

third
edition

NATIVE AMERICAN VOICES: A READER

*Susan Lobo, Steve Talbot,
and Traci L. Morris*

Prentice Hall

Boston Columbus Indianapolis New York San Francisco Upper Saddle River
Amsterdam Cape Town Dubai London Madrid Milan Munich Paris Montreal Toronto
Delhi Mexico City Sao Paulo Sydney Hong Kong Seoul Singapore Taipei Tokyo

NOTES

1. Felix Cohen, *Handbook of Federal Indian Law*, Washington D.C., U.S. Government Printing Office, 1942: 122.
2. Stephen Cornell and Joseph P. Kalt, "Two Approaches to the Development of Native Nations: One Works, the Other Doesn't," in *Rebuilding Native Nations: Strategies for Governance and Development*, ed. Miriam Jorgenson (Tucson: University of Arizona Press, Tucson, 2007), 3–33.
3. Casino City's Indian Gaming Industry Report 2008–2009.
4. Ibid.
5. Nicholas C. Peroff, "Indian Policy as an Emergent Property of the American Policy Making Process," *The Social Science Journal*, 44, no 2 (2007): pp. 319–331.
6. William Brandon, *The American Heritage Book of Indians*. New York: Dell, 1961, 223.
7. Christopher Vecsey and Robert W. Venables, eds., *American Indian Environments: Ecological Issues in Native American History* (Syracuse, N.Y.: Syracuse University Press, 1980), xviii.
8. Ibid., 26.
9. Cornell and Kalt, "Two Approaches."



REMAKING THE TOOLS OF GOVERNANCE COLONIAL LEGACIES, INDIGENOUS SOLUTIONS

Stephen Cornell

Native nation building is a governance challenge. It is about Native nations enhancing their own capacities for effective self-rule.

It doesn't start out that way. There's a prior step, a necessary condition for Indigenous nation building that has to be established first, and that is the right of self-determination. Obtaining substantial decision-making control over the nation's lands, resources, affairs, and future—this is the first step, the one that leads to the governance challenge. Of course this is a massive task in and of itself. In the United States, despite the successes American Indian nations have had over the last three decades in reclaiming control over some of their affairs, the struggle for self-determination goes on. Indigenous peoples wage that fight against the sometimes contrary actions of Congress, states, and courts, where the fragility of Native rights has been particularly apparent in recent

years. Elsewhere—Canada and Australia, for example—some Indigenous rights of self-determination are relatively secure while others are at grave risk or are simply denied outright. Indigenous self-determination is an ongoing enterprise with enemies to spare and major battles ahead. The fight will not soon be over.¹

But wherever a significant degree of Indigenous self-determination is in some measure secured, much of the responsibility for the future falls on Native peoples themselves. With genuine decision-making power in hand, they have to take the lead in addressing their problems and rebuilding their nations. Under conditions of genuine self-determination, what does or does not happen increasingly depends on what *they* do, and less on what federal governments or other outsiders do.

The tasks they face are enormous. Colonialism, paternalism, massive resource losses, and cultural suppression have left legacies of poverty, dependency, and bitterness that are difficult to overcome. Some nations in the United States have struck it rich in the gaming industry, but despite the notoriety of

"Remaking the Tools of Governance: Colonial Legacies, Indigenous Solutions" by Stephen Cornell from *Rebuilding Native Nations* by Miriam Jorgenson, editor. © 2007 The Arizona Board of Regents. Reprinted by permission of the University of Arizona Press.

gaming and other notable successes, many Native nations in North America remain impoverished. Restoring economic and community health; managing natural resources and environments; revitalizing Indigenous cultures; stemming the tide of language loss; raising educational levels—these are only some of the tasks that face Indigenous communities. And their own ambitions are greater still. Native nations today are wrestling not only with how to improve community life but with *how to preserve a distinctive nationhood*; not simply with how to invent a new program to address a particular problem but with *how to become consistent and effective problem solvers*; not simply with raising living standards on Indigenous lands but with *how to rebuild societies that work*; not only with finding and training leaders but with *how to govern and how to implement effective and culturally appropriate systems of governance*. The task, as Chief Oren Lyons of the Onondaga puts it, is nation "rebuilding."²

Much of this book is concerned with the last of these tasks: how to govern and govern well. There is a reason for this focus. It is not that self-determination is secure. Far from it. Nor is the focus on governance because the other tasks listed here are unimportant. They are obviously critical to the future of Native nations. But those nations that have most effectively addressed these challenges—including the challenge of practical self-determination in the face of hostility from non-Native governments—have been ones with capable, potent governing tools in hand. They are nations that have been able to mobilize and sustain community energy and ideas in effective pursuit of community goals and to capably exercise the right of self-determination for which they have fought so hard. As Satsan (Herb George), a Wet'suet'en leader from western Canada and head of the National Centre for First Nations Governance, recently put it, "If we have the right to use the land in our own way, we need to get organized to do it. When the [government] has to consult with us, we have to be organized and capable of consulting. We have to know what we want and be able to make our vision effective. . . . This is a governance issue."³

THE PECULIAR HISTORY OF CONTEMPORARY TRIBAL GOVERNMENTS

We can think of the institutions of governance as tools, the instruments that Indigenous nations use to address and solve the problems they face—maintaining good relations among themselves, surviving hard

times, interacting with other nations, caring for the land, educating the young, and so forth. Prior to the European arrival in North America, Native nations governed and sustained themselves through the skilled use of such tools.

