INTERGOVERNMENTAL COMPACTS IN NATIVE AMERICAN LAW: MODELS FOR EXPANDED USAGE

> Don't bring us your poor, your tired, your huddled masses yearning to breathe free. . . . Bring us a good deal.
>
> Dennis Gibb, Acting Director of Economic Development, Puyallup Tribe.[1]

Native Americans and state governments have witnessed tension and divisiveness mar their interactions since the Nation's founding. Fortunately, recognition that states remain the bodies with which tribes must interact on a day-to-day basis has encouraged the development of intergovernmental agreements. In particular, compacts — working agreements between tribes and states that resolve jurisdictional or substantive disputes and recognize each entity's sovereignty — have become a "device of necessity" for tribes and regional governments.[2] Both groups have recognized the benefits of negotiated agreements for effective delivery of social services, economic development, and resource protection.[3]

Several factors have contributed to this trend. First, judicial solutions to conflicts between tribes and states have proven untenable. The expense, duration, and complexity of litigation have "forced lingering issues to be resolved with practical solutions."[4] The Supreme Court has become more hostile to Native American interests in its resolution of issues of tribal self-determination, highlighting the dearth of secure footholds in judicial doctrine for Native American law.[5] Second, the large number of Native American tribes,[6] each with unique geographic, economic, and structural concerns, has prevented uniform

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[1] Susan D. Brienza, *Wet Water vs. Paper Rights: Indian and Non-Indian Negotiated Settlements and Their Effects*, 11 STAN. ENVTL. L.J. 151, 177 (1992) (quoting Kate Shatzkin, *A New Future? — Reading Between the Lines of the Puyallup Settlement*, SEATTLE TIMES, Feb. 25, 1990, at 8).

[2] David H. Getches, *Negotiated Sovereignty: Intergovernmental Agreements with American Indian Tribes as Models for Expanding First Nations Self-Government*, 1 REV. CONST. STUD. 120, 121 (1993). This Note uses the term "compact" to refer to a type of agreement that other authors may describe using different language, such as the general phrase "intergovernmental agreement" or the deceptive term "contract." In addition, this Note distinguishes compacts from other agreements discussed in the literature that are more akin to contracts by emphasizing compacts' enforceability and jurisdictional focus.

[3] *See* SHARON O'BRIEN, AMERICAN INDIAN TRIBAL GOVERNMENTS 290 (1989).

[4] Getches, *supra* note 2, at 121.

[5] *See* CHARLES F. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW 9 (1987); *Indian-State Relations and "Tribal-State Compacts", in* RETHINKING INDIAN LAW 85, 86 (Committee on Native American Struggles, National Lawyers Guild ed., 1982) [hereinafter *Indian-State Relations*].

[6] As of 1990, the federal government had recognized 497 tribes and bands, which are united groups of tribes. *See* Getches, *supra* note 2, at 122 n.2.

national rules from reliably addressing local needs.[7] In an era of federal budget cuts and devolution of federal power to the states — in which Congress has been increasingly willing to delegate to tribes regulatory and implementation functions previously accorded only to states — the need for tribal-state cooperation in allocating scarce financial resources has increased.[8] Third, a growing movement among Native Americans to preserve their heritage, exercise self-governance, and define the legitimate functions of their sovereign governmental entities has exacerbated these factors.

The rise in compacting has produced substantial secondary benefits.[9] By examining an array of compacts' benefits and drawbacks, tribes and states can construct improved agreements marked by increased equality in bargaining power, a fairer distribution of benefits, and a broader scope of achievable goals. Establishing default conditions with model compacts can enhance these gains, making compacts more widely available at lower costs.

Compacting is not without potential flaws, however, and states and tribes frequently encounter obstacles in their negotiations. For example, many negotiations suffer from inequalities in bargaining positions between parties, and litigation and legislation offer certain advantages over compacting, such as ex ante determinations of parties' rights and powers. Tribes and states should weigh the benefits and drawbacks of using negotiated agreements in a given situation, and consider combining compacting with other strategies.

Part I of this Note describes compacts, their relationship to other state-tribe agreements, the legal authority of states and tribes to enter into them, and their current uses. Part II examines the circumstances under which compacts would be desirable, discusses possible limitations of such agreements, and proposes a framework for successful compacting. Part III advocates the use of model compacts, which facilitate wider participation by tribes that have less access to traditional avenues of intergovernmental bargaining. The Note concludes that intergovernmental compacts — especially model compacts — if properly negotiated and executed, offer great potential for dispute resolution between Native Americans and states and increased opportunities for disadvantaged tribes.

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[7] *See* FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 380 (1982).

[8] *See* TASK FORCE ON STATE-TRIBAL RELATIONS, NATIONAL CONFERENCE OF STATE LEGISLATURES, STATES AND TRIBES: BUILDING NEW TRADITIONS 19 (James B. Reed & Judy A. Zelio eds., 1995) [hereinafter STATES AND TRIBES].

[9] Thus far, states and tribes have entered into hundreds of compacts. *See id.* at 17. Such agreements have become especially common tools for implementing federal enabling statutes, which confer new powers upon parties. *See* WILKINSON, *supra* note 5, at 218 n.156.

I. WHAT ARE TRIBAL-STATE COMPACTS?

A compact is a negotiated agreement between two sovereign entities that resolves questions of overlapping jurisdictional responsibility, such as law enforcement, or resolves certain substantive matters, such as water rights.[10] Many tribes and states choose to use compacts because they are regarded as the most binding legal arrangement possible.[11] Compacts differ from ordinary contracts because they may be more enforceable,[12] and because contracts, unlike compacts, do not normally resolve issues of legal entitlement or jurisdiction between sovereign entities, but merely provide closure for a specific problem. Compacts are more closely related to treaties[13] in that they set political policies for tribes and states, and therefore have inherent value even beyond their stated goals. Unlike treaties, however, compacts can be superseded by federal law and do not involve transfers of entrusted property without federal oversight.[14]

A. The Legal Authority to Compact

Federal statutes and caselaw restrict the lawful authority of tribes and states to make binding agreements between themselves, and prohibit almost all tribal-state compacts absent approval by the Secretary of Interior.[15] Despite such limitations, federal legislation encourages tribes and states to negotiate the allocation of authority between them in many situations, and mandates negotiations in others. For example, the Indian Child Welfare Act of 1978[16] gives tribes primary jurisdic-

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[10] *See, e.g.*, John A. Folk-Williams, *The Use of Negotiated Agreements to Resolve Water Disputes Involving Indian Rights*, 28 NAT. RESOURCES J. 71 (1988) (discussing water rights compacts).

