

# **The Work of Sovereignty**

Tribal Labor Relations and Self-Determination  
at the Navajo Nation

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## **Introduction**

It was by coincidence that I originally began to consider the relationship between labor unions and American Indian communities. Like many living in California in the 1990s, I gave little thought to how labor relations might play out in a contemporary indigenous context until they became a significant public issue in the debate surrounding the federally mandated regulation of tribal governmental gaming casinos. This public debate stemmed from two referendum campaigns (Proposition 5 in 1998 and Proposition 1A in 2000) meant to establish a legal regulatory relationship between the State of California and indigenous nations operating casinos within the state's boundaries. During these campaigns, most of the state's population supported tribal nations' efforts to improve their socioeconomic conditions by engaging in the enterprise of high-stakes gaming. Apart from the relatively minor voices of moral objection to gambling, the only significant opposition to Indian gaming in California swirled around concerns of corporate oversight of casino operations (see Bruyneel 2007; Goldberg and Champagne 2002; Rosenthal 2004). By questioning enforcement of environmental, labor, safety, and criminal codes, political campaigns and television ads (mostly funded by Las Vegas casinos) provoked fears of reservation lawlessness and of "unregulated" Indian gaming corporations. Some of the most active proponents of this position, and thereby the most vocal opponents of Indian gaming, were labor unions. They called attention to the labor relations of casino operations and sought to secure collective bargaining rights for casino employees.

At the time of this debate, I was in graduate school at UCLA, studying for a master's in American Indian studies and working as a union organizer. The union for which I worked—the United Auto Workers (UAW)—took no official stance on Prop 5, but many of my friends in the Los Angeles labor movement were progressive and proactive organizers for the Service Employees International Union (SEIU) and the Hotel Employees and Restaurant Employees International Union (HERE). As the two major representatives of casino employees in the United States, these unions were the most vocal opponents of Prop 5. Representatives from SEIU and HERE claimed that, as constructed by the proposition, the tribal–state gaming compacts did not allow enough protection for worker rights. In contrast, the sentiment in the Department of American Indian Studies, in which I was enrolled, was decidedly in favor of Prop 5. The department became an unofficial campus headquarters for the pro–Prop 5 campaign. Flyers and posters were hung in many offices, and the department lounge became a central distribution center for buttons and stickers. The department even co-hosted a debate on Prop 5, broadcast live in advance of the election. In this forum, the most significant opposition to the proposed tribal gaming structure, as described by the Prop 5 compact, came from prominent Los Angeles–area union leaders. These leaders claimed to speak on behalf of the majority nontribal members who would work at the casinos, and they criticized the proposition's lack of comprehensive protections for workers' rights to collectively organize and bargain. In the debate, both sides of the campaign framed unionism and tribal governmental gaming as being nearly irreconcilable.

I found my own political and social allegiances torn. Indeed, in the month leading up to the election, I wore a pro–Prop 5 button while walking around campus doing my duties organizing graduate teaching assistants. Although I respected the new labor movement's commitment to social justice, spearheaded locally by many of my friends and colleagues from SEIU and HERE, I could not help but feel that they were on the wrong side of the battle. Despite my involvement in and commitment to the labor movement, I got into many spirited debates with these friends and colleagues, usually provoked by my support of Prop 5. But I did not maintain my stance without internal conflict. I often cringed inside when some of the Native folks who avidly supported Prop 5 marshaled outdated and oversimplified tropes to attack labor's opposition to the proposition. On more than one occasion, in discussion with friends and classmates from the American Indian studies department, I felt the need to defend the historical necessity and overall objectives of the labor movement. Yet, in the next breath, I took pains to explain that despite my intimate connection to unions and union organizing, I was completely in favor of tribal gaming and tribal sovereignty and the proposition sustaining them in California. The thought-provoking discussions with friends, classmates, and union colleagues, on and around all sides of the gaming issue, led me to consider questions for which Indian gaming is only part of the answer: What is the nature of tribal labor relations? How do workers in Indian Country relate to corporate management in Indian Country?<sup>1</sup>

These questions strike at the heart of contemporary indigenous economic development and at broader issues of the process of indigenous self-determination. At stake are how much control indigenous communities have over shaping their economies and governing structures and how to do this in a way that is responsible to the people who participate in and are meant to benefit from economic development and political self-determination. This means considering the ways people enact economic and political self-determination from the top down and the ground up. Workers, who are the engine of indigenous economic development, have as much at stake in the process as policy makers, in large part because the jobs in these developing economies are often the only opportunities for miles around and years to come. Attending to tribal labor relations gives us a chance to look at what happens when indigenous leaders take on the power and responsibility of corporate management. As elected or appointed tribal economic administrators, they manage some employees who are tribal members and some who are not. With the former, they manage people they are meant to work in behalf of, in a broad political and economic sense, and at the same time to supervise in a more technocratic workplace setting. With the latter, they manage people who are not their political constituents and are not equally invested in the larger political, cultural, and social agendas of tribal economic development. Examining tribal labor relations, then, adds depth to our understanding of how globalization leads to unique and intricate economic, political, and civic relations at multiple levels.

Examining tribal labor relations is also important for what it can teach us about tribal sovereignty. In simple terms, tribal sovereignty is the right of tribes as political, cultural, and economic communities to decide how to govern themselves for themselves: it is the right of self-governance and self-determination. The goal of labor unionism is to secure for workers a collective say in terms of their work conditions. At first blush, these two agendas might seem at odds with each other in the context of tribal labor relations. Indeed, in the case of tribal gaming in California, labor unions sought to put legal limits on tribes' sovereign rights to make unilateral decisions about tribal economies and workplaces. But focusing on tribal labor relations shows us more than just the limits of tribal sovereignty; it gives us a new view of the characteristics of sovereignty as well. Tribal labor relations can be seen as a way for tribal governments to expand their governing jurisdiction and further enhance their day-to-day sovereignty. Moreover, asserting control in the affairs of tribal workplaces gives rank-and-file tribal members a say in how economic and political self-determination is enacted—not just for themselves as individuals but also for their communities as a whole. Hence, studying tribal labor relations reveals how the process of tribal sovereignty and self-determination is an interactive one between multiple on- and off-reservation forces.