These tools included, on the one hand, agreed-on and often quite specific rules about how rights and powers were distributed and how things should be done. They also included, on the other, specific entities—from councils and chiefs to warrior and medicine societies to clan leaders and town criers—that were charged with carrying out certain governmental tasks, making decisions, enforcing the rules, and getting things done. Such governance tools were hugely diverse. They were not necessarily perfect, but they were often extremely effective, enabling these nations to prosper.⁴ And one reason they were effective is that both the rules and the entities or individuals that made or enforced or implemented those rules were chosen by Native societies themselves. They reflected each nation's own sense of what government should be like and its own understanding of the hard realities it faced. The rules were designed both to meet current demands and conditions and to retain the support and allegiance of the people they governed.

Since then, both the conditions facing Native nations and the governing tools they have in hand to address those conditions have changed. First, over time, the economic and social circumstances of Native nations were transformed through catastrophic losses of lands and livelihoods and the development of encompassing and controlling economic and social systems. Second, outside governments forced new institutions on Native societies that reflected outsiders' needs and ideas about how things should be done, and limited Indigenous peoples' freedom to design their own governing institutions and their power to make decisions for themselves. The result is that today, Native nations face a new set of challenges but find themselves burdened, in many cases, by imposed and inadequate governing tools.

The Beginnings of Contemporary Tribal Government in the United States

From the end of the Indian wars and the establishment of the reservation system in the nineteenth century until at least the 1930s—and despite the recognition, in law, of tribal sovereignty—the governance of American Indian nations was largely in

non-Indian hands, typically those of the U.S. federal government, first the War Department and later the Bureau of Indian Affairs (BIA) in the Department of the Interior. These federal agencies controlled much of what happened on Indian reservations and, particularly in the latter part of the nineteenth century and early decades of the twentieth, did so largely in the name of assimilation. With few exceptions, Indigenous control over the tools of government was modest, with outsiders not only controlling the financial resources necessary for effective government but also wielding veto power over tribal government actions.

In the 1930s, increasingly aware of the abject poverty of Indian communities and under the influence of visionary reformers, the federal government took several tentative steps toward restoring some form of Indigenous self-government, culminating in passage of the Indian Reorganization Act (IRA) of 1934.⁵ This legislation largely ignored the facts that a number of Indian nations had functioning governments, that nearly all still retained some decision-making processes operating within the narrow spaces left to them by federal controls, and that most had elders who had experienced older forms of Indigenous governance prior to federal impositions. It paid little attention to the tools those nations might still have in hand. Nonetheless, the IRA was a departure: the federal government endorsed and encouraged formal structures of tribal government, and following the IRA's passage, there was an intense period of government and constitution making on many reservations, either directly under IRA provisions or indirectly under its influence.

But few of the resulting governments were indigenous creations. On the contrary, not only were they drawn from non-Indigenous models, but they often introduced governing structures that were in direct conflict with the political traditions of the nations they were supposed to govern.⁶ Despite commitments among some senior officials in the Interior Department to genuine tribal self-government, these governments were shaped by prevailing mainstream legal and political understandings of how Native nations ought to govern—and by the often heavy-handed involvement of BIA field personnel, many of whom did not share the commitment to Indigenous self-government, had little confidence in Indigenous governance practices, and in any case had little intention of relinquishing their authority. As a result, many of the

resulting constitutions—intentionally or not—supported the assimilationism that was still at the heart of federal policy. Replicating, for the most part, core American institutions and practices, they were intended to provide Indians with what John Collier, primary architect of the IRA, described as “the experience of responsible democracy”—as if such a thing were alien to North America’s peoples.⁷

Until the 1960s, and in some cases longer, most of these governments were small, typically consisting of a popularly elected tribal council or business committee with officers—usually at least a chair and vice chair—chosen either at large by tribal citizens or by the council itself from among its members, and perhaps a skeletal staff of one or two people. They also were designed more for administration than for governance, having only modest law-making powers and lacking such key institutions as independent judiciaries or other dispute-resolution mechanisms (O’Brien 1989). While these governments made some important decisions, the ultimate power in reservation affairs was still the BIA.

Growth in Tribal Government

In the 1960s and 1970s, this gradually changed. The critical event in the 1960s was the establishment of the federal Office of Economic Opportunity (OEO), and the critical event in the following decade was the Indian Self-Determination and Education Assistance Act of 1975. Combined with Indian political activism, including growing tribal political assertions, these developments precipitated both an expansion of tribal governing power and two decades of dramatic organizational growth.