[11] *Cf.* PAUL T. HARDY, INTERSTATE COMPACTS: THE TIES THAT BIND 2 (1982) (discussing agreements between states). *But see* Joel H. Mack & Gwyn Goodson Timms, *Cooperative Agreements: Government-to-Government Relations to Foster Reservation Business Development*, 20 PEPP. L. REV. 1295, 1305 (1993) ("[B]ecause there is very little case law addressing cooperative agreements between tribes and states, it is unclear whether these agreements will be enforceable as contracts.").

[12] *See* Mack & Timms, *supra* note 11, at 1305. Enforceability may vary based upon the type of compact, however. For example, tribal-state compacts under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 (1994), may not be as enforceable as compacts made independently of federal oversight and direction. *See* Rebecca Tsosie, *Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act*, 29 ARIZ. ST. L.J. 25, 59 (1997).

[13] The federal government used treaties to regulate its relations with tribal nations until 1871, when Congress ended the process by statutory directive. *See* Act of Mar. 3, 1871, ch. 120, 16 Stat. 566 (codified as amended at 25 U.S.C. § 71 (1994)).

[14] Were compact enforceability equal to that of treaties, compacts might interfere with the federal government's broad authority over Native American affairs. *Cf.* Getches, *supra* note 2, at 135 (discussing *Worcester v. Georgia*, 31 U.S. 515 (1832)).

[15] *See* Trade and Intercourse Act, 25 U.S.C. § 177 (1994); COHEN, *supra* note 7, at 381; *Indian-State Relations*, *supra* note 5, at 86; Mack & Timms, *supra* note 11, at 1299–305.

[16] 25 U.S.C. §§ 1901–1963 (1994).

tion over the children of its members in the adoption, foster care, and custody contexts. The Act leaves the determination of jurisdiction over Native American child welfare proceedings to tribal-state compacts.[17] In addition, the Indian Gaming Regulatory Act of 1988 (IGRA)[18] requires states to negotiate compacts concerning the establishment and regulation of gaming activities on Native American reservations.[19] Many tribes have already negotiated gaming compacts under the Act,[20] and further negotiations are underway.

Another federal grant of authority stems from Public Law 280,[21] which allows flexible transfers of authority to the states over specified reservation areas, and permits retrocessions of jurisdiction to the federal government upon approval by the Secretary of the Interior.[22] In addition, the federal government routinely delegates to tribes some of its authority in providing contractual services. The Indian Self-Determination and Education Assistance Act of 1975[23] permits tribes to conduct programs and provide services within their own reservations that the Bureau of Indian Affairs formerly had supervised. With this grant of authority, tribes have established Native American-controlled schools on reservation lands, as well as tribal social service agencies.[24]

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[17] *See id.* § 1919; COHEN, *supra* note 7, at 381.

[18] 25 U.S.C. §§ 2701–2721 (1994).

[19] *See id.* § 2710(d)(2)(D)(iii)(I)(3)(A).

[20] *See* Getches, *supra* note 2, at 144; Bureau of Indian Affairs, *Tribal-State Compact List* (visited Dec. 8, 1998) <http://www.doi.gov/bia/foia/compact.htm> (listing 171 approved tribal-state gaming compacts between 24 states and 146 tribes).

[21] Act of Aug. 15, 1953, ch. 505, Pub. L. No. 280, 67 Stat. 588 (codified as 18 U.S.C. § 1162(a) (1994) (criminal jurisdiction); 28 U.S.C. § 1360(a) (1994) (civil jurisdiction)).

[22] *See id.* Congress designed Public Law 280 to extend state criminal jurisdiction to specified reservation areas inadequately protected by tribes and to permit states generally to assume criminal and civil jurisdiction on tribal lands through statute or constitutional amendment. *See* COHEN, *supra* note 7, at 381. For a more detailed explanation of the law's jurisdictional effects, see RONALD B. FLOWERS, CRIMINAL JURISDICTION ALLOCATION IN INDIAN COUNTRY 61–63 (1983); O'BRIEN, *supra* note 3, at 276–79; and STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES: THE BASIC ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS 113–18 (2d ed. 1992).

[23] 25 U.S.C. § 450(a)–(n) (1994).

[24] On several occasions, Congress has considered a legislative initiative — the Tribal-State Compact Act — that would authorize and encourage tribal-state compacts in a broad range of circumstances. *See* S. 2502, 95th Cong. (1978); S. 1181, 96th Cong. (1979); S. 563, 97th Cong. § 101(a)(1)–(3) (1981). The Act would have required that covered compacts be approved by the Secretary of Interior to receive federal funding and would have imposed a five year default time limit. *See* S. 2502, §§ 101(b), 102(a). The Act provided for enforcement and application of civil, criminal, or regulatory laws within the respective jurisdictions of the parties; allocation or determination of governmental jurisdiction by subject matter or geographic area; concurrent jurisdiction between states and tribes; and procedures for transferring individual court cases between state and tribal courts. Congress did not adopt the legislation for several reasons. Tribes perceived the Act as a vehicle for state encroachment on tribal sovereignty. *See Mutual Agreements and Compacts Respecting Jurisdiction and Governmental Operations: Hearings on S. 563 Before the Select Comm. on Indian Affairs*, 97th Cong. 14 (1981) (statement of James F. Canan, Acting Deputy Assistant Secretary for Indian Affairs); *Indian-State Relations*, *supra* note 5, at 87–88.

States themselves have issued several forms of authorization for compacts, although the majority of states appear to have no written or detailed statutory policy controlling intergovernmental agreements with tribes. Informal policies range from active pursuit of fixed agreements to more passive, open-door policies.[25] Under these informal policies, states appear to have the power to negotiate agreements with or without state compact-enabling legislation. Such enabling legislation, if present, however, may foster cooperation among a variety of state agencies that otherwise might resist negotiated agreements.[26] Governors also have stimulated bargaining by proclaiming that their states would deal with tribes directly on a government-to-government basis.[27]

B. The Current Scope of Tribal-State Compacts

Although compacts have emerged only recently as a means of demarcating the respective powers of states and tribes, intergovernmental agreements are now used to avoid or solve disputes in two primary subject areas: environmental and property concerns, and tribal governance and finance.[28] In the area of environmental and property compacts, tribes and states have made especially great strides in resolving land rights and zoning[29] — areas that are particularly important in light of both the gravity of the potential problems[30] and the failure of judicial decisions to establish clear allocations of power in such fields as zoning.[31] Fish and game management also has provided a fertile ground for state-tribe compacting, particularly because of the cross-jurisdictional nature of migratory patterns and habitat degradation.[32] Indeed, conservation agreements have proven very useful for

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Further, Senator Slade Gorton of Washington objected because the Act did not require consent of non-Native Americans living on reservations. *See* Getches, *supra* note 2, at 146.