Indian gaming is at both the center and the periphery of these questions of economic development, tribal sovereignty, and labor relations. The economic success of tribally operated casinos has put them at the heart of debates about tribal labor relations. As some of the most economically successful enterprises in Indian Country, with relatively

large, stable, and generally non-Native workforces, tribal casinos present a prime opportunity for labor unions seeking to expand membership. Moreover, local and global political and economic forces have created the context wherein the strongest and most aggressive unions in the United States are the ones that represent service employees such as casino workers.<sup>2</sup> Thus, certain prominent unions have directed concerted energy toward proactively participating in tribal labor relations. For these reasons—and because of a general fascination with anything Indian gaming related—tribally operated casinos have increased the public profile of the issue of tribal labor relations. Most recently, tribal casinos have become a venue for legal and political battles between indigenous nations and U.S. labor unions. In these courtroom and legislative battles, the terms of the debate have been defined as a zero-sum game between labor unionism and tribal sovereignty. And current legal decisions on tribal casino labor relations threaten to have drastic impacts not just on tribal labor relations in general but also on the exercise of tribal sovereignty, even outside the realm of tribal labor relations. The story of tribal labor relations, however, does not begin and end with tribal gaming.

As publicly prominent as gaming is, successful tribal gaming operations are only a small percentage of tribal economic enterprises. Moreover, only a small percentage of tribally operated casinos are tremendously financially successful (HPAIED 2008). In terms of overwhelming financial success, tribal casinos are the exception rather than the rule.<sup>3</sup> Tribal casinos can also be considered peripheral to the rest of economic development in Indian Country in that they are among the few tribally run economic enterprises wherein the majority of employees are not tribal members. Tribal labor relations and their connection to tribal self-determination are influenced differently when tribal citizens are the employees of the tribal enterprise. In this context, unions are not as readily coded as foreign intrusions seeking to infringe upon tribal sovereignty. Indeed, unions can become a tool with which indigenous workers can expand their voices in the economic *and* political processes of tribal self-determination.

It is the exceptionalism of tribal gaming that allows it to be simultaneously at the center and on the periphery of tribal labor relations and, for that matter, economic development in Indian Country as a whole. That is, the few outlying Native nations whose financial success is so threatening to nonindigenous commerce and polities are made examples of by non-Indian critics who call for regulation of Indian casinos and the tribal sovereignty that allows for them. Although the criticisms are leveled at and the limitations designed for a specific enterprise, they go beyond just the “offending” Native nations and threaten to restructure the whole order of indigenous sovereignty (Corntassel and Witmer 2008). When attention gets so focused on tribal gaming, it can drive trends throughout the political economy, federal Indian policy and law, and even indigenous discourse in Indian Country. At the same time, this intense focus obscures a whole host of things in Indian Country that have little or nothing to do with tribal gaming. Tribal labor relations span the tension between gaming and nongaming concerning issues and questions that are central to any tribally run economic enterprise.

*The Work of Sovereignty* explores political, economic, and cultural forces that structure and influence economic development in Indian Country from the perspective of workers. A fundamental goal of this book is to view indigenous self-determination from the vantage point of work and workers. My considerations coalesce around what I call tribal labor relations, the unique ways in which relationships between workers and management play out in Indian Country. I hone in on this relationship because it allows me to stitch together structural forces such as law, politics, governments, and markets with the people who are affected by and influence these institutions. I am particularly concerned with the people most affected by tribal labor relations: workers. My analytical privileging of workers comes from the fact that most research on tribal sovereignty and economic development focuses on the legal, governmental, and economic structures that delimit sovereignty, not on the people who experience and enact it through their everyday labor. Most American Indians experience tribal economic development not as theorists, policy architects, or legislators but as workers. *The Work of Sovereignty* is interested in how individuals as workers contribute to the larger collective goals of tribal sovereignty.<sup>4</sup>

Labor relations in Indian Country can be delineated by the interrelation between four variables: (1) tribal employees; (2) nontribal employees; (3) tribal enterprises; and (4) nontribal enterprises. I use the term *tribal labor relations* specifically to describe the interrelationship between variables 3 and 1, 3 and 2, or 3, 1, and 2. This definition of tribal labor relations is not just a geographic designation—that is, labor relations happening in Indian Country—but rather is based on the participation of tribal enterprises in labor relations. Arguably, this definition emphasizes the composition of management over the composition of labor, but it is the participation of a tribal enterprise that makes the labor relations inherent to the enterprise distinctly “tribal labor relations.”

In talking about a tribal enterprise, I mean an economic venture that is owned, sponsored, or run by a Native national government. This definition is critically important for understanding tribal labor relations; although some enterprises may appear to be commercial in nature, a tribal enterprise is a governmental entity, and therefore its employees are governmental employees. Not all the employees are tribal members with a distinct political/electoral relationship to the tribal government, but most U.S. labor laws construct the definition of governmental employees differently than that of private-sector employees. The difference is in large part a recognition that governmental enterprises are established for the benefit of citizens as a collective, not for individual investors or private shareholders. This is the case in almost all instances, whether a governmental enterprise is for profit or nonprofit. In the former, profits go into governmental coffers to support governmental activities and administration. In the latter, the enterprise is dedicated to serving the public, and any additional revenue created in this process goes back into the governmental enterprise or toward supporting other governmental services. Because of the importance of governmental enterprises to the act of governance, the relationship between these enterprises and their employees is often conceived of and regulated differently than it would be in private industry.

Tribal governmental enterprises are particularly important because in most cases they are the primary source of employment and generate much of the governmental revenue in Indian Country.<sup>5</sup>

Lastly, when talking about the labor side of tribal labor relations, I am not necessarily talking about unions' relationship to employees of tribal enterprises collectively, but about management's. In general U.S. labor relations, labor unions are the most common expression of workers' collective relationship with management.<sup>6</sup> Still, in this book, I also focus on tribal employees working concertedly for their workplace rights without being under the auspices of a union—unionization was one of the goals they were working toward.

Tribal labor relations is a phenomenon relatively unexamined, particularly from the perspective of indigenous workers. Much of this has to do with a general (non-indigenous) neglect of Indians as workers and of the work they do. As a corrective to this neglect, a growing number of historians and social scientists have begun to focus on how indigenous people experience work and the workplace. Also, public policy research on tribal economic development may focus on job creation and industrial development; however, little is mentioned of what effect this has on labor relations. The one academic discipline that has specifically attended to tribal labor relations is legal scholarship. The juridical approach has focused on how common law debates have structured formal jurisdiction over tribal labor relations. This approach is highly abstracted from people's everyday work experiences in Indian Country, though.

