

Does Expanding Tribal Jurisdiction Improve Tribal Economies: Lessons from Arizona

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In 2013, Congress reaffirmed tribes' inherent authority to prosecute all persons who commit dating violence, domestic violence, or violate a protective order against Indian women on tribal land in the Violence Against Women Reauthorization Act (VAWA). Congress required tribes to comply with strict procedural safeguards to implement VAWA. Although VAWA was not designed to stimulate tribal economies, its due process provisions may be considered judicial improvements. Stronger judiciaries have been consistently linked to greater economic performance. Accordingly, we test whether implementing VAWA improved tribal economies. This analysis compares the income growth of VAWA-implementing tribes in Arizona to neighboring non-implementing tribes. Our findings show that incomes grew faster for VAWA-implementing tribes than for non-implementing tribes in Arizona.

INTRODUCTION

The Supreme Court's 2020 decision in *McGirt v. Oklahoma*¹ was a landmark victory for tribal sovereignty. In *McGirt*, the Court held the Muscogee Creek Nation's reservation—and by implication, the reservations of the other tribes in eastern Oklahoma—had never been disestablished.² Accordingly, *McGirt* recognized forty-three percent of Oklahoma as Indian country.³ Acknowledging the land as Indian country has substantial

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1. 140 S. Ct. 2452 (2020).

2. *Id.* at 2482.

3. *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2499 (2022).

implications for governance.⁴ While Justice Neil Gorsuch believed the jurisdictional questions raised by *McGirt* were surmountable,⁵ Chief Justice John Roberts declared *McGirt* “mires state efforts to regulate on reservation lands in significant uncertainty, guaranteeing that many efforts will be deemed permissible only after extensive litigation, if at all.”⁶

Two years after *McGirt*, the Supreme Court rewrote foundational principles of Indian law for the alleged purpose of allaying jurisdictional confusion in *Oklahoma v. Castro-Huerta*.⁷ States have been prohibited from asserting jurisdiction over reservation crimes involving Indians absent a federal law to the contrary since the United States’ earliest days.⁸ Tribes generally lack criminal jurisdiction over non-Indians.⁹ Hence, criminals exploited this legal regime in post-*McGirt* eastern Oklahoma.¹⁰ The Court believed extending state jurisdiction over non-Indians on Oklahoma’s reservations would enhance tribal safety.¹¹ However, Justice Gorsuch, along with three other Justices, dissented.¹² He questioned whether expanding state jurisdiction would improve reservation safety¹³ and claimed the majority allowed the rule of law to fall to Oklahoma’s “unlawful power grab.”¹⁴ Although the majority said *Castro-Huerta* applies throughout the United

4. *McGirt*, 140 S. Ct. at 2480 (“Finally, the State worries that our decision will have significant consequences for civil and regulatory law.”).

5. *Id.* at 2481 (“But it is unclear why pessimism should rule the day. With the passage of time, Oklahoma and its Tribes have proven they can work successfully together as partners.”).

6. *Id.* at 2501 (Roberts, C.J., dissenting).

7. *Castro-Huerta*, 142 S. Ct. at 2511 (Gorsuch, J., dissenting) (“Truly, a more ahistorical and mistaken statement of Indian law would be hard to fathom.”).

8. Brief of Amici Curiae Federal Indian Law Scholars and Historians in Support of Respondent at 2, *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022) (No. 21-429), 2022 WL 1052058 (“Indian affairs have long been a domain of traditional and exclusive federal power. The U.S. Constitution firmly resolved any confusion wrought by the Articles of Confederation as to whether state or federal governments asserted power over Native people, Indian affairs, and the regulation of Indian Country. The Founders understood that the exclusion of state power was necessary to stabilize relations with Native nations, facilitate trade, and avoid wars that the fledgling United States could not afford.”).

9. *See* *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding that non-Indians that were residents of the reservation couldn’t be tried by the reservation’s tribe because Congress did not affirmatively delegate such power to tribes).

10. *See, e.g.*, Acee Agoyo, ‘Shame on You’: Authorities Warn Criminals Not To Make False Claims About Indian Status, INDIANZ (Aug. 12, 2020), <https://www.indianz.com/News/2020/08/12/shame-on-you-authorities-warn-criminals.asp> [<https://perma.cc/4DN3-47XX>].

11. *Castro-Huerta*, 142 S. Ct. at 2501–02.

12. *Id.* at 2505.

13. *Id.* at 2523 (Gorsuch, J., dissenting) (“The Court also neglects to consider the actual experience with concurrent state jurisdiction on tribal lands.”).

14. *Id.* at 2505.

States,¹⁵ Justice Gorsuch noted the majority's reasoning *ipso facto* limits the holding to eastern Oklahoma.¹⁶ Thus, Indian country remains replete with legal uncertainty.¹⁷

Legal uncertainty is the culprit of many of Indian country's socio-economic problems. It is well-known that criminals exploit Indian country's complicated legal landscape.¹⁸ As a result, Indians have the highest rate of violent victimization in the United States,¹⁹ and the violence Indian women endure is particularly severe.²⁰ More than half of Indian women will be victims of sexual and intimate partner violence during their lifetime.²¹ "Over ninety percent of Indian women experience intimate partner violence perpetrated by non-Indians during their lifetime, many of whom intentionally exploit tribes' lack of jurisdiction over them."²² On some reservations, Indian women are murdered at a rate more than ten times the national average.²³ Indeed, the number of missing and murdered Indian women has reached crisis levels.²⁴

15. *Id.* at 2504 n.9 (majority opinion) ("The Court's holding is an interpretation of federal law, which applies throughout the United States: Unless preempted, States may exercise jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.").

16. *Id.* at 2526 n.19 (Gorsuch, J., dissenting) ("Even more than all that, the Court ultimately retreats from its claim that statehood confers an 'inherent' right to prosecute crimes by non-Indians against tribal members on tribal lands. It rests instead on a 'balancing test' that makes anything it does say about the 'inherent' right of States to try cases within Indian country dicta through and through.").

17. *Id.* at 2527 ("Nor must Congress stand by as this Court sows needless confusion across the country.").

18. See Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(4)(A-B), 124 Stat. 2261, 2262 (2010) ("[T]he complicated jurisdictional scheme that exists in Indian country . . . has a significant negative impact on the ability to provide public safety to Indian communities . . . [and] has been increasingly exploited by criminals . . .").

19. JENNIFER L. TRUMAN & LYNN LANGSTON, CRIMINAL VICTIMIZATION, 2013, at 6 (2014), <https://www.bjs.gov/content/pub/pdf/cv13.pdf> [<https://perma.cc/WT3A-KDRE>].

20. See Tribal Law and Order Act of 2010, *supra* note 18, at § 202(a)(5)(A) ("[D]omestic and sexual violence against American Indian and Alaska Native women has reached epidemic proportions . . ." with 34% being raped in their lifetimes and 39% being subjected to domestic violence.).

21. Andre B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, NAT'L INST. JUST. J. 1, 2 (2016).

22. *Id.* at 47.

23. See S. REP. NO. 115-411, at 2 (2018); S. REP. NO. 112-153, at 7-8 (2012) (Conf. Rep.).

24. See ANNITA LUCHESI & ABIGAIL ECHO-HAWK, MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS 2 (2018), <https://www.uhi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> [<https://perma.cc/6BXY-FYC5>]; Press Release, Catherine Cortez Masto, U.S. Sen., Cortez Masto, Murkowski Reintroduce Savanna's Act (Jan. 28, 2019), <https://www.cortezmasto.senate.gov/news/press-releases/cortez-masto-murkowski-reintroduce-savannas-act> [<https://perma.cc/8QGT-Z4UH>].

Congress took a step towards addressing the trouble caused by legal constraints on tribal jurisdiction in 2013. That year, Congress reaffirmed tribes' inherent authority to prosecute *all persons* who commit dating violence, domestic violence, or violate a protective order against Indian women on tribal land in the Violence Against Women Reauthorization Act (VAWA).²⁵ VAWA faced staunch opposition premised on the idea tribal courts cannot treat non-Indians fairly.²⁶ Responding to this concern, Congress required tribes to comply with strict procedural safeguards before implementing VAWA.

Congress has yet to address tribal jurisdiction in the economic sphere, and jurisdictional confusion has long been named as an impediment to tribal economic development.²⁷ Not knowing whether to comply with tribal or state law creates uncertainty, and uncertainty is bad for economies. Moreover, investors fear tribal courts will deprive them of property without due process of law.²⁸ Concern about tribal courts leads businesses to contest tribal court jurisdiction, which is expensive and time-consuming.²⁹ As a result, Indian country is viewed as a riskier investment than other United States jurisdictions.³⁰ Thus, worries about tribal legal institutions hinder tribes' ability to attract capital.

Despite being limited to a few criminal offenses, VAWA may have spillover effects on tribal economies. VAWA's procedural requirements and jurisdictional expansion can be considered rule of law improvements. The rule of law means conduct is governed by a uniform, publicly available set of rules applied equally throughout society rather than the arbitrary whims of those in power.³¹ The rule of law leads to economic development by ensuring

25. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

26. See Jennifer Bendery, *Chuck Grassley on VAWA: Tribal Provision Means 'the Non-Indian Doesn't Get a Fair Trial'*, HUFFPOST (Feb. 21, 2013, 5:33 PM), https://www.huffpost.com/entry/chuck-grassley-vawa_n_2735080 [<https://perma.cc/T97H-B2SW>].