[25] *See* Frank Pommersheim, *Tribal-State Relations: Hope for the Future?*, 36 S.D. L. REV. 239, 261–62 (1991) (citing FRANK R. POMMERSHEIM, SURVEY OF STATE ATTORNEYS GENERAL).

[26] *See* Getches, *supra* note 2, at 147. For examples of beneficial enabling acts for state-tribal cooperative agreements, see Getches, cited above in note 2, at 147–48.

[27] For example, the Governors of Arizona, New Mexico, and Utah, along with the President of the Navajo Nation, which is a landholder in each of the three states, recently signed a cooperative "Statement on Government to Government Policy." *See id.* at 149.

[28] *See id.* at 122.

[29] For example, the Swinomish Tribe and Skagit County, Washington, agreed upon a memorandum of understanding — in essence an agreement to agree — in 1987 regarding land use planning in and around the tribe's reservation. *See id.* at 153. Likewise, the Tulalip Tribe and San Juan County, Washington, have a zoning agreement concerning land that the tribe purchased for use as a seasonal fishing camp. *See id.*

[30] *See* CONFERENCE OF WESTERN ATTORNEYS GENERAL, AMERICAN INDIAN LAW DESKBOOK 388 (1993) [hereinafter AILD]; *see also* Getches, *supra* note 2, at 156–57 (noting that regulation of solid waste disposal is an area of particular concern).

[31] *See* Getches, *supra* note 2, at 153.

[32] *See* AILD, *supra* note 30, at 389–90; O'BRIEN, *supra* note 3, at 285–87 (describing state-tribe conflicts over fishing in the Pacific Northwest and the Great Lakes region); STATES AND

states and tribes, whether such agreements seek to preserve habitats, fishing harvests, or cultural and religious sites, or to protect supplies of oil, gas, and timber on reservation lands.[33] Similarly, compacts can avoid protracted legal battles in the area of water rights[34] by eliminating legal uncertainty and minimizing the costs of delineating states' and tribes' respective rights.[35]

In the area of tribal governance and finance, compacts have allowed states and tribes to make great progress in intergovernmental relations. For example, in the historically contentious area of taxation,[36] compacts can serve both tribes and states by granting each a proportionate share of the revenues from a streamlined collection system.[37] Likewise, numerous states and tribes have responded to the common need for effective law enforcement by developing cross-deputization, training, and prisoner detention agreements. Such agreements coordinate arrest and detention practices between tribal and nontribal communities, and provide for enforcement of environmental laws on reservations.[38] Agreements also exist for a variety of

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TRIBES, *supra* note 8, at 17–18 (discussing successful hunting compacts between Wisconsin and the Ojibwe tribe, and between Idaho and the Coeur d'Alene tribe); JOHN R. WUNDER, "RETAINED BY THE PEOPLE": A HISTORY OF AMERICAN INDIANS AND THE BILL OF RIGHTS 180–83 (1994) (noting the restrictions on Native American hunting and fishing rights under state and federal laws in the 1970s and 1980s).

[33] *See* AILD, *supra* note 30, at 389–90. One agreement designed to avoid environmental problems resulted after the Campo Band of Mission Indians allowed a solid waste disposal plant to be located on its reservation despite objections by state and local authorities. California ultimately bargained for environmental impact statements, strict regulations, and site inspection visits, giving in exchange technical assistance and jurisdiction over the site. *See* Getches, *supra* note 2, at 157.

[34] *See* AILD, *supra* note 30, at 392; WUNDER, *supra* note 32, at 183–84; *cf.* O'BRIEN, *supra* note 3, at 281–83 (describing the tension between the states' and tribes' needs for water). A number of authors have discussed this topic more fully. *See* LLOYD BURTON, AMERICAN INDIAN WATER RIGHTS AND THE LIMITS OF LAW 58–62 (1991); Reid Peyton Chambers, *Indian Water Rights After the* Wyoming *Decision*, *in* 1989 HARVARD INDIAN LAW SYMPOSIUM 153 (1990).

[35] *See* Folk-Williams, *supra* note 10, at 93. Various authors have discussed the process and history of negotiations to determine tribal water rights. *See* BURTON, *supra* note 34, at 63–86; Jana L. Walker & Susan M. Williams, *Indian Reserved Water Rights*, 5 NAT. RESOURCES & ENV'T 6 (1991).

[36] Many heated battles have involved states' authority to tax activities or transactions between tribes and nonmembers on reservation lands. *See* AILD, *supra* note 30, at 390–91. Such disputes over jurisdiction have the potential to deter and slow nonmember investment and development within reservations. *See id.*

[37] *See id.* at 391; *see also* O'BRIEN, *supra* note 3, at 284–85 (describing an arrangement under which South Dakota collects sales and cigarette taxes on the Oglala Sioux reservation). *See generally* Susan Williams & Kevin Gover, *State and Indian Tribal Taxation on Indian Reservations — Is it Too Taxing?*, *in* 1989 HARVARD INDIAN LAW SYMPOSIUM, *supra* note 34, at 165, 187–88 (describing possible approaches to resolving taxation disputes between tribes and states). New Mexico and the Pueblos of Santa Clara and Pojoaque coordinate collection of gross receipts taxes, and New York has coordinated gasoline and cigarette tax collection with the Seneca Indian Nation. *See* Getches, *supra* note 2, at 161–62.