Disregard for indigenous work and workers has its roots in the larger and long-held settler colonial project of rationalizing the appropriation of Indian land by denying the work Indians did. Patrick Wolfe (2001:868) argues that "settler colonialism" is distinguished from other kinds of colonialism because its agenda is "to replace the natives on their land rather than extract surplus value by mixing their labor with a colony's natural resources.... [Settler] colonizers come to stay, expropriating the native owners of the soil...[and] introduc[ing] a zero-sum contest over land on which conflicting modes of production could not ultimately coexist." Settler colonialism overwrites Native occupancy with the argument that the land was not improved—not *worked* by indigenous peoples. Being unimproved meant that the land was not being used in a way (or through a mode of production) that implied possession. Therefore, it was surplus available for white expropriation. A counterpart to this logic of expropriation, or what Wolfe (2001) calls "the logic of elimination," was an attempt to assimilate Indians by compelling them to do certain kinds of work. Nineteenth- and twentieth-century assimilationist policies tried to make Indians into yeoman farmers through the Dawes Act of 1887 or into industrial laborers through boarding school vocational training (Littlefield 1991; Pfister 2004). The implication of these policies was that before they were enacted, Indians existed in a state of nature that did not qualify as "work." And, even if turn-of-the-past-century job training did assimilate some Indians into market economies, nonindigenous scholarship from the early twentieth century on ignored the class aspects of assimilationist tactics and focused instead

on issues of cultural assimilation. For example, salvage ethnography privileged a “vanishing,” “traditional” culture over the multiple ways in which indigenous peoples were actively engaged in contemporary economic systems. It assumed that cultural or “traditional” beliefs and practices kept Natives from entering market economies. This logic took either the extreme racist, social Darwinist perspective, that Indians were not prepared for or capable of participating in market economies, or a more seemingly neutral perspective, that Indians were too isolated to join market economies, either because of the historic economic and geographic limitations of reservations or because Natives actively chose to opt out of modernity and capitalism.<sup>7</sup>

Confronting these biases, many historians and historical anthropologists have recovered accounts of the working lives of American Indians. This research has emphasized three issues: (1) Native participation from the beginning in the growth of capitalism and modernism in America (e.g., Littlefield 1991; Pfister 2004; White 1991; Wolf 1982); (2) Native participation in wage labor on and off reservations (e.g., Hodge 1971; Hosmer and O’Neill 2004; Littlefield and Knack 1996; Meeks 2007; Norrgard 2009; O’Neill 2005; Weppner 1971); and (3) the extent to which we should read cultural activities such as arts, crafts, and tourism as labor—in addition to reading these activities for their meanings in terms of cultural representations (Dilworth 1996; Knack and Littlefield 1996; Raibmon 2005). This scholarship teaches us that blindness to indigenous work reinforces a version of the primitivist trope that constructs Native life as a cultural artifact not participating in but only affected by modernity. Attention to tribal labor relations further distinguishes our understanding of indigenous participation in the work spaces produced in modernity in that it illustrates how the meaning and terms of work are negotiated in Indian Country as part and parcel of the growth of tribal economies.<sup>8</sup> Above and beyond the historical and anthropological scholarship on the work indigenous people do (and have done), a focus on tribal labor relations looks at indigenous management of labor.

Much of the literature on tribal economic development treats indigenous peoples as fully modern subjects engaged in the process of nation building. This scholarship comes out of policy studies and social science research, and it analyzes and proscribes how to develop tribal economies and governments hand in hand. This indigenous nation building, though, seeks to be different from the model set up by modern, twentieth-century European nation-states. The policy analysts and social scientists propose a Native nation building that combines the form and structure of Euro-American economic and governmental institutions with traditional indigenous values and modes of relations.<sup>9</sup> The goal is tribal constitutionalism and tribal capitalism. However, the focus on the cultural aspects of economic development overlooks the notion of Indians as workers. Indeed, the only real discussion of employment comes in terms of job creation, and even this rarely deals with who is doing the actual work of tribal economic development and how they relate to tribal management and governments.

One thing lacking when work and workers are left out of discussions of tribal economic and political development is a discussion of the connection between markets

and citizenship. As tribes further develop their economies and governments, the relationship between tribal citizenship and labor in Indian Country will become increasingly significant because of two factors: (1) many tribes need to hire nonmembers to fully staff their economic ventures; and (2) the workplace can be used as a venue for both tribal members and nonmembers to assert their economic *and* political rights. In terms of the first factor, the demographics of most tribes demand that to a varying extent they staff their tribal enterprises with labor from outside Indian Country.<sup>10</sup> However, this is not to suggest that there is not a huge need for jobs for tribal members in many Native communities. This is where the second factor comes in; a major goal of tribal economic development is to reduce reservation unemployment. The availability of work, the kinds, and how work will be distributed have always been political questions in Indian Country, and this is particularly the case for employment in tribal governmental enterprises. Because tribal governmental enterprises are operated in behalf of tribal members, there is often public discussion of whether these enterprises are being run in the interest of the people. The workplace is a key forum for this discussion because employees of tribal enterprises have insight into day-to-day operations and are directly affected by them. In this regard, active participation in tribal labor relations can be about more than just localized work conditions; also it can be about holding tribal leaders accountable for how they enact economic development in behalf of the community. This partaking in the political life of the community fits conventional notions of citizenship as participation (see Bosniak 2000). Moreover, citizenship has long been thought to be articulated in, around, and through work (e.g., Bosniak 2000; Goldberg 2007; Gordon 2007; Kessler-Harris 2003; Marshall 1964; Ong 2006; Shklar 1991). Examining tribal labor relations illustrates how this happens in Indian Country because it reveals how tribal members and nonmembers relate to the public-sponsored venture of tribal nation building and tribal capitalism.