In 1964, Congress passed the Economic Opportunity Act. Among other things, this legislation established the OEO, one of the keystone components of the federal War on Poverty and the Great Society programs of the Lyndon Johnson presidency. OEO, in turn, established a number of programs that affected Indian Country, most importantly the Community Action Program (CAP), designed to attack poverty through the organization and empowerment of poor people themselves (Greenstone and Peterson 1976). American Indians were among OEO’s target populations and, in a few short years, OEO had organized nearly seventy CAP agencies serving more than 170 Indian reservations (Levitan and Hetrick 1971, 91). Some were established separately from tribal governments and even served multiple reservations; some were established within

tribal governments; and some, as at Mississippi Choctaw (Ferrara 1998), began as separate bodies but eventually were folded into tribal government.

These agencies were both new conduits moving federal program monies into tribal hands and new vehicles for tribal assertions of decision-making power. In both cases, they bypassed the BIA and significantly increased tribal control over selected federal programs. As Sam Deloria once pointed out, "the CAP funds were the first discretionary funds that many tribes had had" (P. Deloria 1986, 197).⁸ Coupled at last with real resources, tribal decision making began to have some impact.

Nor was OEO alone in developing new relationships with Indian nations. The departments of Commerce, Labor, Housing and Urban Development, and Health, Education, and Welfare (now Health and Human Services) also initiated new Indian programs in the 1960s. Many of these involved tribal governments in program administration or implementation, increasing both funding and administrative employment on reservations.

By the late 1960s, these developments had produced explosive growth in tribal governments. For example:

- The tribal government at Zuni Pueblo had nine employees in the late 1950s; a decade later, largely with the support of federal funds, it had fifty-four. The largest single component of tribal government had become the CAP agency, employing thirty-three people and controlling much of the tribal budget (Ferguson, Hart, and Seciwa 1988).
- Using federal funds, the Navajo Tribe established an Office of Navajo Economic Opportunity in 1965. In short order, according to Iverson (1981, 90), this office "had established a far-flung preschool program, a small business development center, a Neighborhood Youth Corps summer program involving 3,500 Navajo young people, a 'reservation-wide' recreation and physical fitness program, and a local community development program." Soon after came a Head Start program, other educational programs, medical services, a culture center, legal services, job placement, and other services. All had administrative components within a mushrooming tribal government.
- Established in the late 1930s, the Papago (now Tohono O'odham) tribal government remained small for nearly thirty years, consisting of a council and four officers (chair, vice chair, secretary, and treasurer). Starting in 1965, federal funds and

program initiatives produced a proliferation of committees, boards, programs, and offices, and a massive tribal administration (Manuel, Ramon, and Fontana 1978).

- Fowler writes that on the Fort Belknap Reservation in Montana, home of the Gros Ventre and Assiniboine peoples, "the War on Poverty programs . . . resulted in hundreds of jobs" (1987, 116) as the tribal government became a major reservation employer.
- On the Fort Yuma-Quechan Reservation in Arizona, according to Bee, "members of approximately 130 of the reservation's 180 families received full or part-time wages from government programs between 1966 and 1969" (1981, 143). Although many of these jobs were temporary training or construction positions, some were longer-term administrative positions in tribal government.⁹

These programs foreshadowed the developments of the 1970s. Castile points out that the CAP agencies demonstrated "the feasibility of self-administration of federally funded programs by Indian tribes" (1998, 41)—indeed, this emerged as a deliberate goal of the CAP initiative. The effort to empower local Native communities received a major boost in 1975 when Congress passed the Indian Self-Determination and Education Assistance Act (P.L. 93-638), the core legislation in the federal government's new policy of self-determination for Indian tribes. This policy encouraged Indian nations to take over direct management of federal programs on Indian reservations, either through contracts with the federal government under P.L. 93-638 or through federal-tribal compacts enabled in subsequent legislation. Faced with urgent social and economic needs within their populations and eager to expand their control of reservation affairs, many Native nations moved quickly to "638" a variety of federal programs (Vinje 1996). Over the next twenty years, these arrangements led to a significant shift not only in program management but in jobs, which rapidly migrated from federal to tribal administrations.

Other factors contributed to the expansion of tribal governments. For example, over the last three decades several Native nations, under internal and external pressure to develop natural resources, rapidly expanded their capacities to monitor and regulate resource extraction, often using proceeds from the sale of resources to do so (see Ambler 1990; also Iverson 1981 and Robbins 1979). Tribal efforts to pursue economic development and to play a larger role

in education and health care have contributed to tribal government growth as well.