[38] *See* AILD, *supra* note 30, at 389, 391; COHEN, *supra* note 7, at 381; O'BRIEN, *supra* note 3, at 281. New Mexico has codified the process for cross-deputization: its statute authorizes the chief

social services, including health, welfare, burial sites, and education.[39] Compacts such as that between the Apache and the Globe, Arizona, school district have been instrumental in establishing a greater number of public schools on reservations.[40] Finally, perhaps the most widely publicized source of compacting in recent years has been that of tribal gaming under IGRA. Although many critics protest that IGRA encroaches upon state and tribal sovereignty,[41] a significant number of tribes and states have successfully signed compacts governing gaming on reservations that greatly benefit both parties.[42]

II. The Benefits and Drawbacks of Compacts

Tribes and state or local governments may choose from an array of mechanisms to settle their differences. In addition to entering into compacts, tribes and states may pursue litigation, contracts, legislative compromises, or advisory agreements.[43] Litigation may be appropriate if tribes and states desire to establish initial rights for each party and resolve questions about legal entitlements.[44] Alternatively, a legislative approach may increase funding allocations or amend restrictive legislation. Compacts offer more comprehensive relief. Considerations favoring compacts include the inherent shortcomings of litigation, the power inequalities and fewer number of safeguards that hinder effective legislative lobbying efforts, and the multitude of substantive areas for which compacting may be used. Tribes and states can successfully

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of the state police to deputize pueblo or tribal officers who meet statutory criteria if the pueblo or tribe can show proof of sufficient liability and property insurance. *See* N.M. STAT. ANN. § 29-1-11 (Michie Supp. 1996); Ryder v. State, 648 P.2d 774 (N.M. 1982). States and tribes also have agreed on such matters as service of process, full faith and credit, and extradition. *See* Getches, *supra* note 2, at 152; *see also* COHEN, *supra* note 7, at 382–85 (describing full faith and credit and extradition arrangements).

[39] These include compacts reached pursuant to the Indian Child Welfare Act concerning the care and custody of Native American children. *See supra* pp. 924–25.

[40] *See* O'BRIEN, *supra* note 3, at 289–90.

[41] Several recent articles discuss federal authority to bind a state to a tribal-state compact under IGRA. *See, e.g.*, Sidney M. Wolf, *Killing the New Buffalo: State Eleventh Amendment Defense to Enforcement of IGRA Indian Gaming Compacts*, 47 WASH. U. J. URB. & CONTEMP. L. 51, 87–113 (1995); Joel P. Brous, Note, *The Constitutionality of the Indian Gaming Regulatory Act: State Sovereignty and Compulsory Negotiations*, 1994 J. DISP. RESOL. 125; Eric D. Jones, Note, *The Indian Gaming Regulatory Act: A Forum for Conflict Among the Plenary Power of Congress, Tribal Sovereignty, and the Eleventh Amendment*, 18 VT. L. REV. 127, 135–71 (1993).

[42] *See* Pam Greenberg & Judy Zelio, *States and the Indian Gaming Regulatory Act*, STATE LEGIS. REP., July 1992, at 7–9; *see also* Tsosie, *supra* note 12, at 47–49 (noting that the first negotiated state-tribe agreement concerning reservation gambling was Nevada's Fort Mojave compact).

[43] *See* Folk-Williams, *supra* note 10, at 63, 71.

[44] *See* Pommersheim, *supra* note 25, at 264 ("[S]tates and tribes often find themselves in the unenviable position of construing and implementing federal policy and law that was drafted on a national level, and whose specific contours may not be clear at the state and tribal level." (emphasis omitted)).

avoid many of the shortcomings of compacts through strategic compact negotiation and planning.

A. Benefits of Negotiated Compacts

Perhaps the greatest benefit of compacting is that such negotiated agreements can "resolve disputes that would otherwise be mired in costly, protracted, and occasionally inconclusive litigation."[45] Court decisions are fact-specific and are often focused on minute points of law, and therefore leave much room for further litigation.[46] Conversely, negotiated compacts offer greater flexibility to accommodate local needs and changed circumstances over time,[47] reduce the likelihood of future disputes, and answer regulatory questions created by ambiguities in jurisdictional authority, such as jurisdiction over nontribal members living on reservations.[48] Parties can include continuing management provisions allowing the sovereigns to continue to meet over time to discuss contingencies, and not be bound by excessively rigid provisions. Compacts can accommodate those situations that would be best handled by allowing unforeseen circumstances to be addressed not in advance, but, rather, when they arise.

Negotiated compacts are also more comprehensive than litigation. In addition to enabling both sides to hold enforcement power, rather than only one as in litigation, compacts allow compromises that are almost impossible to achieve through litigation.[49] Negotiated compacts avoid ongoing lawsuits and jurisdictional uncertainty that often hinder economic development.[50] In addition to being narrow and inconclusive, litigation may be ineffectual on many issues — producing mere paper rights without any tangible gains beyond injunctions.[51] Compacts permit states and tribes to share resources, reduce administrative

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[45] Getches, *supra* note 2, at 121.

[46] *See* STATES AND TRIBES, *supra* note 8, at 19; *cf. Indian-State Relations*, *supra* note 5, at 86 ("Land claims in particular lend themselves to negotiated settlements because of their drastic impact on large populations and the tortuous and largely uncharted path for resolution through the courts."); Mack & Timms, *supra* note 11, at 1307 (stating that the case law regarding land claims and the right to tax persons and activities on reservations is relatively unclear).

[47] *See* VINE DELORIA, JR., BEHIND THE TRAIL OF BROKEN TREATIES: AN INDIAN DECLARATION OF INDEPENDENCE 259–60 (1985); Brienza, *supra* note 1, at 169–70; *infra* pp. 934–35. Rebecca Tsosie notes that, in some cases, compacts can satisfy tribal interests by a settlement for damages that "can then be used to purchase tribal lands." Tsosie, *supra* note 12, at 40–41. She explains that, "[i]n other cases, the tribe retains an attachment to a specific parcel of land, which is *not* compensable by money damages." *Id.*

[48] *See* Mack & Timms, *supra* note 11, at 1308–09.

[49] *See* P.S. Deloria & Robert Laurence, *Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question*, 28 GA. L. REV. 365, 373–74 (1994).

[50] *See* STATES AND TRIBES, *supra* note 8, at 19; Mack & Timms, *supra* note 11, at 1308.