Tribal capitalism is an ideal model of Indian Country economic development because it envisions tribal government-sponsored economic enterprises that value a tribe's natural and cultural resources and that redistribute the revenues these generate (Champagne 2004; Smith 2000). The emphasis on the way Native cultural values are infused into tribal capitalism is generally approached from the perspective of tribal corporate management and the tribal political leaders who structure and oversee these enterprises. Although certainly a very important and significant perspective, it has left out the standpoint of Native employees and employees in general. How do indigenous and nonindigenous employees interact with tribal economic development, whether it is operated by their own tribal government or by an outside firm working in conjunction with the tribal government? And to what extent are indigenous people, as individuals, relevant to these models of development as tribal employees, not just as tribal members? Furthermore, this literature does little to reflect on responsible labor relations as part of responsible economic development. Instead, workers' significance to the project of tribal economic development and its success is understood by the way in which cultural identity and values of tribal members and nontribal members harmonize or clash



with a given strategy for economic development. The question of compatibility is primarily contemplated from a cultural perspective, not from the perspective of tribal members *as workers*. In decisions about tribal economic development, the collective labor resources of an indigenous community ought to be given the same weight as the cultural and natural resources. This is not to say that paying attention to tribal labor relations should be done at the expense of issues of cultural and ecological values, but rather in addition to them.<sup>11</sup>

Moreover, considering tribal economic development and nation building from the perspective of labor relations may shed a different light on our understanding of American Indian communities' relationships to globalization and labor relations in general in the current age of globalization. Tribal economic development that is responsible to the concerns of workers ensures that Indian Country does not become what Aihwa Ong (2006) describes as a zone of neoliberal exceptionalism, in which the drive to attract foreign capital investment and to compete on a global economic scale becomes so extreme that governments distribute rights in terms of what is expedient for profit margins rather than democratic notions of citizenship. If tribal capitalism is distinguished as being based on the ideals of redistribution over those of accumulation (Champagne 2004), then indigenous governments and tribal enterprises ought to be wary of implementing political, economic, and legal strategies that are used as neoliberal policies around the world. Attending to tribal labor relations means, then, considering how union-busting tactics and right-to-work laws affect indigenous communities and whether anti-unionism, or even unionism for that matter, is compatible with localized indigenous values. Equally relevant, examples of unionism that work in Indian Country because they are highly attuned to local needs might be instructive in the way unions ought to act in indigenous (and, potentially, nonindigenous) communities throughout the world.

Similarly, considering citizenship in the context of work in Indian Country and labor relations could contribute to broader ongoing discussions of postnational citizenship. Many scholars of globalization debate whether citizenship is still primarily a nation-state phenomenon and the extent to which it is becoming "denationalized," in the words of Linda Bosniak (2000), through transnational forces. As part of this debate, questions of citizenship are coalescing around globalization of labor, in the way labor migrates to find employment and in the way global capital travels the world to capture the cheapest labor market (see Barry 2006; Bosniak 2000; Chander 2006; Gordon 2007; Kessler-Harris 2003; Ong 2006). Ong claims that this process has led to

components formerly tied to citizenship—rights, entitlements, as well as nation and territoriality...becoming disarticulated from one another and rearticulated with government strategies that promote an economic logic in defining, evaluating, and protecting certain categories of subjects and not others.... We are beginning to see a detachment of entitlements from political membership and national territory, as certain rights and benefits

are distributed to bearers of marketable talents and denied to those judged to lack such capacity or potential. (Ong 2006:16)

She and others have noted how globalization and neoliberalism allow certain economic elites to cross different national territories in ways that grant them the same rights and benefits as local citizens or exceptional rights and benefits above and beyond those of local citizens.

Indian Country is also feeling the effects of the global movement of labor and capital as nontribal members come to reservations to work for, help manage, or even help capitalize tribal enterprises. In some cases, these people live on reservations or live near them and commute. What seems to be different about the movement in and out of Indian Country is the expectation that citizenship rights will travel with nonmembers to reservations. This is not just neoliberal exceptionalism for economic elites, but also for undifferentiated labor. The expectation of traveling citizenship likely has its roots in the assumption of continuity of citizenship and territory in the United States—Indian Country is not thought of as a distinguishable locale, because it is within U.S. national and territorial borders. U.S. courts have supported the expectation of traveling citizenship by limiting the authority of tribal governments mainly to members, not nonmembers (Aleinikoff 2002; Frickey 1999).

What this system creates is overlapping and crosscutting citizenship within one territory, where nontribal citizens have some important legal rights, such as criminal and civil rights protections, but not the same political rights and entitlements that tribal members have, such as voting rights, indigenous social services, and a share of tribal income. At its highest potential, this overlapping citizenship can be expressed in ways that allow for alliances against forces of neoliberalism. Tribal and U.S. citizenship rights can be conjoined to forestall neoliberal efforts to distribute rights based on profit margin, not on democratic ideals. At the same time, this overlapping can lead to contentious debates about which government's model of citizenship is the most valuable, just, or sacrosanct. My research on tribal labor relations bears out both collaborative and contentious overlapping as nontribal members and tribal members at the Navajo Nation work together to increase the accountability of tribal leaders or as tribes and unions fight in courtrooms about whose laws will most adequately protect tribal employees. Both examples of overlapping citizenship ought to further fine-tune our understanding of postnational citizenship.

Within Indian Country, the issue of citizenship is also paramount, because the legal right that tribes have over nontribal citizens demarcates and defines the limits of tribal sovereignty. Tribal labor relations play an important role in this debate as the courts adjudicate what legal jurisdiction tribal governments have in regulating non-member employees. It should come as no surprise, then, that the academic field that has given the most detailed consideration to tribal labor relations is legal scholarship. Its main focus is how tribal labor relations relate to tribal sovereignty. Analysis of opinions made by the National Labor Relations Board (NLRB) and state and federal judiciaries has charted the complicated and often contradictory development of the

common law that structures tribal labor relations (Buffalo and Wadzinski 1994–95; Grez 2005; Kemp 1995; Limas 1993; Rice 1996; Singel 2004; Thompson 2001). The main question of this legal analysis is, Under whose jurisdiction do tribal labor relations properly lie? From this perspective, tribal sovereignty is considered a question of jurisdiction: What governments and whose body of law should adjudicate what kind of tribal labor relations and under what circumstances? The debate in these court cases is whether federal labor law, specifically the National Labor Relations Act (NLRA), applies in Indian Country. This debate has structured jurisdiction as a zero-sum game and thus has played out as an adversarial relationship between labor unionism and tribal sovereignty. Argued and decided in this way, these cases have the potential impact of drawing tighter boundaries around tribal sovereignty in general, not just for the issue of labor relations. In this regard, it is important to pay attention to the jurisprudence of tribal labor relations for the way in which it may affect other aspects of federal Indian law and fit into larger patterns and judicial trends. Indeed, the contemporary jurisprudence of tribal labor relations provides an interesting barometer with which to measure juridical attitudes about both organized labor and tribal sovereignty. In recent years, the federal courts have not been friendly to either cause (see Aleinikoff 2002; Frickey 1999; Wilkins and Lomawaima 2001; Williams 2005 on tribal sovereignty; see Gross 1995; Lichtenstein 2002; Logan 2002; Tomlins 1985 on labor unions). As two causes that are under significant judicial attack are pitted against each other, judicial opinions on tribal labor relations might give us some sense of just how hostile the courts are to labor rights and tribal sovereignty rights.<sup>12</sup>