27. PRESIDENTIAL COMM'N ON INDIAN RSRV. ECON., REP. & RECOMMENDATIONS TO THE PRESIDENT OF THE U.S. 38 (Nov. 30, 1984) [hereinafter REP. & RECOMMENDATIONS], https://files.eric.ed.gov/fulltext/E_D252342.pdf [<https://perma.cc/W4UP-FCAV>]; see also Joel Pruett, *Nothing Personal (or Subject Matter) About It: Jurisdictional Risk as an Impetus for Non-Tribal Opt-Outs from Tribal Economies, and the Need for Administrative Response*, 40 AM. INDIAN L. REV. 131 (2016).

28. REP. & RECOMMENDATIONS, *supra* note 27, at 41.

29. *Id.* at 40.

30. See *id.*

31. See *United States v. United Mine Workers of Am.*, 330 U.S. 258, 312 (1947) (Frankfurter, J., concurring) ("There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every

individuals have their rights fairly enforced.³² Hence, businesses' incentives to invest increase if they feel more confident about investing in a tribal jurisdiction whose court abides by VAWA's procedural safeguards, as compared to tribal jurisdictions that are unrestrained by the United States' Constitution and whose laws may not be easily accessible.³³ This is the first paper to examine whether VAWA has an impact on tribal economies empirically.

The remainder of this paper proceeds as follows. Part I provides a history of the jurisdictional rules governing Indian country. It begins before European contact and discusses key developments through the modern era. Part II focuses on the VAWA. It examines why VAWA was implemented, its key legal aspects, and its effect on Indian country crime. Part III examines whether VAWA affected the median family income of implementing tribes and concludes VAWA had a significant, positive effect on the median family income of implementing tribes.

I. THE RULE OF LAW AND UNCERTAINTY IN INDIAN COUNTRY

Tribes have existed as sovereigns since time immemorial. While each tribe was different,³⁴ all recognized the rule of law. Each tribe punished the crimes committed within its borders.³⁵ Sanctions varied across tribes and the type of crime but would have included restitution, banishment, and the death penalty.³⁶ Tribes also developed private law regimes recognizing private

man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility."); *see also* *What is the Rule of Law*, UNITED NATIONS, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> [<https://perma.cc/NA7S-QS6K>].

32. Ibrahim F.I. Shihata, *The Role of Law in Business Development*, 20 FORDHAM INT'L L.J. 1577, 1578 (1997) ("There is ample evidence that the establishment of the rule of law attracts private investment, to the extent that it creates a climate of stability and predictability, where business risks may be rationally assessed, property rights protected, and contractual obligations honored.").

33. *See* *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) ("As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority."); *United States v. Bryant*, 136 S. Ct. 1954, 1962 (2016) ("The Bill of Rights, including the Sixth Amendment right to counsel . . . does not apply in tribal-court proceedings.").

34. Kristen A. Carpenter & Angela R. Riley, *Privatizing the Reservation?*, 71 STAN. L. REV. 791, 808–09 (2019) (highlighting the range of language, religion, culture, and governance structures among tribes).

35. ANGLIQUE TOWNSEND EAGLEWOMAN & STACY L. LEEDS, *MASTERING AMERICAN INDIAN LAW* 46–47 (2d ed. 2013).

36. *Id.*

property rights in personal items, land, water bodies, and intellectual property.³⁷ Tribes enforced contracts³⁸ and possessed various mechanisms to perfect security interests.³⁹ Indigenous commercial law facilitated the development of transcontinental trade networks.⁴⁰

Tribes continued to exercise sovereignty over all persons on their land after European contact.⁴¹ Accordingly, the United States recognized tribal sovereignty in the Constitution.⁴² One of the first laws passed by Congress regulated Indian country commerce involving non-Indians.⁴³ However, tribal law was more important than the federal rules because the fledgling United States lacked the capacity to enforce federal law in the vast Indian territory.⁴⁴ Commercial disputes between non-Indians and Indians often led to violence.⁴⁵ Thus, the United States and multiple tribes entered treaties

37. Adam Creppelle, *Decolonizing Reservation Economies: Returning to Private Enterprise and Trade*, 12 J. BUS. ENTREPRENEURSHIP & L. 413, 417–18, 422 (2019).

38. See *Conley v. Cloud*, 2 Am. Tribal Law 289, 293 (2000) (“Although the tribe would not have traditionally dealt in terms of currency, the sanctity and attendant responsibilities of an agreement were recognized as self-evident.”); John W. Ragsdale, Jr., *The Rise and Fall of the Chacoan State*, 64 UMKC L. REV. 485, 542 (1996) (“The legal tools chosen and employed by the sovereign Chacoan state included, inferentially, a form of promissory exchange or contract.”); Rennard Strickland, *Wolf Warriors and Turtle Kings: Native American Law Before the Blue Coats*, 72 WASH. L. REV. 1043, 1056 (1997) (“Comanches religiously kept their agreements.”).

39. Adam Creppelle, *Getting Smart About Tribal Commercial Law: How Smart Contracts Can Transform Tribal Economies*, 46 DEL. J. CORP. L. 469, 474 (2022) (“Tribes also had security devices—including intermarriage, ceremonies, and pledges.”) (citations omitted).

40. Adam Creppelle, *The Time Trap: Addressing the Stereotypes that Undermine Tribal Sovereignty*, 53 COLUM. HUM. RTS. L. REV. 189, 230–32 (2021).

41. WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 161 (7th ed. 2020) (“In colonial days, the Indian territory was entirely the province of tribes, and they had jurisdiction in fact and theory over all persons and subjects present there.”); G.D. Crawford, *Looking Again at Tribal Jurisdiction: “Unwarranted Intrusions on Their Personal Liberty”*, 76 MARQ. L. REV. 401, 420 (1993) (noting that certain tribes claimed criminal jurisdiction over non-Indians prior to the Supreme Court’s decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)).

42. U.S. CONST. art. I, § 8., cl. 3 (containing the Indian Commerce Clause, which is considered the primary vehicle for recognizing and defining tribal sovereignty).

43. Trade and Intercourse Act of 1790, ch. 33, § 5, 1 Stat. 137, 138 (codified as amended at 25 U.S.C. § 177).

44. Matthew L.M. Fletcher & Leah Jurss, *Tribal Jurisdiction—A Historical Bargain*, 76 MD. L. REV. 593, 599 (2017) (“Even Congress, at times, seemed to understand that tribal regulations were of greater import than federal Indian trader statutes, which proved to be an ineffective means to govern Indian trade.”).

45. Brief of Amici Curiae Federal Indian Law Scholars and Historians in Support of Respondent, *Oklahoma v. Castro-Huerta*, 142 U.S. 2486 (2022) (No. 21-429), 2022 WL 1052058, at *8–12.

recognizing tribal criminal jurisdiction over non-Indians.⁴⁶ These treaties also permitted the United States to assert criminal jurisdiction in Indian territory when a United States citizen was the victim of an Indian crime.⁴⁷

In 1831, the Supreme Court classified tribes as “domestic dependent nations” rather than full sovereigns,⁴⁸ and tribes were forced onto reservations.⁴⁹ Tribes were guaranteed the right to govern themselves free from outside interference on reservations in numerous treaties.⁵⁰ Tribal government extended to non-Indians as tribes asserted civil⁵¹ and criminal jurisdiction over non-Indians.⁵² However, the federal government began severely infringing upon tribes’ right to self-govern during the 1880s.⁵³ The Supreme Court held states had exclusive criminal jurisdiction over

46. See, e.g., Treaty with the Chickasaw, U.S.-Chickasaw Nation, art. IV, Jan. 10, 1786, 7 Stat. 24 (“If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands hereby allotted to the Chickasaws to live and hunt on, such person shall forfeit the protection of the United States of America, and the Chickasaws may punish him or not as they please.”).

47. See, e.g., *id.* at art. V (“If any Indian or Indians, or persons residing among them, or who shall take refuge in their nation, shall commit a robbery or murder, or other capital crime, on any citizen of the United States, or person under their protection, the tribe to which such offender or offenders may belong, or the nation, shall be bound to deliver him or them up to be punished according to the ordinances of the United States in Congress assembled: Provided, that the punishment shall not be greater, than if the robbery or murder, or other capital crime, had been committed by a citizen on a citizen.”).

48. *Cherokee v. Georgia*, 30 U.S. 1, 10 (1831).

49. Indian Removal Act of 1830, ch. 148, 4 Stat. 411 (repealed 1980).

50. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2477 (2020) (“And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves.”); Andrew Jackson, President of the U.S., First Annual Message to Congress (Dec. 8, 1829) (transcript available at *December 8, 1829: First Annual Message to Congress*, MILLER CTR.: PRESIDENTIAL SPEECHES, <https://millercenter.org/the-presidency/presidential-speeches/december-8-1829-first-annual-message-congress> [<https://perma.cc/4DE4-XY3T>] (“As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any state or territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes.”).