THE HISTORICAL LEGACY: A MIXED BAG

In the United States, contemporary tribal governments reflect this peculiar history. They are products both of tribal assertions of governing power and of federal policies that, in various ways, have limited that power and often ignored Indigenous political culture. With ambitious goals and complex challenges ahead of them, they are at the same time handicapped by the consequences of this history, including the following: organizational weakness, functional overload, financial dependence on outsiders, a primary focus on program and service delivery, workforce dependence on government employment, a politics of spoils, and an impoverished conception of government.

Organizational Weakness

In the period from the 1930s to the 1960s, few people thought that tribal governments might one day be managing billions of dollars in natural resources, negotiating agreements with states and multinational corporations, or regulating environmental matters or large-scale business activity. Instead, the tribal constitutions that emerged under the IRA and its influence seem designed primarily to administer programs, sign resource-extraction contracts, and "practice" democracy. Most have grown in an *ad hoc* fashion, reflecting not a coherent strategy for building governing capacity but instead the gradual accumulation of offices in response to federal funding opportunities. The result is that most tribal governments from the time are organizationally weak, with few separations of powers, few checks and balances, and unwieldy administrative structures.

Functional Overload

Tribal governments are often the only institutions within Indian nations that have any resources. One result is a community expectation that these governments—and tribal councils in particular—will do every-thing. During executive education sessions in recent years, Native Nations Institute faculty have informally canvassed tribal councilors, asking what they're expected by constituents to do. The range of answers is astonishing: make laws, run businesses, be the ultimate judge in disputes, "fix everything for everybody," protect the nation's future, "be the local ATM machine," protect the land, "give everyone a job," and more. Expected to

be involved in everything, both councils and tribal administrations are often overwhelmed.

Financial Dependence on Outsiders

Many tribal governments have become heavily dependent on federal funds for daily operations. As a result, many of their activities are hostage to funding decisions made by non-Indian decision makers who live far away and serve multiple interests, while their operations have to follow guidelines set by outside agencies. This makes it more difficult for tribal governments to pursue tribal priorities, and it is the opposite of self-determination.

A Primary Focus on Program and Service Delivery

Providing services of various kinds is a common and critical governmental function. But in some Native nations, it has become virtually the only governmental function—and the only reliable source of funding. Obtaining grants and developing more social programs can become the primary focus of governmental energy, distracting attention from long-term, strategic goals and from developing solutions that reduce—not increase—dependence on federal dollars and decision makers.

Workforce Dependence on Government Employment

A growing, social service-oriented tribal government, combined with the absence, in many cases, of commercial economic activity, means that on many reservations, the bulk of the jobs are in the public (government) sector.¹⁰ In 1985, out of 1,406 full-time jobs counted in Todd County, South Dakota, which is essentially coextensive with the Rosebud Sioux Reservation, only 214—15 percent—were in productive business. The rest were all in the public sector (Szabo 1985). BIA data from 1997 on public sector employment provide additional illustrations: at Northern Cheyenne, an estimated 82 percent of those employed were in the public sector; at Hualapai, 95 percent; at Pine Ridge, 97 percent (U.S. Bureau of Indian Affairs 1997).¹¹ Combined with dependence on federal funds, such concentrations leave much of the workforce vulnerable to cutbacks in federal spending. They also concentrate employment in that part of the economy that is least productive of new wealth.

A Politics of Spoils

Where tribal government's primary function has become employment and service delivery, and where most financial resources are controlled by tribal

government, control of that government becomes the key to gaining access to economic resources: jobs, money, services. This turns reservation politics into a politics of spoils, having less to do with where the nation is headed or how best to organize tribal operations than with which faction will control the goodies that government can hand out.

An Impoverished Conception of Government

The politics of spoils in turn breeds community cynicism about tribal government, which comes to be viewed by citizens as concerned largely with handing out jobs and services—often to political supporters. Government, in this impoverished conception, is mostly administration. Its task is not to make law or envision the future or shape the nation but simply to run programs and distribute resources. It administers, but it does not *govern*.

Not all Native nations suffer equally from these problems, and some have both confronted and surmounted them. Through sheer determination or exceptional leadership, some American Indian nations have accomplished extraordinary things despite the handicap of inadequate governing tools. But determination and leadership have not been the only keys. Some nations have gone much further, turning tribal government itself into an effective instrument of the national will. They have done so by transforming inadequate governing tools into more effective instruments for rebuilding their communities and nations.

For those nations concerned with overcoming the crippling legacies of colonialism, the critical questions about government are these: *Does the present design of tribal government offer adequate tools for meeting the challenges the nation faces? If not, what steps should the nation take to equip itself with more effective governing tools? Why should any nation settle for governing tools that fail to serve its purposes?*

THE TASK AHEAD: REMAKING THE TOOLS OF GOVERNANCE

Native nations today need governing tools designed to meet the challenges they face: promoting and protecting rights of self-determination, developing and enforcing laws, managing natural resource endowments, revitalizing Indigenous cultures, building sustainable economies, negotiating effectively with corporations and other governments, designing educational and health care systems that reflect Native priorities and knowledge, and so forth. For many

nations, this means the tools of governance need to be remade. The resulting institutions will need both to reflect Indigenous principles and to perform at a high standard.