At the time of this writing, the most recent outcome of these adversarial legal deliberations has been rulings that favor union rights over tribal sovereign rights. Whether this will be the final word remains to be seen. But there is no denying the growing importance of tribal labor relations, particularly in regard to how tribal governments and enterprises need to make this issue a policy priority. Indeed, many have; they are increasingly developing their own legal structures for handling tribal labor relations, in the form of tribal ordinances and regulatory codes. This is in large part why tribal labor relations are so significant, because they represent the nexus of economic development and self-determination. Tribally run workplaces are among the key sites where tribal citizens (and noncitizens) directly experience—and have the potential to shape—the day-to-day enactment of tribal sovereignty. The economic articulation of tribal citizenship is at least as important as more purely political or cultural forms that might take shape through participation in electoral processes and governmental institutions or in ceremonial practices and kin networks. In fact, much of *The Work of Sovereignty* deals with how the tribal workplace and the labor relations therein become a forum for the expression of the political agendas of tribal self-determination. We should view the nexus of workers' rights and tribal sovereignty rights not in terms of conflict but in terms of the tremendous potential for expansion of tribal sovereignty—both in increasing the domain of tribal governance and law and in broadening democratic and grassroots participation in the exercise of tribal

self-determination.<sup>13</sup> This is how attention to tribal labor relations can make a significant contribution to the crucial ongoing conversations about tribal sovereignty and self-determination.

Tribal self-governance and communal identity have always been critical aspects of indigenous communities, but in the past thirty-some years, as the field of American Indian studies has developed, tribal sovereignty has been among the central concerns of both the academic discipline and the indigenous communities with which the discipline seeks to work collaboratively. In many ways, academic considerations of tribal sovereignty have their genesis in the U.S. and international indigenous political and legal activism that has pushed for recognition of the sovereign status of indigenous communities within settler colonialist boundaries (Alfred 1995; Anaya 2004; Barker 2005; Barsh and Henderson 1980; Biolsi 2005; Bruyneel 2007; Cobb 2005/2006; Ivison, Patton, and Sanders 2000; Warrior 1994; Wilkinson 2005). What these indigenous activists sought and continue to seek is the collective right of self-governance without interference from settler colonial nation-states and their political subgroups.<sup>14</sup> Activists and Native community leaders in the United States and Canada have increasingly described self-governance in terms of nationhood and peoplehood and have called for government-to-government relations between indigenous nations and settler colonial nation-states. In the United States, the executive branch has proclaimed this government-to-government relationship as the baseline framework for federal Indian policy decisions, but Congress still maintains a stance of plenary power over Native communities.

What is often debated and misunderstood—particularly from the outside—in the drive for indigenous collective rights of sovereignty and self-determination is the extent to which indigenous sovereignty means independence or separatism. Indigenous rights within settler colonialism are certainly based on notions of distinction and difference (Povinelli 2002; Simpson 2000), but this does not necessarily mean autonomy. Indeed, it is likely that the (mis)emphasis on sovereignty as autonomy has driven the hostility toward indigenous sovereignty. This certainly seems to be the case on the international stage. The world's major settler colonial nation-states were unwilling to be party to the United Nations Declaration on the Rights of Indigenous Peoples because they feared a disruption caused by autonomous polities within what they perceived to be their territorial boundaries (Scott 1996). Sovereignty as autonomy does not accurately describe the political, economic, and cultural nature of our globalized world today (if it ever did) (Deloria 1979; Stacey 2003; Wilkins and Lomawaima 2001; Young 2000, 2001). Sovereignty is more appropriately thought of in terms of relatedness or, as Jessica Cattelino (2008) calls it, “interdependent sovereignty.” This notion of sovereignty acknowledges the extent to which political communities depend upon one another but ought to be free from domination by one another. The sovereignty and self-determination of nondomination require that polities work out relationships based on compromises that allow for the mutual expression of political voice and need (Young 2001).

Following Iris Marion Young (2000, 2001) and Jessica Cattelino (2008), I read tribal labor relations through the notion of interdependent sovereignty. “Interdependent sovereignty” is the best way to describe the collaborative relationships within much of the noncasino-industry-based labor relations in Indian Country. Moreover, viewing sovereignty from an interdependent perspective seems to be the only way to break the legal and political stalemate that is growing around casino-industry-based tribal labor relations. The assumption that sovereignty means autonomy has created an argument, in which labor unions claim that tribal labor relations should be adjudicated solely on their terms—the NLRA—and tribes claim the converse—that their sovereignty trumps intervention of foreign regulation of labor. So far, the courts that have ruled in favor of labor unions have employed the logic of sovereignty as autonomy by setting untenable expectations of what tribal activities ought to look like to be exempt from NLRA jurisdiction. At the same time, tribal enterprises should not be too quick to label labor union organizers as foreign agitators who inherently contradict efforts toward tribal self-reliance. Although the extremes of this debate are almost exclusively engaged with tribal labor relations in the Indian gaming industry, the way in which the debates are settled legally and politically will likely affect the way labor relations are handled throughout Indian Country.