51. *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 855 n.17 (1985); Gregory Ablavasky, *Beyond the Indian Commerce Clause*, 124 Yale L.J. 1012, 1086, n.400 (2015) (“It also ignores historical evidence suggesting that the federal government not only permitted, but oversaw, tribal court jurisdiction exercising tribal sovereignty over non-Natives.”).

52. Paul Spruhan, “*Indians, in a Jurisdictional Sense*”: *Tribal Citizenship and Other Forms of Non-Indian Consent to Tribal Criminal Jurisdiction*, 1 AM. INDIAN L.J. 79 (2012).

53. See *United States v. McBratney*, 104 U.S. 621, 624 (1882).

reservation crimes involving only non-Indians in 1882.⁵⁴ A few years later, the federal government claimed concurrent authority with tribes over reservation crimes involving only Indians.⁵⁵ The United States began eliminating reservations and tribal institutions with the General Allotment Act of 1887 (GAA).⁵⁶ This added further instability to Indian law as the Supreme Court held allotment could occur despite tribal opposition and in violation of treaties,⁵⁷ which under the Constitution are “supreme law of the land.”⁵⁸

The GAA ended with the Indian Reorganization Act of 1934 (IRA), which empowered tribes to adopt constitutions and develop court systems.⁵⁹ However, federal support for tribal sovereignty decreased in the aftermath of World War II as the United States adopted a policy of tribal termination.⁶⁰ On the jurisdictional front, Congress granted six states criminal jurisdiction and civil adjudicatory jurisdiction over the reservations within their borders with Public Law 83-280 (PL 280).⁶¹ The stated purpose of PL 280 was to improve law and order on reservations;⁶² nevertheless, some scholars suggest that its

54. *Id.*

55. Indian Major Crimes Act, ch. 341, § 9, 23 Stat. 385 (codified as amended at 18 U.S.C. § 1153). The original Act of 1885 extended federal jurisdiction into Indian country for the crimes of murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny. The current code has been amended to include additional crimes.

56. General Allotment Act, Pub. L. No. 49-105, ch. 119, 24 Stat. 388, repealed by Indian Land Consolidation Act Amendment, Pub. L. No. 106-462, Title I, § 206(a)(1). Theodore Roosevelt, President of the U.S., Message to Congress (Dec. 3, 1901), https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=720 [<https://perma.cc/LWK9-U7VN>] (“The General Allotment Act is a mighty pulverizing engine to break up the tribal mass...”); *Mattz v. Arnett*, 412 U.S. 481, 496 (1973) (“Unallotted lands were made available to non-Indians with the purpose, in part, of promoting interaction between the races and of encouraging Indians to adopt white ways.”).

57. *See Lone Wolf v. Hitchcock*, 187 U.S. 553, 566–68 (1903).

58. U.S. CONST. art. VI.

59. Indian Reorganization Act, ch. 576, 48 Stat. 984 (codified as amended in scattered sections of 25 U.S.C.).

60. *Crepelle*, *supra* note 37, at 440 (“The era of the Indian New Deal came to a close in the aftermath of the Second World War and was replaced by the assimilationist tribal termination policy.”).

61. 18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a).

62. *See Bryan v. Itasca Cnty.*, 426 U.S. 373, 379 (1976) (“The primary concern of Congress in enacting Pub. L. 280 that emerges from its sparse legislative history was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement.” (citation omitted)); M. Brent Leonhard, *Returning Washington P.L. 280 Jurisdiction to Its Original Consent-Based Grounds*, 47 GONZ. L. REV. 663, 695 (2012); Erin E. White, *Fresh Pursuit: A Survey of Law Among States with Large Land Based Tribes*, 3 AM. INDIAN L.J. 227, 229 (2014) (“Congress, perceiving a particular lawlessness in Indian Country, enacted Public Law 83-280 (Public Law 280) in 1953.”).

actual purpose was to reduce federal expenditures.⁶³ Consistent with the latter view, the federal government did not provide states with funds to police reservation lands.⁶⁴ Further, tribes in PL 280 states were also often excluded from federal funding for their court systems.⁶⁵ Some scholars suggest that PL 280 reservations experienced higher crime rates than reservations in non-PL 280 states.⁶⁶ Additionally, PL 280 has led to confusion over whether state or tribal law applies on reservations.⁶⁷

Federal termination policies severely undermined tribal sovereignty, but the Supreme Court affirmed tribal law governs reservation transactions involving Indians in the 1959 case of *Williams v. Lee*.⁶⁸ The case arose when Hugh Lee sought to enforce a debt the Williamses, citizens of the Navajo

63. See Carole Goldberg, Duane Champagne & Heather Valdez Singleton, *Final Report: Law Enforcement and Criminal Justice Under Public Law 280*, at 7 (2007) (unpublished report) (on file with the Department of Justice), <https://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf> [<https://perma.cc/ZCG3-H6Q5>] (“While this failure to authorize or appropriate federal funds for Public Law 280 states is understandable given Congress’ goal of reducing the federal budget, it left local governments in a difficult situation.”).

64. See LAURENCE ARMAND FRENCH, *POLICING AMERICAN INDIANS: A UNIQUE CHAPTER IN AMERICAN JURISPRUDENCE* 65 (2016) (noting PL 280 states “were not pleased with this unfunded mandate and tended to neglect and harass their Indian charges”); Eric Lichtblau, *California Shorted on Tribal Police Funding*, L.A. TIMES (Oct. 28, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-oct-28-mn-27258-story.html> [<https://perma.cc/WYX7-SXY2>] (discussing the underfunding of tribal law enforcement in California, a mandatory PL 280 state, and state law enforcement’s neglect of reservations).

65. Carole Goldberg, *Unraveling Public Law 280: Better Late Than Never*, 43 HUM. RTS. 11, 11 (2017) (“Furthermore, since the 1970s, when tribal law enforcement and court systems were developing and receiving federal funding support, Public Law 280 tribes were told they did not need the federal funds because states had taken over. Growth of tribal justice systems suffered in Public Law 280 states.”).

66. Samuel E. Ennis, *Reaffirming Indian Tribal Court Criminal Jurisdiction over Non-Indians: An Argument for a Statutory Abrogation of Oliphant*, 57 UCLA L. REV. 553, 571 (2009); Daniel Twetten, *Public Law 280 and the Indian Gaming Regulatory Act: Could Two Wrongs Ever Be Made into a Right?*, 90 J. CRIM. L. & CRIMINOLOGY 1317, 1318 (2000).

67. E.g., Adam Creppelle, *Protecting the Children of Indian Country: A Call to Expand Tribal Court Jurisdiction and Devote More Funding to Indian Child Safety*, 27 CARDOZO J. EQUAL RTS. & SOC. JUST. 225, 242–43 (2021) (“Under PL-280, a state’s criminal/prohibitory laws apply to all persons on reservations, but a state’s civil/regulatory laws do not. It is not entirely clear whether sex offender registry laws are civil or criminal; accordingly, state power to enforce sex offender registration laws within Indian country is debatable.”); Eugene Sommers, et al., *It’s Time to End Public Law 280*, Native Governance Center (Aug. 9, 2021), <https://nativegov.org/news/its-time-to-end-public-law-280/> [<https://perma.cc/9DBN-4TQS>] (“Matthew Fletcher sheds light on how uncertainty caused by concurrent jurisdiction can play out: ‘It’s likely that there is often a race to the court, or a race to the incident, and whoever gets there has jurisdiction. If the Tribe and the county are not playing well with each other, and there are a lot of conflicts between them, then you’ll have these jurisdictional conflicts as well.’”).

68. 358 U.S. 217 (1959).

Nation, accrued on the Navajo Reservation.⁶⁹ Lee pursued the collection effort in Arizona state court, and the Williamses claimed the state lacked jurisdiction over the claim.⁷⁰ The United States Supreme Court agreed with the Williamses asserting, “There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves.”⁷¹ Since *Williams*, tribal courts have exercised exclusive jurisdiction over Indian country civil suits against Indian defendants.

Although the United States formally adopted a policy of tribal self-determination in 1975,⁷² the Supreme Court turned hostile to tribal interests during this period.⁷³ *Oliphant v. Suquamish Indian Tribe* embodies the Court’s anti-Indian bias.⁷⁴ The case began when Mark David Oliphant punched a tribal police officer on the Port Madison Indian Reservation.⁷⁵ When the tribe sought to prosecute him, Oliphant claimed the tribe lacked authority over him because he was not an Indian.⁷⁶ The District Court and Ninth Circuit disagreed; nevertheless, the Supreme Court sided with Oliphant.⁷⁷ Despite admitting tribes had never surrendered their criminal authority over non-Indians, the Court divined tribes had been implicitly divested of this power.⁷⁸ Most troublingly, the Court acknowledged that its opinion would make Indians more vulnerable to non-Indian criminals.⁷⁹ In 2022, the Court granted Oklahoma, and possibly other states, jurisdiction over this class of crimes to protect Indian victims.⁸⁰

69. *Id.* at 217–18.

