Houston, where he earned his master's degree in 2017. He completed his undergraduate work at Texas A&M University, where he was a President's Endowed Scholar. His research interests include public policy, policy diffusion, inequality, and immigration. He has presented gaming research papers at the Midwest Political Science Association Annual Meeting as well as the Annual Meeting of the Southern Political Science Association. Manh's current project is his dissertation, "The Determinants of Gaming Policy Diffusion & Expansion." This is an analysis of gaming policy diffusion and gaming rights expansion in both commercial and tribal arenas.



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