[51] *See* Judith V. Royster, *A Primer on Indian Water Rights: More Questions Than Answers*, 30 TULSA L.J. 61, 100 (1994).

costs, and pursue federal funding for joint projects.[52] Moreover, litigation is often extremely complex,[53] and can be extended for years, hindering resolution of disputes and competing claims. These delays provide powerful incentives for ending conflicts.[54]

Tribes, which are culturally accustomed to cooperative agreements,[55] as well as states may prefer compacts to litigation because court decisions invariably produce winners and losers, which may engender resentment without necessarily averting future disputes.[56] Negotiated compacts reduce intergovernmental tensions and encourage cooperation that transcends historical prejudices.[57] Such developments would be a welcome change from the historically bitter condition of relations between tribes and states. Further, to the extent that negotiation reflects a nonadversarial model of justice that encourages the parties to develop their own solutions to problems, the negotiation of compacts is consistent with many tribal systems of justice.[58] Finally, many tribes contend that entering the courts of the United States to defend basic rights would compromise their sovereignty. Thus, they believe that conducting relations with the federal and state governments through diplomatic means is preferable to submitting tribal claims to the courts of a competing sovereign.[59]

Compacts reduce the likelihood of other problems stemming from litigation as well. Some commentators believe that tribes cannot rely on the courts for perpetual support for their claims; scholars claim that the "Supreme Court has begun deliberately to abandon many long-established principles and to diminish Indian governmental power in

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[52] *See* Mack & Timms, *supra* note 11, at 1307. Although negotiation is usually cheaper than litigation, it still entails substantial costs, including attorneys' fees, travel costs, the expenses of retaining mediators and experts and conducting necessary research, and, later, the costs of enforcement litigation or administering proper implementation. *See* Getches, *supra* note 2, at 166.

[53] *See* WILKINSON, *supra* note 5, at 9.

[54] "It is not unusual for water rights litigation to drag on for fifteen years. And by that time the question may be entirely moot, because there is scant wet water left." Brienza, *supra* note 1, at 167; *cf.* DOUGLAS J. AMY, THE POLITICS OF ENVIRONMENTAL MEDIATION 70–77 (1987) (discussing the inconclusiveness of current data on the cost and time benefits of environmental mediation). However, "the ratification process alone [for IGRA compacts] often takes from four to eight years, adding to the already lengthy process of initiation and negotiation of the compact." Tsosie, *supra* note 12, at 60.

[55] *See generally* ROBERT A. WILLIAMS, JR., LINKING ARMS TOGETHER: AMERICAN INDIAN TREATY VISIONS OF LAW AND PEACE, 1600–1800 (1997) (describing traditions that affected tribes' approaches to and perceptions of treaties).

[56] *See* STATES AND TRIBES, *supra* note 8, at 19; *cf.* Brienza, *supra* note 1, at 168 (asserting that such binary thinking can provide no more than a starting point for the resolution of complex disputes).

[57] *See* Brienza, *supra* note 1, at 171–72; Tsosie, *supra* note 12, at 37, 91–95 (describing tribal-state compacts as a multicultural dialogue).

[58] *See* Tsosie, *supra* note 12, at 36.

[59] *See Indian-State Relations*, *supra* note 5, at 86. One scholar has suggested that Congress could provide a special federal court to handle all questions arising under the agreements. *See* DELORIA, *supra* note 47, at 260.

favor of the states."[60] Such precedent one-sidedly favoring state jurisdiction presents two problems. First, it leaves less even-handed precedent to guide elected judges, who some have accused of being prejudiced or vulnerable to pressure from powerful interest group lobbies, which tribes historically have been unable to afford on a great scale.[61] Second, compacting may be the only way to reach rational, workable compromises in many legally complex areas, such as zoning.[62]

Many tribes have pursued legislation as a possible alternative to litigation. Like compacting, federal or state legislation could address issues common to hundreds of conflicts, locate some basis for compromise, lay out the proper hierarchy of rights and duties, and ultimately keep these complex and costly disputes out of the courts. While this option is often desirable, however, many tribes have not found it viable. In many instances, "tribes face the same disadvantage legislatively that they face in every other political context."[63] In most, but not all, cases, "Native Americans are the poorest, least powerful, and least represented minority group";[64] proponents of greater federal and state power and lobbyists against tribal rights are plentiful.[65] Accordingly, the government's duty to promote the welfare of the broader American public often may prevail over its duty to Native Americans.[66] Critics have charged that the federal government has too many conflicts of interest to balance state and tribal interests fairly and honestly.[67] While compacting faces many of the same hurdles, its more structured, monitored process offers other assurances of fairness.

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[60] *Indian-State Relations*, *supra* note 5, at 86 (citing Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (jurisdiction over non-Native Americans); Washington v. Confederated Tribes, 447 U.S. 134 (1980) (state taxation on a reservation); and Montana v. United States, 450 U.S. 544 (1981) (state regulation of hunting and fishing)).

[61] *See* Brienza, *supra* note 1, at 165. Additionally, in some states the initial fact finders are members of a state board appointed by the governor subject to legislative consent, adding to concerns about inherent biases. *See id.*

[62] *See* Getches, *supra* note 2, at 153 (discussing the problem of overlapping allocations of responsibility imposed by Supreme Court precedent).

[63] Brienza, *supra* note 1, at 161; *cf.* BURTON, *supra* note 34, at 59 (describing the legislative stalemate over recognition of Native American water rights).

[64] Brienza, *supra* note 1, at 161; *see* Tsosie, *supra* note 12, at 38 ("[T]ribes are politically less powerful than the federal and state governments, primarily because, unlike the states, they have no formal representation in Congress."). Note that these assertions treat Native Americans as a relatively homogenous group. In fact, there are great disparities among Native American nations in wealth, education, access to state government and services, and myriad other characteristics. *See infra* pp. 937–38 (discussing the particular significance of these differences in the context of state-tribal compacts).

[65] *See* Brienza, *supra* note 1, at 161–62.

[66] *See* Tsosie, *supra* note 12, at 38.

[67] *See id.* For additional discussion of conflict of interest problems, see Brienza, cited above in note 1, at 163–64.

B. *Drawbacks of Negotiated Compacts*

Notwithstanding these advantages, a few scholars caution against tribal-state compacting. Perhaps the most widely cited concern is that states wield dramatically greater political and economic bargaining power, which invariably compels Native Americans to surrender more rights than they would if bargaining power were equal.[68] A less powerful party may be critically disadvantaged under traditional negotiation practices unless negotiators use some corrective technique to balance the power.[69] Critics claim that tribes could be integrated involuntarily into the administrative structures of states and could witness their affairs increasingly subsumed under state laws and policies — a "municipalization of Indian territories."[70]

Such abuses have hardened the resolve of defenders of the federal government's trustee relationship with tribes. Gaining support during the debate over the proposed broad tribal-state enabling statute,[71] these defenders claim that it is "essential that the federal government provide some protection from the duress, graft, and political pressure which have routinely been used to exploit Indians,"[72] as well as any attempts by states to coerce tribal acceptance of mutual immunity from suit.[73] Some believe that judicial procedures may best correct power imbalances, which are especially pronounced for tribes that have recently embarked on a path to self-government or considered tribal-state negotiations and compacts. This belief assumes, however, that courts respect tribal interests and are capable of evaluating them fairly. Further, this position does not recognize certain situations in

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[68] Again, this concern assumes the traditional view of tribes as weak, not only compared to the states, but also in terms of politics, structure, and economics. *See infra* pp. 937–38.