70. *Id.* at 218.

71. *Id.* at 223.

72. Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (1996) (codified at 25 U.S.C. §§ 5301–5423 (2018)).

73. Robert N. Clinton, *The Dormant Indian Commerce Clause*, 27 CONN. L. REV. 1055, 1057 (1995) (“Beginning in the 1970s and accelerating in the last decade, however, the decisions of the Supreme Court more frequently countenance expanding state authority in Indian country by limiting the historic scope of tribal authority in Indian country.”).

74. 435 U.S. 191 (1978).

75. *See id.* at 194.

76. *Id.* at 194–95.

77. *Id.* at 194–95, 212.

78. *Id.* at 204 (“While Congress never expressly forbade Indian tribes to impose criminal penalties on non-Indians, we now make express our implicit conclusion of nearly a century ago that Congress consistently believed this to be the necessary result of its repeated legislative actions.”).

79. *See id.* at 212 (“Finally, we are not unaware of the prevalence of non-Indian crime on today’s reservations which the tribes forcefully argue requires the ability to try non-Indians.”).

80. *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2502 (2022) (“The State’s interest in protecting crime victims includes both Indian and non-Indian victims.”). *But see id.* at 2526 n.10 (Gorsuch, J., dissenting) (“It rests instead on a ‘balancing test’ that makes anything it does

Tribes' lack of criminal jurisdiction over non-Indian criminals means tribes depend on state and federal law enforcement for public safety.⁸¹ However, non-Indian law enforcement is often located over one hundred miles from Indian country.⁸² Non-Indian law enforcement would rather solve crimes closer to their offices.⁸³ In addition to distance, Indian country crimes have an added element—jurisdiction turns on “Indian status.”⁸⁴ This means police must discern whether the parties are Indians before making an arrest.⁸⁵ Further complicating the issue, federal law defines “Indian” in over two dozen different ways.⁸⁶ Consequently, a person may qualify as an Indian in one courtroom but not another.⁸⁷ Police and prosecutors have no desire to deal with this, so they frequently ignore reservation crimes.⁸⁸

Three years after *Oliphant*, the Supreme Court was tasked with discerning the scope of tribal civil jurisdiction over non-Indians in *Montana v. United States*.⁸⁹ The dispute in *Montana* turned on whether the Crow Tribe could regulate non-Indian activities on non-Indian fee lands within the tribe's reservation.⁹⁰ Relying on *Oliphant*, the Court held tribes presumptively lacked authority over non-Indians.⁹¹ Nonetheless, the Court determined tribes can only assert civil jurisdiction over non-Indians in Indian country in two circumstances: (1) over non-Indians who enter a consensual relationship with the tribe or its citizens or (2) over non-Indians engaged in conduct that imperils tribal welfare.⁹² Both exceptions have been construed exceptionally narrowly.⁹³ As a result, non-Indians regularly contest tribal court

say about the ‘inherent’ right of States to try cases within Indian country dicta through and through.”).

81. See Adam Creppelle, *The Law and Economics of Crime in Indian Country*, 110.3 GEO. L.J. 569, 596–97 (2022).

82. *Id.* at 596.

83. *Id.* at 597.

84. *Id.* at 590–91.

85. *Id.* at 590.

86. *Id.* at 590–91.

87. *Id.* at 591.

88. *Id.* at 597–99.

89. 450 U.S. 544, 565 (1981) (“Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.”).

90. *Id.* at 547.

91. *Id.* at 565.

92. *Id.* at 565–66.

93. Adam Creppelle, *The Time Trap: Addressing the Stereotypes that Undermine Tribal Sovereignty*, 52 COLUM. HUM. RTS. L. REV. 189, 221 (“The *Montana* jurisdictional bases seem to cover a wide breadth of conduct; alas, the exceptions almost never apply.”).

jurisdiction.⁹⁴ However, non-Indians must first exhaust their tribal remedies before appealing to a federal court, which takes time and money.⁹⁵ Plus, the uncertainty over whether tribal or state law governs an activity drives up the cost of doing business in Indian country.⁹⁶

Oliphant and *Montana* are based on the general premise that tribal courts cannot be trusted. The Supreme Court has described tribal courts as “unfamiliar court[s].”⁹⁷ Justice Souter claimed tribal courts “differ from traditional American courts in a number of significant respects,”⁹⁸ and tribal law is “complex.”⁹⁹ Other federal courts have cast aspersions on tribal courts.¹⁰⁰ Businesses have come to believe tribal courts are unreliable¹⁰¹; in fact, Mark Zuckerberg posted about the Blackfeet Indian Reservation’s court, “[outside businesses] find the courts always rule in favor of tribal members.”¹⁰² Thus, businesses distrust and regularly oppose tribal courts.¹⁰³

Tribal courts do occasionally err, as do all state and federal institutions. The occasional tribal court mishap should not result in the distrust of the over

94. Adam Crepelle, *How Federal Indian Law Prevents Business Development in Indian Country*, 23 U. Pa. J. Bus. L. 683, 707–08 (2021).

95. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987) (ruling that federal courts cannot exercise diversity jurisdiction until a tribal court has had a chance to decide its own jurisdiction first); *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985) (requiring an exhaustion of Tribal court remedies before challenging jurisdiction in federal court). See also Crepelle, *supra* note 94, at 708 (“This means businesses must pay court costs, attorney’s fees, and endure lengthy delays just to figure out where to file suit.”).

96. Crepelle, *supra* note 94, at 711 (“This jurisdictional rollercoaster ride raises the cost of capital and scares businesses away from Indian country.”).

97. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997).

98. *Nevada v. Hicks*, 533 U.S. 353, 383 (2001) (Souter, J., concurring).

99. *Id.* at 384.

100. *Little Horn State Bank v. Crow Tribal Court*, 690 F.Supp. 919, 923 (D. Mont. 1988) (“The Crow Tribal Court, acting as a sort of ‘kangaroo court’, has made no pretense of due process or judicial integrity.”); *Alvarez v. Tracy*, 773 F.3d 1011, 1024 (9th Cir. 2014) (Kozinski, j., dissenting) (“He’d have a fairer shake in a tribunal run by marsupials.”).

101. John Koppisch, *Why Are Indian Reservations So Poor? A Look at The Bottom 1%*, FORBES (Dec. 13, 2011, 7:32 PM EST) [hereinafter Koppisch, *Why are Indian Reservations So Poor*], <https://www.forbes.com/sites/johnkoppisch/2011/12/13/why-are-indian-reservations-so-poor-a-look-at-the-bottom-1/?sh=12d854ee3c07> [https://perma.cc/2KNB-FBY8] (asserting that companies are often wary to do business on reservations because of underdeveloped Indian commercial codes, the general difficulty of enforcing contracts under tribal laws, and requirements to bring claims in tribal courts).

102. Mark Zuckerberg, FACEBOOK (July 16, 2017), <https://www.facebook.com/zuck/posts/10103892215949831> [https://perma.cc/PU49-L2DP].

103. E.g., Brief for Amicus Curiae Retail Litig. Ctr., Inc. Supporting Petitioners at 15–16, *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, 136 S. Ct. 2159 (2016) (No. 13–1496), 2015 WL 5244347; Brief for Amicus Curiae S.D. Bankers Ass’n in Support of Petitioners at 1, *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, 136 S. Ct. 2159 (2016) (No. 13–1496), 2015 WL 5261542.

400 tribal judicial institutions¹⁰⁴—just as mistakes do not result in calls to abolish state and federal courts.¹⁰⁵ Tribes want to provide fair judicial forums.¹⁰⁶ They know this is necessary for economic development and the preservation of their sovereignty. Although the available evidence suggests that tribal courts treat non-Indians fairly,¹⁰⁷ distrust of tribal courts remains high.

II. THE VIOLENCE AGAINST WOMEN ACT’S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

Due to *Oliphant*, non-Indian men were essentially free to abuse their Indian wives and girlfriends within Indian country.¹⁰⁸ Congress sought to fill this jurisdictional void with the Violence Against Women Reauthorization Act of 2013’s special domestic violence criminal jurisdiction (“VAWA”).¹⁰⁹ VAWA permitted tribes to prosecute non-Indians who commit dating violence, commit domestic violence, or violate a protective order in Indian country.¹¹⁰ However, VAWA was not automatic. Tribes wishing to charge

104. *Tribal Court Systems*, BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/CFRCourts/tribal-justice-support-directorate> [https://perma.cc/T8RV-4XL8].

105. Joseph P. Kalt & Joseph William Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule* 32–33 (Harv. Univ. Native Am. Program, Working Paper No. RWP04-016, 2004).

106. Kirke Kickingbird, *Striving for the Independence of Native American Tribal Courts*, HUM. RTS. MAG., (Jan. 1, 2009), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/winter2009/striving_for_the_independence_of_native_american_tribal_courts/ [https://perma.cc/N6AR-J9TX] (“Tribes want to provide and be seen as providing a fair and impartial judiciary.”).