In practical terms, the new tools will have to be capable of providing a constitutional foundation for self-rule, making laws, making day-to-day decisions, and providing for fair and nonpolitical resolution of disputes.¹²

Providing a Constitutional Foundation for Self-Rule

Effective self-government requires a foundation of basic rules that spell out how the nation will govern itself. This is what a constitution typically does. It specifies the fundamental purposes of the nation's government, how that government is organized, who has what authority and when that authority can be exercised, what the basic rights of citizens are, and how changes in government can be made. Along with a treaty, if the nation has one, a constitution is a foundational agreement—among citizens themselves—establishing the rules by which the society intends to pursue its purposes and the means by which additional rules can be made.

A constitution doesn't have to be written. The old ones certainly weren't. While the Indigenous societies of North America had common rules by which they were organized and functioned long before the Europeans came—in other words, they had constitutions—those rules were not written down anywhere. They were embedded instead in shared cultural understandings in each nation, understandings that indicated how authority was organized and exercised and how things should be done.

While most American Indian nations today have written constitutions, some do not. The key questions about the rules that govern a society are not whether they are written down but whether they are (1) known and understood by the citizens of the nation; (2) viewed by those citizens as appropriate and fair; (3) fairly enforced; and (4) effective at dealing with the issues the community faces. If the rules meet these criteria, then the nation has in hand a set of usable tools for governing. On that basis, it can begin to build a society that works.

Making Laws

Laws specify relationships and rules of behavior for citizens, outsiders, businesses, and even agencies of government. They indicate what things are permissible and what things are not in specific areas of life.

Most nations have a law-making body of some sort, often composed of representatives of the citizens. Such legislative bodies draft, vote on, and enact ordinances and statutes that then become the law of the land and the basis for numerous actions by both citizens and the nation as a whole.¹³

Like a constitution, not all law must be written down. A nation's common or customary law is its often unwritten set of rules derived from culture, history, established practice, tradition, or the gifts of spiritual beings. The canonical example among contemporary American Indian nations is the Navajo Nation, which recognizes Navajo common law as standing beside the Navajo Tribal Code as the law of the land. The tribal council, the president, and the nation's courts all rely extensively on common law in their decisions. Navajo custom and tradition are thus incorporated into the day-to-day governance of the nation (Nielsen and Zion 2005). In many cases, argues Canadian legal scholar John Borrows, "First Nations legal traditions are strong and dynamic" (2002, 27). Whether they're codified or even written down, they address many of the difficult problems that Native nations face, and they can be incorporated directly into contemporary law-making.¹⁴

As with the constitution, there are some key questions about the laws the nation makes, regardless of their derivation: Are they clear? Are they consistent? Are they fairly and effectively enforced? Can they get the job done?

Making Day-to-Day Decisions

The governments of Native nations typically are confronted with a vast range of decisions, from whether to enter into litigation in a dispute with another government to how to respond to the needs of a family in trouble, from whether to change the management regime in a nation-owned forest to finding the funds to support language revitalization. Much of government's time is spent in making decisions, large and small.

One of the keys to effective government is the ability to make informed decisions in a timely fashion. This requires ways of obtaining the necessary information on which to base decisions and an effective decision-making process that everyone understands and supports.

Implementing Decisions

Once decisions have been made, they have to be implemented. This is typically the task of the administration or bureaucracy. Implementation is a crucial

element of government because it determines how the rules are applied, how policies are carried out, how functions are performed, and how services are delivered. It shapes much of the citizens' experience of their own government, good or bad. An effective government has an administrative system that is capable, predictable, well understood by those dealing with it, and perceived as fair.

Providing for Fair and Nonpolitical Resolution of Disputes

The government also needs to assure the nation's citizens that when they have disputes, either with each other or with the government, they will be dealt with fairly. This requires some sort of mechanism to resolve the disputes—a court, a council of elders, or some other body that can be empowered to evaluate and adjudicate competing claims. The most effective dispute-resolution mechanisms typically are well insulated from other functions of government and from other elected officials such as legislators. This sends a clear message to citizens and outsiders alike that their claims will not be hostage to politics.

That message is critical to the nation's success. As long as people feel their claims will not be fairly addressed or that court decisions or appeals will be politicized, they will tend to mistrust their government and may take their knowledge and their energy and go somewhere else to live their lives, draining crucial assets from the nation.

This same mechanism—a court or other body—also may be charged with interpreting the rules established in the nation's constitution, codes, and common law. Here again, insulation from politics is essential if the nation's citizens are to trust the rules themselves.