This book argues that what is needed is a greater balancing of workers’ rights and sovereignty rights, and viewing sovereignty as interdependent allows for this. I am not calling for indigenous communities to sacrifice their sovereignty to achieve this balance. On the contrary, I am suggesting that indigenous nations expand their exercise of sovereignty by more thoroughly taking labor relations into account and developing more detailed labor codes that include indigenous-based, independent judiciaries to adjudicate tribal labor relations. Undoubtedly, this change would require greater concessions from certain labor leaders and changes in federal court interpretation of federal labor law. Nevertheless, in settler colonial situations, the cards are inherently stacked against indigenous groups, so in almost all cases, balance can be achieved only by the settler colonial nation-state making the greater concessions. At the same time, indigenous political and economic leaders must recognize the interdependent nature of their sovereignty, engage unions in negotiation, and respect certain fundamental collective rights of tribal employees (whether or not they are tribal citizens). These employee rights and protections can be achieved just as thoroughly through indigenous forms of governance as through nonindigenous forms, if not more. Young’s (2001) notion of interdependent self-determination relies on a theory of freedom equal not to autonomy but rather to nondomination. Applied to tribal labor relations, this theory would put the onus on both labor *and* management to negotiate relationships that value and institutionalize workers’ voices through a democratic system of governance that simultaneously respects indigenous sovereignty. Labor relations are, after all, processes of negotiation, and tribal labor relations are ideally processes of equality, nondomination, and open negotiation.

Of course, the process can get tricky where the rubber hits the road. So *The Work*

*of Sovereignty* is not just about the legal jurisdictional debates over tribal gaming labor relations. Much of this book is about how labor relations play out on the ground in Indian Country, how tribal employees view their relationships with their bosses and tribal enterprises, and how this view connects to their enactment of indigenous self-determination. It is worth noting here that for the most part, I use the terms *sovereignty* and *self-determination* interchangeably. However, I do think there is a subtle but significant distinction, in that *self-determination* is a more process-oriented term. The word *sovereignty* in the political arena clearly originates in European monarchs' descriptions of their own power as heads of state (see Bartelson 1995). But with the advent of the nation-state, the term acquired meaning beyond just individual heads of state, and indigenous communities have adopted the term, if not the complete philosophy, to describe the collective rights of nationhood.<sup>15</sup> Indigenous peoples often use the term *self-determination* to talk about the same issues. But I feel that the active sense of self-determination—the “determining,” if you will—implies the enactment of or process of carrying out sovereignty.<sup>16</sup> Indeed, Robert Warrior (1994), interpreting the philosophies of Vine Deloria Jr., talks about sovereignty as a process rather than a thing or a static state of being. It is the exercise of sovereignty, the act of self-determining, that I am trying to get at by looking closely at how Navajo Nation health-care workers experience, impact, and reflect on indigenous sovereignty through tribal labor relations.

The Navajo Nation health-care workers' everyday experience of tribal labor relations provides a valuable contrast to the legal and political wrangling common to tribal casino-based labor relations. First and foremost, their experiences illustrate that unionism is not inherently contradictory to the goal of tribal self-determination. Their union—the Laborers' International Union of North America (LIUNA)—has made noninterference with tribal sovereignty an official policy. This position is easier to sustain, given that the Navajo Nation has its own collective bargaining code. Therefore, following the regulations of the code, LIUNA and its members are not just maintaining noninterference but also are participating in tribal self-determination. Moreover, as part of participating in the procedures of the tribal labor code, tribal citizens exercise self-determination through processes that parallel and supplement tribal electoral and governmental politics. Navajo Nation health-care workers use their positions as tribal employees to articulate their political voice in the enactment of tribal self-determination. These workers have used workplace activism, such as petition campaigns and public protests, to politicize tribal labor relations in ways that express their views on how tribal economic development and self-determination should be conducted. In this case, tribal labor relations offered a space in which to hold indigenous leaders accountable to what workers believed was a legitimate and responsible enactment of self-determination.

This Navajo Nation example provides an excellent case in which to examine tribal labor relations, particularly the relationship between indigenous self-determination and tribal sovereignty. The Navajo Nation has a well-developed export economy, much of which is based on mineral extraction and energy production. Additionally, civil

service—both federal and tribal governmental jobs—provides many jobs for the Diné (the Navajo people, literally translated, “The People”). More importantly, the Navajo Nation has one of the most comprehensive systems of tribal governance (Wilkins 1999). The tribal government consists of a well-developed tricameral structure, in which the executive, legislative, and judicial branches all enjoy a significant amount of independence. In addition to this centralized government, significant power is distributed to local and regional forms of governance and administration. Although the Navajo Nation operates without a constitution, it has a highly sophisticated set of codes that is very comprehensive in its coverage of issues and that generally attempts to blend traditional philosophies of governance with Western forms (Nielsen and Zion 2005; Wilkins 1999).<sup>17</sup>

The Navajo Nation’s sophisticated form of governance has a lot to do with its tremendous geographic, human, and natural resources—both those that can be tapped into and those in need of protection. The Navajo Nation is the largest Native nation in the United States in terms of geographic area and the second largest in terms of population. This prodigiousness, almost in and of itself, necessitates a comprehensive and detailed form of governance. The vastness of Navajo resources has also made the Navajo Nation a coveted space for external investment in extraction and energy production and has led to a long history of economic exploitation of Diné land. The origins of the modern Navajo centralized governments come out of this history; the Bureau of Indian Affairs (BIA) helped the Navajos form a centralized council in the 1930s with nearly the sole purpose of signing agreements with outside investors. The longevity of the interconnectedness between the growth of the Diné economy and the development of the modern Navajo Nation government has also created longevity of experience dealing with labor relations on the Navajo Reservation. Some of the earliest attempts at unionization in Indian Country happened at Navajoland (O’Neill 2005). The first key NLRB court case dealing with labor relations in Indian Country (*Navajo Tribe v. NLRB*, 1961) involved the Navajo Nation. And the Navajo Nation was one of the first tribal governments to pass its own collective bargaining code.

Given all these factors, the Navajo Nation might seem an exceptional place to study tribal labor relations. However, although other Native nations might not share legal, economic, political, and demographic facets to the same degree as the Navajo Nation, many reservations have similar enough experiences with tribal economic development to make aspects of Navajo labor relations analogous and generalizable to them. For example, a significant reason to study labor relations at the Navajo Nation is the fact that tribal policy and communal expression of labor relations are being worked out almost exclusively in the absence of tribal gaming. Tribal gaming—with its conventionally high instance of imported labor—has been driving many of the current trends in tribal labor relations, although gaming is unrepresentative of most tribal economies.<sup>18</sup> Therefore, studying tribal labor relations in a primarily nongaming context can be more instructive about what is going on in the rest of Indian Country, particularly in regard to civil service work.