107. *See, e.g.*, Brief for Respondents at 7, *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, 136 S. Ct. 2159 (2016) (No. 13-1496), 2015 WL 5244347 (“Nonmember litigants routinely appear before—and prevail in—the Choctaw Courts . . . Over 85% of the suits involving nonmembers resulted in a settlement or a win for the non-Indian party.”); Bethany R. Berger, *Justice and the Outsider: Jurisdiction over Nonmembers in Tribal Legal Systems*, 37 ARIZ. STATE L.J. 1047, 1094 (2005); Alexander S. Birkhold, *Predicate Offenses, Foreign Convictions, and Trusting Tribal Courts*, 114 MICH. L. REV. ONLINE 155, 159 (2016); M. Gatsby Miller, Note, *The Shrinking Sovereign: Tribal Adjudicatory Jurisdiction over Nonmembers in Civil Cases*, 114 COLUM. L. REV. 1825, 1839 (2014) (concluding that, while concerns about bias are “not trivial,” the “validity of these concerns is unclear” because “tribal courts, on the whole, are fair to nonmembers”).

108. Adam Creppelle, *Tribal Courts, The Violence Against Women Act, and Supplemental Jurisdiction: Expanding Tribal Court Jurisdiction to Improve Public Safety in Indian Country*, 81 MONT. L. REV. 59, 59–60 (2020).

109. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

110. 25 U.S.C. § 1304.

non-Indians had to comply with strict procedural safeguards.¹¹¹ These procedural safeguards are too expensive for most tribes;¹¹² furthermore, some tribes view these mandates as colonial impositions.¹¹³ Hence, VAWA has only been implemented by 31¹¹⁴ of the 574 federally recognized tribes.

To implement VAWA, tribes must provide defendants with licensed attorneys, publish their laws, and record the proceedings.¹¹⁵ VAWA prosecutions require tribal judges to have “sufficient legal training to preside over criminal proceedings.”¹¹⁶ This seems reasonable; nevertheless, many judges throughout the United States are not law-trained.¹¹⁷ Tribal juries are also required to “reflect a fair cross section of the community,” which cannot systematically exclude non-Indians.¹¹⁸ State and federal juries have no equivalent obligation when prosecuting Indian defendants. Additionally, VAWA mandates that tribes grant defendants all rights necessary to comply with the United States Constitution.¹¹⁹

VAWA has improved public safety for implementing tribes.¹²⁰ Tribes’ lack of jurisdiction over non-Indians creates a lawless environment, and VAWA helps fill the jurisdictional lacuna.¹²¹ By giving tribes the power to act, VAWA empowers Indian victims to report crimes.¹²² Accordingly, VAWA leads to increased public safety among implementing tribes. Defendants’

111. 25 U.S.C. § 1304(d).

112. Maureen L. White Eagle, Melissa L. Tatum & Chia Halpern Beetso, *Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction*, TRIBAL L. & POL’Y INST. (Feb. 2015), <http://www.tribal-institute.org/lists/TLOA-VAWA-Guide.htm> [<https://perma.cc/P8CC-K6HS>].

113. Jessica Allison, Note, *Beyond VAWA: Protecting Native Women from Sexual Violence Within Existing Tribal Jurisdictional Structures*, 90 U. COLO. L. REV. 225, 246 (2019); Mary K. Mullen, Note, *The Violence Against Women Act: A Double-Edged Sword for Native Americans, Their Rights, and Their Hopes of Regaining Cultural Independence*, 61 ST. LOUIS U. L.J. 811, 812 (2017); Catherine M. Redlingshafer, *An Avoidable Conundrum: How American Indian Legislation Unnecessarily Forces Tribal Governments to Choose Between Cultural Preservation and Women’s Vindication*, 93 NOTRE DAME L. REV. 393, 410 (2017).

114. *Currently Implementing Tribes*, SDVCJ TODAY, NAT’L CONG. OF AM. INDIANS, <https://www.ncai.org/tribal-vaawa/get-started/currently-implementing-tribes> [<https://perma.cc/F868-MEEK>].

115. 25 U.S.C. § 1302(c).

116. 25 U.S.C. § 1302(c)(3)(A).

117. DAVID H. GETCHES ET AL., *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 586 (7th ed. 2016) (“[S]ome estimate that far more than half of state judges, including magistrates, justices of the peace, and family court referees, are not lawyers.”).

118. 25 U.S.C. § 1304(d)(3).

119. 25 U.S.C. § 1304(d)(4).

120. NAT’L CONG. OF AM. INDIANS, *VAWA 2013’S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION FIVE-YEAR REPORT 1* (2018), https://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf [<https://perma.cc/5XDZ8WYM>].

121. Crepelle, *supra* note 108, at 78.

122. Crepelle, *supra* note 108, at 78–79.

rights were not sacrificed in the process either. Tribal justice systems encountered over one hundred non-Indian defendants and not even one alleged unfair treatment.¹²³ Due to tribes' success with VAWA, Congress recently expanded tribal criminal jurisdiction over non-Indians to include the offenses of assault of tribal justice personnel, child violence, obstruction of justice, sexual violence, sex trafficking, and stalking.¹²⁴

III. DOES VAWA IMPROVE TRIBAL ECONOMIES?

VAWA was originally limited to three crimes; accordingly, it is safe to assume economic development was not the legislation's goal.¹²⁵ Nonetheless, VAWA's due process protections should increase investor confidence. After all, if a non-Indian wishes to pursue a breach of contract or repossession action against an Indian on a reservation, the non-Indian must bring the case in tribal court.¹²⁶ Non-Indian businesses will likely feel more confident litigating in a tribal court with a law-trained judge, publicly available laws, recorded proceedings, and a jury that includes non-Indians. Indeed, one critique of VAWA is that it imposes western judicial norms on tribes.¹²⁷ While this is a fair critique, businesses prefer uniformity because it reduces uncertainty. Increased confidence in tribal courts should improve tribal economies. This Part tests this hypothesis.

Section A describes the data and empirical design. Section B sets forth the results. Section C offers possible explanations for the results.

A. Data and Empirical Design

Our empirical analysis uses data from the American Community Survey (ACS) administered by the US Census.¹²⁸ Started in 2005, the ACS is an annual national survey providing information on social, economic, housing,

123. NAT'L CONG. OF AM. INDIANS, *supra* note 120, at 1 ("There has not been a single petition for habeas corpus review brought in federal court in an SDVCJ case. Although preliminary, the absence of habeas petitions suggests the fairness of tribal courts and the care with which tribes are implementing SDVCJ.")

124. 25 U.S.C. § 1304(a)(5).

125. Nevertheless, it is worth noting the Violence Against Women Act was predicated upon Congress's power under the Commerce Clause. *See* United States v. Morrison, 529 U.S. 598, 628–29 (2000) (Souter, J., dissenting) (discussing "the mountain of data assembled by Congress . . . showing the effects of violence against women on interstate commerce").

126. *Williams v. Lee*, 358 U.S. 217, 222–23 (1959). PL 280 is an exception to this rule.

127. *See, e.g.,* Samuel E. Ennis & Caroline P. Mayhew, *Federal Indian Law and Tribal Criminal Justice in the Self-Determination Era*, 38 AM. INDIAN L. REV. 421, 422 (2014).

128. *See About the American Community Survey*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/about.html> [<https://perma.cc/5CHG-DMR5>].

and demographic characteristics. Government agencies use the ACS statistics to allocate over \$675 billion annually in federal funds to states, counties, and other communities, including reservations.¹²⁹ ACS also publishes five-year averages, which are based on annual surveys.

While the ACS publishes annual data, they only do so when the unit that is being surveyed has a sufficiently large number of individuals. Since the number of individuals on reservations is relatively small for the purposes of the Census, the ACS does not publish annual data for the vast majority of reservations. Therefore, this study, like other studies that focus on using the ACS to analyze data from Indian reservations,¹³⁰ uses five-year averages. This is due to the relatively small sample size sampled in each reservation each year. Additionally, the ACS five-year data set provides information on characteristics unavailable in the annual data sets due to small sample sizes resulting in confidentiality concerns.¹³¹ Again, this latter concern is especially relevant for reservations with relatively few residents. We focus on five-year averages reported in 2012 and 2019. The U.S. Census, which distributes the ACS, computes the 2012 five-year averages based on annual data from 2007 to 2012 and the 2019 five-year averages based on annual data from 2014 to 2019. According to the U.S. Census, using these multiyear estimates offers the advantage of an “increased statistical reliability of the data compared with single-year estimates”, especially for small geographic areas and small population subgroups like Native American reservations.¹³²

Regarding which income measure to use in the analysis, the main alternatives are Indian per capita income, household income, and family income.¹³³ Per capita income is the total amount of money earned divided by

129. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY INFORMATION GUIDE 3 (2017), https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf [<https://perma.cc/7RMV-D3MM>].

130. See, e.g., Dustin Frye & Dominic P. Parker, *Indigenous Self-Governance and Development on American Indian Reservations*, 111 AM. ECON. ASS'N PAPERS AND PROC. 233 (2021).

131. See *American Community Survey 5-Year Data (2009-2021)*, U.S. CENSUS BUREAU, <https://www.census.gov/data/developers/data-sets/acs-5year.html> [<https://perma.cc/7SQ2-YZTW>].