[69] *See* Tsosie, *supra* note 12, at 36.

[70] *Indian-State Relations*, *supra* note 5, at 88. However, for a discussion of the potential of interstate compacts to reduce states' sovereign powers, see HARDY, cited above in note 12, at 21–22.

[71] *See supra* note 24.

[72] *Indian-State Relations*, *supra* note 5, at 87. This perspective may rest upon traditional biases against Native Americans and the widely recognized paternalistic attitude embodied in the federal trust relationship. For examples of federal violations of the trust doctrine, see LAURENCE ARMAND FRENCH, THE WINDS OF INJUSTICE: AMERICAN INDIANS AND THE U.S. GOVERNMENT 189–204 (1994). The federal government's mistaken assumptions, which have been evident since it first began making treaties with tribes, may account for this lingering bias; broad generalities about Native Americans' negotiation skills, status as parties, or literacy and fluency should not be assumed without analyzing the individual case. *See* RONALD LEE STEINER, THE INTERPRETATION OF TREATIES AND THE CONSTITUTION OF NATIVE AMERICAN IDENTITY 30–36 (1984); WILLIAMS, *supra* note 55, at 14–39. Moreover, the idealistic yet protective trust relationship "limit[s] choice and frequently impose[s] higher economic burdens on the 'protected' group." RUSSEL LAWRENCE BARSH & JAMES YOUNGBLOOD HENDERSON, THE ROAD: INDIAN TRIBES AND POLITICAL LIBERTY 231 (1980). In some circumstances, however, such arrangements "may be justified by the dangers or costs they protect against." *Id.*

[73] *See Indian-State Relations*, *supra* note 5, at 88; Joseph R. Membrino, *Indian Reserved Water Rights, Federalism and the Trust Responsibility*, 27 LAND & WATER L. REV. 1, 21 (1992).

which preexisting tribal entitlements and rights desired by the state — such as valuable tribal water or land rights — place tribes in stronger bargaining positions.

One cautionary note against complete reliance on compacts is that threatened lawsuits may facilitate greater equality in compact negotiations. Many Native American leaders contend that if courts do not determine preliminary rights and priority issues, or at least if tribes do not threaten litigation, tribes may be in weaker bargaining positions and unable to arrive at negotiations with secured rights.[74] "The right to negotiate has to be won by establishing the fact that the parties cannot ignore each other. . . . All must recognize one another's power to influence the course of decision-making before they will take each other seriously as negotiating partners."[75] Courts also can clarify "murky jurisdictional questions."[76] For example, in situations that pit Native Americans against non-tribal members over compact rights that appear to afford tribes special treatment, legal decisions protect public officials from having to take a stand on inflammatory issues.[77] In addition, parties may not be able to avoid litigation by negotiating a compact because lawsuits still may arise over compact terms, just as they regularly result over contract disputes.[78] One solution to this unnecessary litigation is to specify in the agreement that such issues are subject to arbitration and mediation, a practice New York and the Seneca Nation have used.[79] Finally, it may appear that, because the federal bench is becoming less responsive to tribal claims,[80] states have fewer reasons to bargain with tribes. However, some tribes have won large victories, even in state courts, that may give them more than they would have obtained through negotiation.[81]

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[74] *See* AMY, *supra* note 54, at 89–91; Tsosie, *supra* note 12, at 39. Rebecca Tsosie does note that "litigation is often essential to reaching an effective negotiated settlement," and cites the Maine Land Claims case, *Joint Tribal Council v. Morton*, 528 F.2d 370 (1st Cir. 1975), which concerned claims of the Passamaquoddy and Penobscot tribes for land wrongfully taken by the state. Tsosie, *supra* note 12, at 39–40. In *Morton*, the state refused to negotiate with the tribes until the tribes had first established the validity of their legal claim in federal court. *See Morton*, 528 F.2d at 372.

[75] Folk-Williams, *supra* note 10, at 71.

[76] STATES AND TRIBES, *supra* note 8, at 18.

[77] *See id.* at 18–19. For arguments that Congress could smooth the negotiation process by enacting legislation that clearly defines and distinguishes Native American reserved rights, see Gina McGovern, Note, *Settlement or Adjudication: Resolving Indian Reserved Rights* 36 ARIZ. L. REV. 195, 220–21.

[78] *See* Getches, *supra* note 2, at 166. Treating the agreement as a contract may be inappropriate, however, because of sovereignty concerns, differences in rules of construction, and concerns over both proper drafting and consistency with enabling legislation and constitutional principles. *See id.*

[79] *See id.* at 167. David Getches notes, however, that "[t]he use of professional mediators has been rare in formulating Indian-tribal inter-jurisdictional arrangements." *Id.*

[80] *See Indian-State Relations*, *supra* note 5, at 86.

[81] *See* BURTON, *supra* note 34, at 131.

Furthermore, some theorists argue that ethnic minorities and disadvantaged groups actually benefit from asserting legal rights, and claim that the "deformalization and privatization of justice" associated with negotiation compromises the ability of such groups to vindicate these rights.[82] Native Americans enjoy a unique political status, however, and do not hold the same legal standing as do other ethnic minorities in America. In tribal-state negotiations, "the very act of sitting at the table is an exercise of tribal sovereignty."[83] This is especially true "when the issue is cross-boundary enforcement of judgments, because the issue is one about which only governments may negotiate."[84]

Moreover, many tribes view state governments as adversaries. One commentator has noted that "[t]he survival instinct . . . is not drawing Indian and non-Indian peoples together; it is driving them apart."[85] He continued, "[u]ntil the Euro-American culture can convincingly demonstrate the ability of cooperative effort to ensure the survival of all peoples . . ., the Indians will have no reason to make peace."[86] This sentiment necessitates "continuing political discussion within tribal communities and tribal councils to forge a wide-ranging and thoughtful tribal public policy on tribal-state relations, complete with specific goals, objectives, and attendant strategies."[87] Overcoming these preconceptions requires substantial educational reform, both by enlightening non-Native Americans about the realities of reservation life and by informing tribes about their sovereign powers and civil rights.[88]

Finally, contrary to widely held belief, some claim that interstate compacts are often too inflexible to be effective.[89] These observers note that the processes for amending or revising compacts may be difficult and often require lengthy negotiation and ratification procedures.[90] Such arguments ignore the possibility of including amendment and termination provisions in the compact[91] as well as the occasional advantage of inflexibility. For example, inflexibility is particularly desirable when compacts concern such matters as boundary disputes and water rights, in which a degree of finality is necessary. Also, inflexibility does not pose a problem for projects that are "one-

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82 Tsosie, *supra* note 12, at 36, 86–87; *see also* AMY, *supra* note 54, at 132–42 (noting that to the extent that politically powerless affected parties, such as tribes, are excluded from the mediation process, the public interest at stake in environmental disputes is harmed).