POPULATION SIZE AND JOINT INSTITUTIONS

The tasks of governance are demanding, and not only of time and energy. They also demand people. This makes self-government a particular challenge for Native nations with small populations. Such nations face the same tasks that larger nations do, but they approach those tasks with fewer people. For a nation of several hundred citizens or less, only half of whom may be adults, building a governing structure capable of effectively carrying out the nation's business can be extremely difficult. Everyone wears multiple hats; people burn out; it's tough to keep roles

and responsibilities clear; there aren't enough people to get it all done; and so forth.

These problems are partly artifacts of history. Particularly in Canada, colonial processes and federal policy broke up language and cultural groups, dispersing single peoples into multiple, postage-stamp-sized reserves with tiny populations. While denying First Nations sufficient land and other resources to sustain their economies, the government of Canada vastly complicated their governance challenges as well. Although this is less of a problem in much of the United States, where reservation-based Native populations are often larger, there are places such as Alaska and southern California where fragmentation and isolation make rebuilding Native nations a particularly difficult task.

One solution is to build governing institutions that link multiple nations, reducing the pressure on individual nations to organize all government functions at the local level. An example is the Northwest Intertribal Court System, created by a consortium of small tribes in western Washington that lacked the resources to form and sustain individual courts of their own. The system provides appellate and other judicial services and support to its member tribes (Harvard Project on American Indian Economic Development 2003). Nine First Nations in Saskatchewan formed the Meadow Lake Tribal Council to manage jointly owned businesses and coordinate service delivery. Several First Nations in southern British Columbia have gone further still, building comprehensive governing institutions under the umbrella of the Ktunaxa Nation Council, reconnecting Ktunaxa communities long dispersed on remnant lands.¹⁵ Other nations have joined forces to manage natural resources, coordinate policing, and deliver health care and other services. Not all government functions have to be carried out at the same level. Some nations may reserve certain functions to themselves while carrying out other functions through joint institutions.

The bases of such joint institution building can be found in shared culture, shared history, or even shared space or ecosystem, as in the case of watersheds shared by several nations. But whatever the bases on which they occur, agreements to join together for certain governance purposes are themselves exercises in self-determination, examples of Native nations finding ways to address the crippling circumstances created by colonialism,

including small population sizes. In the process, some nations are restoring older boundaries and bases of identification and action, building new governance tools that reflect much older conceptions of peoplehood.

THE LEGITIMACY CHALLENGE

Governments that lack support from the people being governed—that lack legitimacy in the eyes of their own citizens—are governments on the road to failure. There are at least two sources of legitimacy. One is effectiveness; the other is cultural match.

Effectiveness has to do with the fit between the organization of governance and the real-world circumstances confronting the nation. The issue is stark: Can this form of government accomplish what needs to be done in the circumstances that the nation faces? Is it adequate to contemporary times? A government that is incapable of effectively making and implementing decisions will have difficulty protecting the nation's interests. A government that allows political factionalism to get in the way of needed changes will lose the confidence of its citizens. A government in which the basic rules for how things are done change every time there's a new administration will face lost opportunities and talent as potential partners and skilled citizens decide to invest their energies somewhere else. And so forth.

These are not "Indigenous" problems. They are governance challenges that all human communities face. Can the nation find and retain the expertise it needs to deal with complex issues? Can the nation persuade would-be entrepreneurs to start businesses at home instead of taking their ideas and energy somewhere else? Can the nation resolve its internal conflicts without ripping itself apart? Can it negotiate effectively with another government or with a multinational corporation? Can it get the bills paid? Can it provide justice to its citizens? Can it not only decide what to do but do it well?

If the current form of governance is incapable of solving such problems, then the task before the nation is to develop new tools—or to reinvigorate old ones. Rebuilding Indian nations may require both restoration and innovation, drawing on past principles and practices and, at the same time, on the adaptive skills that Native peoples have long employed as they adjusted to new ecosystems, new trade opportunities, alien cultural influences, and unexpected problems.

But simply being effective is not enough to win legitimacy with the people. A technically proficient government that is at odds with people's beliefs about what governing means and how it should be done will invite abuse. Cultural match, in contrast to effectiveness, is a matter of the fit between the formal organization of governance and people's beliefs about how authority should be organized and exercised.¹⁶ What's fundamentally at issue is political culture: What does the community view as an appropriate way to govern? Does the organization and action of government resonate with the community's ideas about how things should be done? Is it appropriate, for example, to settle disputes this way, or should they be settled some other way? What powers should be in the hands of elected leaders and what powers in the hands of medicine people, or elders, or clans, or others? Do the nation's laws respect Indigenous understandings about appropriate relationships to the land, to sacred spaces, to the animals, to the less fortunate? Are elections the right way to choose leaders in this community? Should decisions be made centrally or locally? And so forth.

Where there is cultural match—a fit between the organization of government and the culture of the people—government is more likely to have legitimacy with the community it governs and to achieve the nation's goals.