132. U.S. Census Bureau, *Understanding and Using ACS Single and Multiyear Estimates*, in UNDERSTANDING AND USING AMERICAN COMMUNITY SURVEY DATA: WHAT ALL DATA USERS NEED TO KNOW 13 (2020), https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020_ch03.pdf [<https://perma.cc/B98T-RZYX>].

133. Formally, the Census definitions are as follows: Per capita income is the mean income computed for every man, woman, and child in a particular group. It is derived by dividing the total income of a particular group by the total population. *Per Capita Income*, U.S. CENSUS BUREAU, <https://www.census.gov/glossary/?term=Per%20capita%20income>

the population.¹³⁴ Children are also included in population estimates but generally do not have income.¹³⁵ Thus, lower per capita income may not necessarily indicate worse economic well-being if areas with large families or younger populations have lower per capita incomes. Household income is the total amount of money earned by every member of a single household. The U.S. Census defines a household as one consisting of all people who occupy a housing unit regardless of relationship.¹³⁶ Family income is computed for only those households in which two or more people related by birth, marriage, or adoption residing in the same housing unit.¹³⁷

As defined by the U.S. Census Bureau, monetary income includes any cash public assistance or welfare payments from the state or local welfare offices.¹³⁸ In the context of this study, we posited that the adoption of VAWA improves the institutional framework on reservations, but this hypothesis pertains to earned income. If VAWA improves employment and thereby increases earned income, government assistant payments may fall. Thus, the income measures of the U.S. Census Bureau, which include government transfer payments, might not be as responsive to VAWA adoption as a measure that considers only earned income due to the fact that higher earnings and subsequent lower government transfer payments are partially offset.

Household income measures include the elderly residing in the household, who receive social security checks, or younger individuals, who may forgo earnings due to seeking education. In comparison, the family income measure

[<https://perma.cc/DE9Y-XK2P>]. Household income is the sum of the income of all people fifteen years and older living in the household. A household includes related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit, is also counted as a household. *Household Income*, U.S. CENSUS BUREAU, <https://www.census.gov/glossary/?term=Household%20income>

[<https://perma.cc/6G7T-2H6D>]. Family income is the sum of the income of all family members fifteen years and older living in the household. Families are groups of two or more people (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered members of one family.

Family Income, U.S. CENSUS

BUREAU, <https://www.census.gov/glossary/?term=Family%20Income> [<https://perma.cc/3ETC-AB6D>].

134. See *Per Capita Income*, *supra* note 133.

135. See *Children*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/children.html> [<https://perma.cc/36N5-BQ59>] (“All Census Bureau demographic surveys collect information about children.”).

136. See *Household Income*, *supra* note 133.

137. See *Family Income*, *supra* note 133.

138. *Income*, U.S. CENSUS BUREAU, <https://www.census.gov/glossary/?term=Income> [<https://perma.cc/K4DL-V2D6>].

is based on individuals who tend to be in their prime earning years and do not include homes for the very young or elderly, who tend to have lower incomes and be in single-member households.¹³⁹ This fact suggests that family income comprises fewer government transfers than household income. Related, family income is typically higher than household income, consistent with the earned income being a larger part of household income than family income.¹⁴⁰ For the above reasons, this analysis selects family income over the household and per capita income.

Another issue is whether to analyze the average or median family income. Average income, also known as mean income, is calculated by taking the total income generated by a community's members and dividing it by the number of community members.¹⁴¹ Outliers easily skew averages. For example, if one community member wins \$100 million and the community contains one hundred people, the average income increases by \$1 million, assuming nothing else changes. Contrarily, median incomes are less affected by extremes. The median is determined by arranging numbers, revenue in this case, from lowest to highest. The median is in the middle, where half of the incomes are above, and half are below. Hence, transforming the median usually requires impacting a large population segment. In the example above, a single person's \$100 million income change barely alters the median. Therefore, median income provides a better understanding of the population's well-being and will be used in the analysis. When used in this analysis, median family income refers only to Indian families residing on the named reservations.¹⁴²

This study uses a difference-in-differences design to assess VAWA's impact on the median Indian family income. The difference-in-differences method is well-established in the analysis of causal effects.¹⁴³ This method calls for comparing the change in the outcome of interests, here median family income, between a treated group, the VAWA implementing tribe in this

139. *Family Income*, *supra* note 133.

140. The Missouri Census Data Center describes the advantages and disadvantages of the per capita income, family income, and household income measures. *All About Measures of Income in the Census*, MISSOURI CENSUS DATA CENTER, <https://mcdc.missouri.edu/help/measures-of-income/> [https://perma.cc/9D34-NKU9].

141. *Id.*

142. The Census Bureau defines an American Indian or Alaska Native as “[a] person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.” *About the Topic of Race*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/race/about.html#:~:text=American%20Indian%20or%20Alaska%20Native,tribal%20affiliation%20or%20community%20attachment> [https://perma.cc/VW2S-87VV].

143. *See* SCOTT CUNNINGHAM, CAUSAL INFERENCE: THE MIXTAPE 406 (2021).

case, to the change in the outcome of interest for the control group. The methodology then computes the difference between these two changes to identify the causal impact of adopting VAWA.

When conducting a difference-in-difference analysis to identify a causal effect, the comparison group should be as similar as possible to the treatment group. In our application, the treatment group is the VAWA-adopting tribe. This requirement implies that treatment tribes should be similar to comparison tribes. The more similarities between the tribes, the more likely VAWA accounts for the income difference.

While the income of a VAWA-adopting reservation might increase between 2012 and 2019, this does not necessarily provide evidence that VAWA adoption caused the income increase. To be more confident that any increase in income can be attributed to implementing VAWA, data on comparison tribes is required. Comparison tribes should be as similar as possible across income, culture, location, and other factors. The more similarities between the tribes, the more likely VAWA accounts for the income difference. With such comparison tribes, this empirical approach allows for a determination of whether adopting VAWA led to improved economic growth.

While each tribe is unique, the comparison tribes in this study are relatively similar.¹⁴⁴ One comparison pair is the Pascua Yaqui Tribe (“PYT”), which implemented VAWA in 2014, and Tohono O’odham Nation (“TO”), which has not implemented VAWA. The PYT and TO reservations are located a few minutes apart in south Tucson, Arizona, where both operate casinos.¹⁴⁵ Due to proximity, many employees work for both tribes during their careers. The tribes have comparable population sizes: PYT has 19,000¹⁴⁶ citizens, and TO has approximately 28,000.¹⁴⁷ Both have populations as well as traditional lands in Mexico. Culturally, both practice a version of Catholicism fused with

144. The authors in no way intend to suggest the comparison tribes are identical. For example, the TO Reservation is much larger than the PYT Reservation. Notwithstanding the differences that may exist, the factors enumerated make the tribal comparisons useful for gauging VAWA’s effects.

145. *Map of Arizona Indian Communities*, UNIV. OF ARIZ., <https://ag.arizona.edu/pubs/general/azlp47-2/maps.html> [<https://perma.cc/T6N2-4DHH>].

146. *Pascua Yaqui Tribe*, NAT’L CONG. OF AM. INDIANS, <https://www.ncai.org/tribal-vawa/for-tribes/vawa-sdvj-implementing-tribes/pascua-yaqui-tribe#:~:text=The%20Pascua%20Yaqui%20Tribe%20is,members%20living%20on%20the%20reservation> [<https://perma.cc/T6N2-4DHH>].

147. *About Tohono O’odham Nation*, TOHONO O’ODHAM NATION, <http://www.tonation-nsn.gov/about-tohono-oodham-nation/#:~:text=The%20Tohono%20O%20odham%20Nation,tribal%20lands%20in%20Southwestern%20Arizona> [<https://perma.cc/CZ3T-WA36>].

their traditional beliefs.¹⁴⁸ The median income for families on the PYT and TO Reservations was less than a thousand dollars apart in 2012, two years before PYT implemented VAWA.¹⁴⁹ Accordingly, PYT and TO provide a valuable comparison to observe VAWA's effects.

This study also compares the Salt River Pima-Maricopa Indian Community ("SR") to the Gila River Indian Community ("GR"). GR implemented VAWA in 2018,¹⁵⁰ and SR enacted an ordinance to implement VAWA in May of 2022.¹⁵¹ Thus, SR's implementation falls outside the observation period, allowing it to serve as a control for this study. The tribes are located about forty-five miles apart in the outskirts of Phoenix.¹⁵² Both tribes have casinos; however, SR is situated in the affluent Scottsdale area. Hence, SR's 2012 median income was over \$15,000 higher than the median family income on GR.¹⁵³ Both tribes are descendants of the Hohokam culture.¹⁵⁴ Today, the tribes' reservations have a similar population, GR at approximately 14,000 people¹⁵⁵ and SR at about 7,300 people.¹⁵⁶

Although GR implemented VAWA in 2018 and the observation period closes in 2019, gauging VAWA's impact on GR is still useful. Preparing to

148. Barbara E. Sherrill and Susan Gage, *Tohono O'odham*, UNIV. OF ARIZ.: THROUGH OUR PARENTS' EYES, <https://parentseyes.arizona.edu/node/1239> [<https://perma.cc/BRY7-MFJT>] ("The O'odham communities developed a kind of 'folk Catholicism,' that allowed them to retain some of their old, pre-Catholic traditions."); *Culture*, PASCUA YAQUI TRIBE, <https://www.pascuayaqui-nsn.gov/culture/> [<https://perma.cc/T2N7-9FY4>] ("Culture is an important element with all Yaqui communities and bonds both Christianity and Yaqui spirituality in the hope for a better view of the world and morality.").