83 Deloria & Laurence, *supra* note 49, at 390.

84 *Id.*

85 BURTON, *supra* note 34, at 140.

86 *Id.*

87 Pommersheim, *supra* note 25, at 271.

88 *See id.* at 271–72.

89 *See, e.g.*, HARDY, *supra* note 11, at 10, 21.

90 *See id.* at 21.

91 *See id.* Compacts can provide for continuing discussions between parties and establish ex ante parameters within which to resolve contingencies or unexpected developments.

shot operations," such as a compact to build a bridge across a river running between a state and a reservation.[92]

C. *A Compromise Solution*

These debates over benefits and drawbacks do not mean that an insurmountable void exists between compacting and alternative choices. Indeed, states and tribes often employ a combination of negotiation, litigation, and legislation to reach fair and agreeable outcomes.[93] Litigation can be a first step in affirming and quantifying rights, correcting a disparity in the balance of power, and creating the leverage necessary to force parties to the bargaining table.[94] Legislation can pave the way for easier compact negotiations or increase the availability of funding. Often, the decisions among these approaches depends on the subject matter in question. For example, law enforcement compacts share resources efficiently; water rights compacts offer guarantees beyond paper rights; and child welfare agreements avoid the particularly problematic issue of time delays in determining the proper placement of children.

Several new substantive areas are ripe to capture many of the benefits of compacting while avoiding its pitfalls. For example, legislation governing alcohol sales permits tribes to regulate the introduction of liquor into reservations with the approval of the Secretary of Interior, as long as the regulations do not violate state law.[95] The requirement of state approval has generated conflicts between states and tribes,[96] but this may be remedied by compacts. In addition, public tribal functions such as road maintenance and education often relate to similar state and local government activities; compacts for mutual assistance can introduce greater efficiency and better services.[97] Finally, environmental regulation offers an additional area for tribal-state compacts. Nearly all federal pollution control acts currently stipulate that tribes are to be treated as states and that they may assume primacy within their territory under these laws.[98] Similarly, although at least one major environmental statute, the Solid Waste Disposal Act,[99] fails to mention tribes, scholars have reasoned that courts would uphold delegation of authority by the Environmental Protection Agency to tribes under the Act, and cases on the issue suggest likewise.[100]

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92 *Id.*

93 *See* Brienza, *supra* note 1, at 172–74.

94 *See* AMY, *supra* note 54, at 90–94; Brienza, *supra* note 1, at 172.

95 *See* 18 U.S.C. § 1154 (1994).

96 *See* Getches, *supra* note 2, at 144.

97 One author has posited, however, that the relative rarity of such agreements may indicate their disfavor by the Bureau of Indian Affairs. *See id.* at 145.

98 *See id.* at 155.

99 42 U.S.C. §§ 6901–6991(i) (1994).

100 *See* Getches, *supra* note 2, at 155.

III. The Promise of Model Compacts

A. Evaluating Compacts

To take advantage of the full range of possibilities that compacts offer, tribes and states must develop guidelines for evaluating benefits and drawbacks, both of the negotiation process and the results reached. This may be a difficult task for parties,[101] but internal ratification processes can provide short-term assurances of fairness[102] and can be augmented over time by monitoring the effects of the agreements. Perhaps the strongest protection against disparities in resources and power leading to unfair bargains is a legitimate and reliable process for compact acceptance.

However, even with such procedures in place, more powerful parties still may control information or coerce their weaker counterparts, forcing them to accept unfavorable agreements. Use of compact safeguards, therefore, still requires an analysis by both sides of each compact's substantive merits. Procedural controls exist, however; parties favoring unfair compacts assume the risk that the ratification process or subsequent litigation will nullify the proposal.[103] The federal government's role as trustee for Native American property serves as an additional safeguard against coercion, as does establishing rights through litigation in advance of negotiation. Although those same protections of tribal interests "can raise doubts in the minds of non-Indian parties about the finality of agreements reached with tribes because they may be subject to legal challenge as being inconsistent with these safeguards,"[104] the shields can offer much reassurance overall.

B. The Desirability of Model Compacts

Using mutually agreeable guidelines, parties regularly agree to effective and fair compacts across a variety of subject areas and jurisdictions.[105] Compacts that exhibit such safeguards, from inception through negotiation and ratification, offer great potential as models for future negotiated agreements. Whether or not they are in the same locale or addressing the same topical problem, other tribes and states may build upon already-established agreements to arrive at mutually agreeable and effective compacts of their own more easily and cheaply, as long as the differences in context are recognized and corrected.

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101 *See* Folk-Williams, *supra* note 10, at 100–01.

102 Such assurances depend on a variety of factors, such as each side having competent, independent counsel. *See* Brienza, *supra* note 1, at 183–84; *see also* Getches, *supra* note 2, at 165–66 (advocating independent federal and tribal counsel).

103 *See* Folk-Williams, *supra* note 10, at 102.

104 *Id.*

105 *See supra* pp. 924–28.

Like the American Law Institute's model legal codes in specialty areas of the law, which are designed to support reform efforts by local jurisdictions lacking the resources to perform such research, model compacts reduce repetition and preserve resources in efforts to resolve specific disputes.[106] Subsequently, these models "could begin to establish substantive norms for what constitutes a fair and appropriate settlement."[107] Such models and norms would aid states and tribes under IGRA-imposed time pressures to agree on compact terms.[108]

Perhaps a broader but often overlooked benefit of model compacts is that they effectively respond to current realities among Native Americans. Contemporary tribes differ from each other on many levels. Several tribes, such as the relatively small Mashantucket Pequots of Connecticut, are extremely wealthy and capable of extensive educational and lobbying efforts, while others, such as the large Navajo Nation, support great numbers of destitute and relatively disempowered members.[109] If such disparities are recognized and properly taken into account, they actually may be a source of strength for model compacts. Compacts distribute transaction costs between richer tribes — which possess greater resources and experience and which would bear the costs of developing compacts regardless of sharing — and poorer tribes — which benefit from free riding on the otherwise financially unobtainable fruits of compact negotiations. Richer tribes therefore can develop models and provide previously conducted research for poorer groups to use, ideally requiring only minor and cheap alterations. By providing such benefits to poorer tribes at significantly reduced costs and with greater institutional safeguards, model compacts offer a cost sharing mechanism that may allow destitute groups — historically locked out of litigation and legislative initiatives — to enter the realm of public discourse and successfully resolve their problems.