It is also worth noting that by looking at health-care workers, I consider a form of employment similar to service-sector employment in tribal casinos. Of course, health-care workers and casino workers do not do the same kinds of work, but they are arguably more similar to each other than casino employees are to the industrial or construction workers common to other parts of Indian Country.

More importantly, though, a key reason to study health care as a location of tribal labor relations is that a growing number of Native nations are taking over the administration of health care for their communities. In the United States, this is happening through the Indian Self-Determination Act, and indigenous governments are enacting these takeovers to expand both tribal self-governance and tribal control of economies. Under this federal law, reservation health-care facilities become tribally run enterprises, and the employees become tribal employees. Even more significant, the most recent NLRB ruling (*Yukon II*) asserts that labor relations in the context of tribally run health-care facilities (unlike tribal casinos) can be negotiated under the jurisdiction of tribal governments, not the NLRA. In fact, this ruling was designed to be read in conjunction with a recent NLRB ruling on tribal gaming to jointly set the legal precedent for adjudicating tribal labor relations. Tribally run health-care facilities, like casinos, are key locales at the intersection of tribal labor relations and indigenous sovereignty.

In addition to the policy- and law-oriented significance of labor relations at Navajo Nation health-care facilities, this example allows me to follow the experiences of tribal employees through dramatic changes to their workplace and to evaluate how the changes affected perspectives on tribal labor relations. The health-care workers who agreed to share their stories with me went through a pivotal change in management of health-care facilities, initiated by the Navajo Nation Council. Many employees' responses to this change were strong collective actions that publicly asserted the importance of worker voices in tribal labor relations and even in how to manage a tribal enterprise undertaken in behalf of indigenous communities. Much of *The Work of Sovereignty* studies organizing campaigns and grassroots, ad hoc collective political actions carried out by employees trying to increase control over their workplaces and their say in the political life of their communities. By studying them, I take an on-the-ground approach to tribal labor relations that puts tribal workers at the center of the action. I focus on how indigenous community members square their economic, political, and social selves in ways that overlap, contradict, and run parallel to one another. Attending to indigenous peoples as both economic and political members of their community also sheds light on processes of indigenous self-determination that are not always as readily visible as those in courtrooms and tribal council chambers. As much as centralized tribal governments are key to sustaining indigenous self-determination, it must also come from the people, from the grassroots upward (e.g., Alfred 1995, 1999; Simpson 2000).

## **Methodologies**

In *The Work of Sovereignty*, I take my methodological cues from the interdisciplinary nature of American Indian studies—drawing on history, anthropology, sociology,



political science, and policy studies, among others. The field of American Indian studies has traditionally critiqued, retooled, and marshaled these key disciplinary approaches to illuminate Native experience and Native concerns from a Native perspective (Deloria 1988). More recently, scholars and activists working in and around indigenous studies have been committed to decolonizing the traditional methods of studying indigenous peoples, in order to make the academy more responsible to and useful for Native people's needs and agendas (e.g., Smith 1999). I heed these concerns by centering a significant portion of my research on tribal labor relations involving the experiences of indigenous workers.

*The Work of Sovereignty* is quite different from what I first envisioned. While working toward my PhD in anthropology, I originally conceived of a more traditional ethnographic study that would combine cultural and linguistic anthropology to answer questions about how union organizing happened in Indian Country. Following a union organizing campaign among Navajo Nation health-care workers, I sought to explore differences in the way non-Native professional organizers and Native workers and volunteer organizers approached and thought about language use in organizing conversations. So I followed union organizers as they talked to Navajo Area Indian Health Service (IHS) employees about a potential tribal government takeover of the management of their health-care facilities and convinced them to sign a petition affirming their collective bargaining rights. I then interviewed several Navajo employees and non-Navajo and Navajo organizers about these conversations. The more I interacted with Navajo health-care workers, the more I realized that this question of language use was not particularly interesting to them (and it soon became less interesting to me as well). What mattered more to them was how their work conditions might change and that they have a say in how the changes would take place. This concern persisted through the transition to tribal administration as workers at one hospital began various kinds of public protest to improve their working conditions. After the protests, I began interviewing workers at this facility and attending some of their community meetings. I learned from these employees that it was critically important for them to have a say in their labor relations. The interactions I had with these workers motivated me to change my focus to how labor relations play out in Indian Country, particularly how employees experience tribal labor relations.

This project on tribal labor relations is the product of relationships with labor organizers and Native workers and activists at the Navajo Nation over the course of seven years. I also work in an American Indian studies department in a state university and in a region of the state where questions of labor and indigenous political economy are acute. These experiences have certainly shaped my understanding of tribal labor relations as a whole. In my ongoing relationship with union organizers and health-care employee activists, I have shared this manuscript with them and invited and incorporated their feedback to make this story of tribal labor relations as much as possible their story.

I have used various ethnographic methods—interviewing, spending time with

workers and organizers, attending organizing and planning meetings, and observing and participating in a union recognition campaign—to get at how these people experience tribal labor relations. My research was conducted with approval from the Cultural Resources Office of the Navajo Nation Historic Preservation Department, along with notification to the chapter houses in areas where I conducted ethnographic research. All research with Navajo consultants was conducted with signed consent.

As Vicki Smith (2001) notes, ethnographic research in the workplace can be challenging, particularly when it involves issues of labor relations. Access to employees at their workplaces during working hours is understandably limited, given the potential for interference with normal workplace activities, and this concern is even greater in health-care settings such as hospitals. Moreover, specific precautions must be taken when talking to employees about their superiors. Most employees feel comfortable having conversations about their work conditions and labor relations out of earshot of their superiors and while remaining anonymous. Given the need to be circumspect, I do not use the real name of any person who consulted with me on this research, and many interviews with workers were conducted off the job site.<sup>19</sup> At the same time, through personal and professional connections, I was granted significant access to a union organizing campaign conducted at Navajo Area IHS facilities.<sup>20</sup> In this context, much of my ethnographic participant-observation time was spent in health-care facilities, where I joined LIUNA organizers during their many hours of the campaign and observed several hundred of their conversations with Navajo Area IHS workers. The organizers also let me sit in on many strategy sessions and planning meetings. However, I did not audiorecord any of the organizing conversations or strategy conversations, unlike my interviews. Nor did I record ad hoc meetings to discuss protest plans or meetings between workers and public officials. I decided that audio recording would disrupt the security and sanctity of these conversations and meetings. I did, however, take many field notes, on which I have based much of my analysis.