149. See *infra* Table 1.

150. *Gila River Indian Community*, NAT. CONG. OF AM. INDIANS, <https://www.ncai.org/tribal-vaawa/sdvcj-today/gila-river-indian-community> [<https://perma.cc/RG7M-Y2EV>].

151. Chris Picciuolo, *Council Enacts Ordinances to Implement Special Domestic Violence Criminal Jurisdiction*, O'ODHAM ACTION NEWS (May 26, 2022), <https://oan.srpmic-nsn.gov/council-enacts-ordinances-to-implement-special-domestic-violence-criminal-jurisdiction/> [<https://perma.cc/YL95-8WTR>].

152. See *Map of Indian Communities*, *supra* note 145.

153. See *infra* Table 2.

154. *The Hohokam*, ARIZ. MUSEUM OF NAT. HIST., <https://www.arizonamuseumofnaturalhistory.org/plan-a-visit/mesa-grande/the-hohokam> [<https://perma.cc/LNJ2-JY7V>] ("The members of the Salt and Gila River communities celebrate their heritage as descendants of the ancient Hohokam.").

155. *Gila River Indian Community*, INTER TRIBAL COUNCIL OF ARIZ., <https://itcaonline.com/member-tribes/gila-river-indian-community/#:~:text=The%20Community%20is%20home%20to%2014%2C000%20people> [<https://perma.cc/H9JN-8M5W>].

156. *Salt River Pima-Maricopa Indian Community Profile*, UNIV. OF ARIZ., <https://naair.arizona.edu/salt-river-pima-maricopa-indian#:~:text=According%20to%20the%20U.S.%20Census,held%20as%20a%20natural%20pr> *eserve* [<https://perma.cc/LPX5-858W>].

implement VAWA takes time.¹⁵⁷ Passing even non-controversial legislation requires drafting, discussing, and voting on the law.¹⁵⁸ In addition to revising legal codes, tribes must hire personnel to put VAWA into effect.¹⁵⁹ VAWA implementation also requires coordinating with non-Indian law enforcement, as tribes often have to place non-Indian criminals in state or county jails.¹⁶⁰ Getting approval for intergovernmental law enforcement agreements can be a lengthy, bureaucratic process.¹⁶¹ Improving relationships with non-Indian law enforcement likely makes non-Indian law enforcement more responsive to reservation crimes and should improve public safety.¹⁶² Accordingly, implementing VAWA may take a few years. Assuming this is accurate, SR would not have experienced effects from VAWA during the observation period, while GR would have experienced effects even to prior to VAWA's jurisdictional provisions coming into force.

B. Results

For this analysis, income is measured in real 2019 dollars. The cross-tabulation in Table 1 compares the median Indian family income in 2012 and 2019 between the VAWA-adopting PYT Reservation to the non-adopting TO Reservation. Throughout our analysis, the median family income measures analyzed here are computed for those Indians residing on both reservations and do not include the income of tribal citizens residing off-reservation. The findings show that the VAWA-implementing PYT Reservation experienced an increase in median family income from about \$32,000 in 2012 to almost \$40,000 in 2019, amounting to a roughly \$7,500 increase in income.¹⁶³

In 2012, the median Indian family income on the non-VAWA implementing TO reservation was \$33,000. In addition to having a similar income level as the “treated” PYT Reservation, both reservations share many other sociocultural and geographic characteristics¹⁶⁴ and thus can be described as “similar.” Table 1 shows that the TO Reservation, which did not adopt VAWA, experienced a median family income decline of about \$2,000 between 2012 and 2019. The difference-in-difference estimate, obtained by subtracting the change in income of the control TO Reservation (\$2,380),

157. DeeJay E. Chino, *The Implementation of Tribal Provisions from the VAWA 2013 Reauthorization 105* (Dec. 1, 2021) (Ph.D. dissertation, University of Nevada, Las Vegas).

158. *See id.* at 39.

159. *See id.* at 51, 107, 143.

160. *See id.* at 108.

161. Crepelle, *supra* note 81, at 607–08.

162. Crepelle, *supra* note 81, at 607–09.

163. *See infra* Table 1.

164. *See supra* text accompanying notes 144–148.

indicates that the causal effect of adopting VAWA is \$9,980. These results suggest the benefit of adopting VAWA amounted to at least a \$10,000 gain in median family income for the PYT Reservation.

Table 1:

Median Indian Family Income Comparisons for 2012 and 2019 Between the VAWA-Implementing Pascua Yaqui Reservation and the Non-Implementing Tohono O’odham Reservation

		Year		
VAWA implementing	Reservation name	2012	2019	Difference
Yes	Pascua Yaqui Reservation	\$31,964	\$39,464	\$7,500
No	Tohono O'odham Nation Reservation	\$32,698	\$30,318	-\$2,380
Difference-in-Difference:				\$9,880

Note: Incomes are measured in real 2019 dollars. This income measure used in this table is based on Indians residing on reservations and does not include the income of Indians residing off the reservation. In 2012, neither reservation had adopted VAWA. The Pascua Yaqui Reservation did not adopt VAWA until 2019.

Table 2 shows a similar cross-tabulation but focuses instead on comparing the VAWA adoption in the GR Reservation to the geographically and culturally “similar” SR Reservation.¹⁶⁵ In 2012, the GR Reservation median family income was approximately \$28,000 compared to the SR Reservation median family income of \$43,000. The fact that the SR Reservation had about one-third higher income does not invalidate our difference-in-difference comparison, as this method does not assume that initial income levels must be identical. This method assumes that both reservations are on similar paths. As with PYT and TO, the SR and GR Reservations are comparable to each other, culturally and geographically, supporting the assumption that both reservations are on a similar path prior to the implementation of VAWA.

Table 2 shows that between 2012 and 2019, the paths of incomes of both reservations diverged. While the GR Reservation experienced a \$4,000 increase in median family income over this period, the SR Reservation experienced a decline in median family income of over \$1,000. It is interesting to note that both comparison reservations, the TO Reservation and the SR Reservation, experienced a decline in income between 2012 and 2019.

165. *See supra* text accompanying notes 149–155.

Table 2 shows that by comparing the changes in income between the VAWA-adopting reservation and the non-adopting reservation, the causal effect of adopting VAWA is estimated to be over \$5,000. The fact that the estimate is lower than the difference-in-difference estimate reported in Table 1 is at least partly explained by GR adopting VAWA later than PYT. Later adoption means the benefits of VAWA had less time to manifest themselves in the former reservation when compared to the latter. This could also indicate that part of VAWA's benefits result from increased jurisdiction over non-Indians, which can only occur after VAWA implementation.

Table 2

Median Indian Family Income Comparisons for 2012 and 2019 between the VAWA Implementing Gila River Indian Reservation and the Non-Implementing Salt River Reservation

		Year		
VAWA implementing	Reservation name	2012	2019	Difference
Yes	Gila River Indian Reservation	\$28,131	\$32,247	\$4,116
No	Salt River Reservation	\$43,464	\$42,244	-\$1,220
Difference-in-Difference:				\$5,337

Note: Incomes are measured in real 2019 dollars. This income measure used in this table is based on Indians residing on reservations and does not include the income of Indians residing off the reservation. In 2012, neither reservation had adopted VAWA. By 2019, the Gila River reservation had adopted VAWA.

To put the increased income for VAWA-adopting reservations in perspective, the \$7,500 increase in real income for the PYT Reservation amounts to a compounded annualized increase of 3 percent, while the \$4,116 increase for the GR Reservation amounts to a 2 percent compounded annualized increase in income. Although these increases seem large, the increases compare to an annualized growth rate in real U.S. median family income of 2 percent.¹⁶⁶ Given that the PYT Reservation implemented VAWA

166. In nominal dollars, U.S. median family income was \$62,527 in 2012 and \$80,944 in 2019. *Income in the Past 12 Months (in 2012 Inflation-Adjusted Dollars)*, U.S. CENSUS BUREAU, <https://data.census.gov/table?q=united+states+median+household+income+2012&tid=ACSST1Y2012.S1901> [<https://perma.cc/P62K-MCUM>]; *Income in the Past 12 Months (in 2019 Inflation-Adjusted Dollars)*, U.S. CENSUS BUREAU, <https://data.census.gov/table?q=united+states+median+household+income+2019&tid=ACSST1>

in 2014 and the GR Reservation implemented VAWA only in 2018, their income growth rates during VAWA adoption are close to the U.S. average.