But achieving cultural match has become more complicated in recent years than it once was. The legacies of colonialism have been destructive, undermining cultural continuities, rupturing relationships, and belittling—if not outright prohibiting—many Indigenous ideas and practices. The great diversity that has long characterized Indian nations now echoes within them: a typical reservation community today may include not only traditional singers, elders who still speak their own language, and expert craftspeople, but video gamers, graduate-degree-holding professionals, business-minded entrepreneurs, rock-and-roll band members, and computer geeks. In some cases, these may be the same people, individuals who neatly straddle a host of activities and ways of life, old and new. Where is cultural match to be found in such a mix of experiences, views, values, and voices?

The answer, in part, lies in what Diane Smith calls "a process of Indigenous choice" (2004, 27). The process of fashioning new governance tools can itself

be a source of legitimacy as long as that process is Indigenously controlled. The resulting tools may mix traditional and contemporary ideas, Indigenous and imported ones. The source of the ideas is less important than how they come to be part of the nation's life. The solutions that are most likely to find support among the people—the ones with staying power—will be those that are chosen and crafted by the people themselves.

These two sources of legitimacy—effectiveness and cultural match—are related. Governments that resonate with their citizens' ideas of what is appropriate and right are more likely, over the long run, to be effective. The creative challenge for Native nations is to do both: to develop effective tools that build on Indigenous values and principles.

SELF-ADMINISTRATION VERSUS SELF-GOVERNMENT

Through much of the latter part of the twentieth century, tribal governments were mostly administrators and managers, running programs designed by outsiders. This was no accident. It is what, for the most part, the federal government imagined for Indian nations. Even the Indian Self-Determination and Education Assistance Act of 1975 was more about administration than government. Its key theme was the right of Indian nations to take over and manage federal Indian programs previously run by someone else.

There were exceptions to this pattern. The more aggressive Indian nations seized much more authority than the creators of the act envisioned: they *governed*, asserting the rights and capacities not only to manage service delivery but to reshape their nations according to their own designs, to make and enforce laws, to develop and pursue long-term strategies of community development, to negotiate new relationships with other governments, and to exercise meaningful jurisdiction over lands and people within their borders. In doing so, they marked out a path from self-administration to genuine self-government. What's the difference? Table 1.1 offers a summary.¹⁷

This shift from self-administration to self-government is a fundamental aspect of nation building. At its core, it is about reclaiming governance as an Indigenous right and activity, and then developing the tools to govern well.

TABLE 1.1: Self-Administration versus Self-Government

Self-Administration	Self-Government
is largely limited to management decisions within programs	Jurisdiction ranges from decisions about governmental form and resource use to intergovernmental relations, civil affairs, and development strategy
is typically shaped or imposed by outsiders, usually federal or state governments	Governmental Form is designed by Native nations
are to administer social programs and distribute resources, such as jobs, money, and services, to citizens	Core governmental Functions are to establish constitutional foundations for government and self-determined development; make and enforce laws; make and implement policy decisions; provide for fair and nonpolitical dispute resolution; administer programs
is largely from other governments; efforts to increase revenue focus on lobbying for additional transfers of funds	Revenue is from diverse sources (may include transfers); efforts to increase revenues focus on various options under Indigenous control (e.g., tribal enterprises, permits and fees, taxation)
typically goes in one direction, having to do largely with community accountability to funders (usually other governments) for how funds are used and for permission to act	Accountability goes both ways, having to do with (1) Native nations' accountability to their own citizens for governing well, (2) their accountability to funders for how funds are spent, and (3) outside governments' accountability to Native nations for policy decisions
require consultation (other governments consult with Indigenous communities, then decide what to do); the assumption is that other governments know what's best for Native nations but should at least talk to them about it	Intergovernmental Relations are partnerships (decisions are made jointly where joint interests are involved); the assumption is that Native nations and other governments can work together in a relationship of mutual respect to determine what's best for both