Another issue with ethnography in the workplace, as Smith (2001) notes, is the extent to which limited access to the workplace can hamper a researcher's ability to observe events that happen without much warning. For this study, I was unable to attend some important meetings and protests. For some events, my consultants shared their personal recordings with me.<sup>21</sup> But for all events discussed in this book—those I participated in and those I did not—an important part of my analysis is based on people's interpretations and recollections. These personal reflections are just as valuable, if not more, than my own participant observation. I think that getting at people's interpretations of their own experiences is one of the most important parts of studying human activities. This is most often where their values, beliefs, and opinions emerge.

My research for this project began in 2001, when I observed LIUNA's eight-month organizing campaign for Navajo Area IHS employees. The campaign sought to secure union recognition for the employees in the event that the Navajo Nation took over administration of IHS facilities. Following the campaign took me all over the Navajo Nation and its surrounding border-town communities. I visited health-care facilities

and communities of various sizes in different regions of the approximately 26,000-square-mile reservation, in the Four Corners region of the United States. Visits included larger hospitals in sizable reservation population centers such as Tuba City, Arizona; Shiprock, New Mexico; and Fort Defiance, Arizona; and large hospitals in large reservation border towns such as Gallup, New Mexico. Additionally, I went to smaller clinics in the medium-sized towns of Crownpoint, New Mexico; Kayenta, Arizona; and Chinlee, Arizona; and to remote clinics such as Inscription House in Arizona and Dzilth-Na-O-Dith-Hle in New Mexico. In addition to the multiple trips made in the course of observing organizing in these facilities, I returned to many of them to interview employees there. These travels gave me a comprehensive cross section of the different communities and regions of the Navajo Nation and a sense of the various sizes and kinds of workplaces. Moreover, at all the facilities, I interacted and consulted with a broad range of workers, from medical staff such as doctors, nurses, and physician's assistants, to janitorial and maintenance staff, to clerical and administrative employees.

The second phase of my field research took place in the summer of 2005, when I did a more intensive study of one health-care facility, the hospital at Tuba City. This research was done during a time when hospital employees were actively protesting the state of labor relations at the hospital and attempting to improve their work conditions. This research included many intensive interviews with employees and workplace activists and attendance at public meetings held to address problems with tribal labor relations at the Tuba City hospital. My research at Tuba City provided a valuable complement to my work following the union organizing campaign, because it allowed me to look in further depth at labor relations in one facility. Moreover, it provided an important longevity component to my project in that it allowed me to follow the process of the tribal takeover of health care and to look at the effect this had on labor relations. Between and after these two concentrated periods of fieldwork, I went back to the Navajo Nation communities multiple times each year to maintain open conversations with my consultants.

### ***The Book's Structure***

This book is divided into two parts: Part 1, "Labor Relations in Indian Country," and Part 2, "Organizing in Indian Country: Navajo Labor Relations." The first part contains two chapters that trace the historical, legal, economic, political, and sociocultural development of workers' rights in Indian Country. Some scholars have argued that capitalism is uniquely practiced in Indian Country because of indigenous values placed on community responsibility and group benefit over individual benefit (Champagne 2004). In chapter 2, "The Legal, Political, and Social Contexts," I make the case that tribal labor relations are also unique because of the legal and political specifics of tribal sovereignty and tribal sociocultural values. This chapter reviews federal legislation and NLRB and federal case law, as well as policy decisions made by tribal leaders, tribal corporations, labor unions, and nontribal corporations that have shaped contemporary tribal labor relations. Chapter 3, "Tribal Structuring of Labor Relations," looks at how

tribal governments have attempted to regulate labor relations through tribal labor laws and governing structures. Here I consider local political decisions and sociocultural values as they are expressed in tribal labor codes that have the potential to offer local models of tribal labor relations and innovative realizations of workers' rights, such as using tribal judiciaries and peacemaker courts to adjudicate labor relations.

The second part of this book, "Organizing in Indian Country: Navajo Labor Relations," is a case study of tribal labor relations at the Navajo Nation, divided into three chapters. Chapter 4, "Navajo Nation Politics and Pragmatic Unionism," historicizes recent expressions of labor relations at the Navajo Nation within the context of Navajo tribal politics and previous Navajo worker participation in unionism. Here I look at how Navajo politics often is expressed as tension around actions and decisions made by the centralized tribal government, the Navajo Nation Council. From its inception, the Navajo Nation Council has played an active role in economic development decisions, and the Navajo people have engaged in public debate about how its decisions affect their lives. At different times, the Navajo government and Navajo workers have engaged unionism as part of public political debates—on both tribal-wide and local levels. This engagement has been more frequently characterized by a pragmatism that uses labor unions to meet the expediencies of particular political and economic needs than by a long-term commitment to labor movement unionism. In chapter 5, "The Campaign for Union Recognition," I examine tribal labor relations and employee activism during a 2001 campaign to maintain union recognition for Navajo Nation health-care employees. This chapter looks at how Navajo health-care workers utilized workplace politics and union organizing tactics to assert their voice in the larger processes of tribal self-determination. Moreover, their support for unionization staked a claim for what they considered responsive tribal labor relations; Navajo health-care workers were no more willing to go without the mediating force of union representation when dealing with tribal management as when working under federal management. And lastly, chapter 6, "Grassroots Expressions of Tribal Labor Relations," is the story of a bold ad hoc group of workers and community members who protested what they perceived to be mismanagement and abusive treatment of Tuba City hospital employees. The group utilized grassroots tactics such as picket-line protests, pamphleteering, and newspaper editorials to make their voices heard. Through the sheer will of their workplace and community activism, they were able to force the resignation of two CEOs, restore the jobs of terminated employees, and gain institutionalized accountability over members of the hospital's board of directors. To this day, they continue to demand union representation. Their example illustrates the extent to which community members see their work conditions and tribal labor relations as vital components of responsible tribal economic development and self-determination. Risking their jobs, grassroots activists asserted their voices in the political life of the tribe and influenced the implementation of tribal labor relations, economic policy, and self-determination. Finally, in the epilogue, I conclude the book with my thoughts about the direction in which tribal labor relations might be headed.