The vast differences among tribes, coupled with the nature of contemporary conflicts, nevertheless may make such a vision appear unrealistic. For example, a current battle between the State of California and a number of casino-owning tribes over gambling compacts has led many to believe that model compacts are not feasible. Governor Pete Wilson reached a gambling compact with the Pala Band of Mission Indians that included a clause banning non-state sanctioned video gambling machines and a cap on the number of sanctioned machines.[110] Governor Wilson then touted this compact as a model to be

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106 *See* BURTON, *supra* note 34, at 133.

107 *Id.*

108 *See* IGRA, 25 U.S.C. §§ 2701–2721 (1994).

109 *See* Bureau of Indian Affairs, *Indian Service Population and Labor Force Estimates* (visited Dec. 8, 1998) <http://www.doi.gov/bia/ifcons95.html>; Navajoland, *Navajo Nation Profile* (visited Dec. 8, 1998) <http://www.navajoland.com/nn/NNprofile.html>.

110 *See* John Matthews, *Indian Gaming Bill Squeaks by Senate Panel; Pala Band's Compact Backed by 6–5 Vote*, SACRAMENTO BEE, Apr. 22, 1998, at A4.

used in agreements between the State and the other casino-owning tribes.[111] The tribes protested that the compact infringed on their sovereignty and was not negotiated in good faith; they argued further that the Pala were not similarly situated because the Pala did not own such machines prior to the compact.[112] This conflict has resulted in a widely publicized battle still raging today.[113]

Such an approach is easily distinguishable, however, from the path this Note advocates. The California-Pala compact may be used in a standardized form, but would not constitute a true model compact because it lacks certain essential characteristics. For example, the agreement did not receive intertribal input and thus did not recognize the self-determination rights of all affected parties, and the State did not permit tailoring for individual tribes' circumstances. Agreements meeting these standards do hold great potential for easing tribal-state relations and enhancing the ability of tribes and states to meet on mutually agreeable and beneficial grounds. Although parties and potential users of model compacts may disagree on the number of permissible defects, the presence of so many problems in one compact should caution against relying on it. Many advances would assist this evaluation process, including the establishment of a repository for model agreements to facilitate comparison of benefits and potential problems, pooled data acquisition and analysis, standardized negotiation procedures, a wider enlistment of impartial facilitators, and federal sponsorship of negotiations.[114]

C. Challenges Inherent in Formulating Model Compacts

Such potential for model compacts does not eliminate the limitations inherent in designing general solutions to address the specific needs and interests of the parties in individual cases. To counteract these possible drawbacks, compacts "should not only identify the problem that the agreement is attempting to solve, but also limit its application to that area," both in subject matter and geographic range, although without restricting usefulness.[115] To preempt later questions by courts, a model compact should describe "the underlying policy reasons for its creation, such as to better develop economic opportunities on the reservation, to protect tribal sovereignty, to foster tribal state relations, or to protect state citizens from any harmful spillover prob-

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[111] *See id.*

[112] *See id.*; Paula Story, *Tribes Reconsider Stance Against Gambling Compact*, ORANGE COUNTY REG., May 26, 1998, at A4.

[113] California's voters recently ratified a referendum measure that would legitimize gambling operations already present in approximately 40 tribal casinos across the state. *See* James P. Sweeney, *Casinos, Schools are Big Winners at Polls*, SAN DIEGO UNION-TRIB., Nov. 4, 1998, at A1. Opponents intend to challenge the measure on constitutional grounds. *See id.*

[114] *See* BURTON, *supra* note 34, at 133–34.

[115] Mack & Timms, *supra* note 11, at 1329.

lems from the reservation."[116] Including the federal interest in tribal affairs in such a list may thwart future challenges based upon allegations that federal law preempts the compact.[117]

Additionally, to avoid possible challenges, a compact should state explicitly that it is not an attempt to expand or limit tribal or state jurisdiction. Like a contract, it should contain a severability clause to protect the balance of the agreement should any particular section be invalidated. One scholar has recommended that both the tribe and state should waive their sovereign immunity against one another for actions based on the cooperative agreement, in order to protect its enforceability.[118] Such waivers seem remote, however, as both sides are likely to be anxious about any encroachments upon sovereignty.[119] Ideal compacts also contain a breach of contract provision and specify in which courts the parties designed them to be enforced.[120] Finally, any such agreement requires the ability to amend it based on political realities and constraints imposed by the process of legislative ratification.[121] Although the advent of compacts has spawned few cases thus far and has not clarified adequately what remedies, if any, may be available, equal bargaining conditions increase the likelihood of judicial enforcement and application of intended remedies.[122]

Intergovernmental compacts thus serve as a significant, highly desirable method of resolving many of the current disputes that plague reservations and regional governments. If properly negotiated and executed, compacts enable effective dispute resolution in areas ranging from the provision of social services to the protection of natural resources and the development of economies. The success of negotiated settlements nevertheless depends upon a realization that they are not suitable for all claims, and do not always ensure equality of bargaining power. In many disputes, however, such agreements — especially when used as models for resolving future conflicts — respond to modern conditions of resource scarcity, financial limitations, and the complexities of multiple bargaining parties. Compacts address in a unique, constructive manner the conflicts inherent in federal trusteeship, many tribes' desire yet inability to gain possession of larger land bases and increased leverage power, and, perhaps most importantly, the limitations of the judicial and legislative systems in providing adequate remedies for disputes.

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116 *Id.*
117 *See id.* at 1330.
118 *See id.*
119 *See* AILD, *supra* note 30, at 393–94.
120 *See* Mack & Timms, *supra* note 11, at 1330, 1332–38.
121 *See* Folk-Williams, *supra* note 10, at 102–03.
122 *See* Mack & Timms, *supra* note 11, at 1330–32.