C. Explanations

This analysis shows that VAWA significantly and positively impacted the median family income of adopting tribes compared to non-adopting tribes. There are several explanations why VAWA could improve median family income. VAWA enables tribes to prosecute non-Indians, and American Indians and Alaska Natives are significantly more likely to experience intimate partner violence from non-Indians.¹⁶⁷ Additionally, implementing VAWA, and even planning to implement VAWA, requires tribes to develop relationships with non-Indian law enforcement,¹⁶⁸ and these relationships likely make state and federal authorities more responsive to reservation crimes. Crime hurts economies.¹⁶⁹ By reducing crime, VAWA may help stimulate the reservation economy. Though VAWA only granted tribes jurisdiction over domestic violence-related offenses before 2022,¹⁷⁰ domestic violence adversely impacts victims' ability to work and affects their general well-being.¹⁷¹ Thus, reducing domestic violence should benefit the economy.

Another possibility is that VAWA's requirements signal fairness to investors. VAWA-implementing tribes are congressionally authorized to put non-Indians in jail for up to nine years.¹⁷² If Congress has this level of faith in VAWA-implementing tribal courts, businesses should feel comfortable having their commercial disputes litigated in a VAWA-adopting tribal

Y2019.S1901 [<https://perma.cc/4YVV-9TCW>]. Converting 2012 dollars into 2019 dollars results in a 2012 real U.S. median family income of \$69,436. See *CPI Inflation Calculator*, U.S. BUREAU OF LABOR STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/4BG4-NGXD>]. Therefore, the annualized implied growth rate is about 2 percent per year.

167. See generally Rosay, *supra* note 21, at 41.

168. See Chino, *supra* note 157, at 108.

169. See U.N. OFF. ON DRUGS & CRIME & THE LATIN AM. & THE CARIBBEAN REGION OF THE WORLD BANK, *CRIME, VIOLENCE, AND DEVELOPMENT: TRENDS, COSTS, AND POLICY OPTIONS IN THE CARIBBEAN I* (2007) ("Crime drives away investment, both foreign and domestic, and consequently slows growth."); Rachel Steiner-Dillon, *Crime Prevention for Economic Development: Lessons from Chicago and Los Angeles*, CHI. POL'Y REV. (Nov. 29, 2019), <https://chicagopolicyreview.org/2019/11/29/crime-prevention-for-economic-development-lessons-from-chicago-and-los-angeles/> [<https://perma.cc/KR3J-PM3P>] ("High and rising rates of crime are often cited as reasons for businesses not to locate to areas of concentrated poverty.").

170. See *supra* text accompanying note 123.

171. See NAT'L CTR. FOR INJ. PREVENTION AND CONTROL, *COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES* 3–4, 19 (2003); GLADYS McLEAN & SARAH GONZALEZ BOCINSKI, INST. FOR WOMEN'S POL'Y RSCH., *FACT SHEET: THE ECONOMIC COST OF INTIMATE PARTNER VIOLENCE, SEXUAL ASSAULT, AND STALKING* 1, 3 (2017).

172. 25 U.S.C. § 1302(a)(7)(D).

court.¹⁷³ Indeed, VAWA’s “westernization” of tribal courts was designed to make non-Indians comfortable in tribal cases.¹⁷⁴ While tribal courts only have to abide by VAWA’s due process protections in VAWA cases, the signaling effect may carry into other areas of the law. PYT Attorney General Alfred Urbina believes VAWA has made non-Indian businesses feel more confident when placing their capital in PYT.¹⁷⁵

Just as VAWA may signal fairness, VAWA may decrease non-Indians’ incentive to contest tribal civil jurisdiction. Uncertainty over tribal civil jurisdiction has long been blamed for tribal economic doldrums.¹⁷⁶ Although VAWA does not address tribal civil jurisdiction, the ability to incarcerate non-Indians should translate into the ability to hold them liable for breach of contract and other civil matters.¹⁷⁷ A law-trained judge—whether in tribal or state court—is likely to reach the same result in many cases. Hence, non-Indians may feel less inclined to contest tribal civil jurisdiction in a VAWA tribe because the judge will be law-trained. If this is true, the non-Indian is likelier to litigate a dispute’s merits in tribal court. Proceeding directly on the merits provides much swifter, less costly adjudication than contesting tribal jurisdiction. Accordingly, VAWA could result in increased jurisdictional certainty, and greater certainty should improve economic performance.

Additionally, VAWA-implementing tribes may invest more in their courts than non-implementing tribes. Tribes implementing VAWA can apply for grants to provide court personnel with training¹⁷⁸ and improve their courthouses.¹⁷⁹ In fiscal year 2018, PYT received a \$450,000 federal VAWA grant.¹⁸⁰ GR received a similar federal grant for \$495,000 in the fiscal year 2017.¹⁸¹ Despite the availability of federal funds, tribes incur serious out-of-pocket expenses to implement VAWA.¹⁸² Insufficient funds constitute a significant problem for many tribal courts, and a lack of funding can

173. Crepelle, *supra* note 37, at 460 (“Compliance with federal guidelines that enables tribes to sentence non-Indians to nine years in jail is a strong signal to private investors that a tribal court will fairly and effectively adjudicate disputes.”).

174. *See* discussion *supra* Section II.

175. Telephone Interview with Alfred Urbina, Att’y Gen., Pascua Yaqui Tribe (July 17, 2022).

176. REP. & RECOMMENDATIONS, *supra* note 27, at 38.

177. *See* Crepelle, *supra* note 37, at 460 n.268.

178. 25 U.S.C. § 1304(h)(2)(A)(i).

179. *Id.* § 1304(h)(2)(A)(iii).

180. DOJ Grants for SDVCJ, NAT’L CONG. OF AM. INDIANS, <https://www.ncai.org/tribal-vawa/resources/doj-grants-for-sdvcj> [<https://perma.cc/GKW9-UKBY>].

181. *Id.*

182. PASCUA YAQUI TRIBE, PASCUA YAQUI TRIBE VAWA IMPLEMENTATION 3–4 (2015), https://www.ncai.org/tribal-vawa/pilot-project-itwg/Pascua_Yaqui_VAWA_Pilot_Project_Summary_2015.pdf [<https://perma.cc/AZ7M-UUGG>].

contribute to poor judicial performance.¹⁸³ *Ceteris paribus*, tribes with robust, independent tribal courts have significantly better economies than tribes without.¹⁸⁴ VAWA-induced funding invigorates due process protections, which likely decreases concerns about tribal court fairness and may be a signal that the tribal court is trustworthy.

CONCLUSION

The Supreme Court frequently remarks about Indian country's confusing legal landscape.¹⁸⁵ Justice Douglas even wrote that the only beneficiaries of Indian country's jurisdictional complexities are "those who benefit from confusion and uncertainty."¹⁸⁶ Businesses are not among those who profit from unstable rules and have long identified jurisdictional ambiguity as an obstacle to operating in Indian country. Hence, private enterprise rarely invests in Indian country.

Though VAWA does not address commercial codes, VAWA does impact tribal court operations. VAWA's due process requirements, though fairly classified as federal impositions, signal judicial legitimacy to outside investors. Accordingly, VAWA should have a positive effect on the economy of implementing tribes. This study finds a statistically significant, positive effect on the median family income of implementing tribes.

The positive impact of VAWA on tribal economies has substantial implications for tribal sovereignty. This finding adds further empirical support to the theory that increased tribal sovereignty leads to improved welfare for tribes. This finding also fits well in the broader literature on the rule of law, as VAWA can be considered a rule of law improvement. Viewed

183. 25 U.S.C. § 3651(8); U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-252, INDIAN COUNTRY CRIMINAL JUSTICE: DEPARTMENTS OF THE INTERIOR AND JUSTICE SHOULD STRENGTHEN COORDINATION TO SUPPORT TRIBAL COURTS 21 (2011) (noting that 11 of 12 tribes described their tribal courts' budgets as inadequate to properly carry out the courts' duties).

184. See MIRIAM JORGENSEN & JONATHAN TAYLOR, WHAT DETERMINES INDIAN ECONOMIC SUCCESS? EVIDENCE FROM TRIBAL AND INDIVIDUAL INDIAN ENTERPRISES 5 (2000) ("Thus, all else equal, tribes that implement a separation of powers that leaves their dispute resolution mechanisms outside political influence enjoy a 5 percent lower level of unemployment than tribes that do not."); Terry L. Anderson, *Zuckerberg Meets Native American Poverty*, THE HILL (July 24, 2017, 5:40 PM), <https://thehill.com/blogs/pundits-blog/energy-environment/343503-zuckerberg-meets-native-american-poverty/> [<https://perma.cc/C9JE-PKCV>] ("Tribes without independent judiciaries have per capita income 30 percent below those with and growth rates 20 percent below.").

185. See Crepelle, *supra* note 81, at 572, 602.

186. *DeCoteau v. Dist. Cnty. Ct.*, 420 U.S. 425, 467 (1975) (Douglas, J., dissenting) ("Jurisdiction dependent on the 'tract book' promises to be uncertain and hectic. . . . The contest promises to be unseemly, the only beneficiaries being those who benefit from confusion and uncertainty.").

in this light, VAWA should be expected to benefit tribal economies. Therefore, policymakers looking to ameliorate reservation poverty should focus on strengthening tribal legal institutions.