NOTES

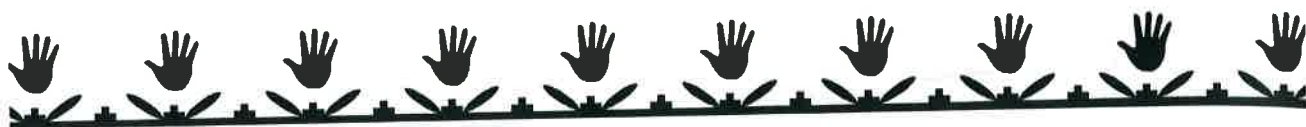
1. On recent U.S. court decisions, see Williams (2005). More generally on Indigenous self-determination in European settler societies, see Anaya (1996), Havemann (1999), Ivison, Patton, and Sanders (2000), and Cornell (2005).
2. See the foreword in this volume.
3. In a meeting with visiting Aboriginal and Torres Strait Island leaders from Australia, in Vancouver, British Columbia, May 29, 2006.
4. For a fascinating case examination of just such tools, see Trosper (2002, 2003) on the Indigenous societies of the northwest coast of North America.
5. There are a number of accounts of this development; see, for example, Philp (1977) and Taylor (1980).
6. See, among others, the discussions in Bee (1981), Biolsi (1992), Fowler (1982, 1987), U.S. Department of the Interior (1937), and Rosier (2001).
7. Collier is quoted in Dobyns (1968, 269). On the assimilationism of the IRA, see Collier (1954), Cornell (1988, ch. 6), Ducheneaux (1976), and Spicer (1962, 352, 412–13). On the details of the IRA, see Deloria and Lytle (1984) and Kelly (1975), and on the thinking among senior officials at the time, Rusco (2000, 2006). The IRA did not lead to uniform governance structures. A number of the New Mexico pueblos, for example, and many tribes in Alaska are organized very differently and often with significant continuities with older, largely Indigenous forms, and a significant number of Indian nations operate without written constitutions. However, a substantial portion of Indian nations in the United States are organized under the IRA, and many more have governments of similar structure. Some comparable processes took place in Canada but with even less deference to Indigenous ideas. The Indian Act of 1876, along with other government actions, supported the establishment of First Nation governments but was more restrictive, more widely imposed, and more consciously assimilationist than the IRA. See, for example, Armitage (1995), Borrows (2002), Cairns (2000), H. Foster (1999), and Ladner and Orsini (2005).
8. On CAP in Indian Country, see Levitan and Hetrick (1971), and Castile (1998).
9. All examples in this list draw on Cornell (2000) and Brown et al. (2001).
10. As used here, the public, or government, sector includes all government employment (tribal, state, federal) other than government-operated commercial enterprises.
11. The quality of BIA labor force estimates varies by reservation, and such estimates should be treated with caution. Nonetheless, they have value as indicators of the general situation. See also Antell et al. (1999) on a similar situation on the Wind River Reservation, and Pickering (2000) on the Lakota reservations. Snipp (1991, 239, 240) discusses the high levels of government employment on reservations generally and points out that, given the negligible role of state government on most reservations, the vast bulk of this employment is either tribal or federal.
12. These points are a modified version of the discussion in Cornell, Curtis, and Jorgensen (2004), 6–9.
13. Such rules are often collected in topic areas as codes—for example, a children's code (governing adoption and foster relationships, child protective services, issues surrounding

abuse and neglect, etc.), a criminal code (defining and providing penalties for criminal acts within the Native nation's territory), or a commercial code (specifying what businesses have to do to operate within the nation, what their rights are, and what the obligations are of the nation's government to businesses).

14. Borrows argues further (2002) that First Nations law has relevance not only for First Nations but for non-Native societies as well, and that it deserves recognition in Canadian law. On the incorporation—formal or informal—of Indigenous law in

tribal courts generally, see Cooter and Fikentscher (1998a, 1998b) and the case study in Richland (2005).

15. On the Meadow Lake Tribal Council, see <http://www.mlhc.net/>; on the Ktunaxa Nation Council, see <http://www.ktunaxa.org/>.
16. According to Lipset (1963, 64), "Legitimacy is evaluative. Groups regard a political system as legitimate or illegitimate according to the way in which its values fit with theirs."
17. This table is a modified version of one in Cornell, Curtis, and Jorgensen (2004, 30–31).



FIRST NATIONS DEVELOPMENT INSTITUTE

Founded in 1980, First Nations Development Institute is a national American Indian-led 501(c)(3) nonprofit organization. Through a three-pronged strategy of educating grassroots practitioners, advocating systemic change, and capitalizing Indian communities, First Nations Development Institute is working to restore Native control and culturally-compatible stewardship of the assets they own—be they land, human potential, cultural heritage, or natural resources—and to establish new assets for ensuring the long-term vitality of Native communities. First Nations was founded with the belief that: "when armed with appropriate resources, Native peoples hold the capacity and ingenuity to ensure the sustainable economic, spiritual, and cultural wellbeing of their communities."

First Nations Development Institute was founded with the belief that Indian Country faces a unique challenge: Unlike

any other impoverished community in the nation, the problem faced by Native communities is not ownership of assets but rather the question of who controls Native assets. First Nations believes that in order to effectively address this challenge, Indian Country needs a multi-faceted approach that uses a wide variety of innovative solutions to assist Native people in controlling the assets they own. At First Nations, those solutions have always been based upon a unique understanding of complex systems and the careful use of traditional knowledge, both of which Indian communities still possess today.

Statement from First Nations Development Institute about its work, 2008.



THE CHICKASAW NATION AN EXAMPLE OF NATION BUILDING

The Chickasaw Nation of Oklahoma, with more than 38,000 citizens, approximately 21,000 of whom reside in Oklahoma, is an example of contemporary nation building and economic success through the assertion of sovereignty and excellence in self-governance. This Nation has taken control of its own institutions and runs them based on its own vision, and it has developed economic, social, and political systems that are culturally appropriate.

Under the leadership of Governor Bill Anoatubby, who was elected in 1987, the tribe has grown from 250 employees and an \$11 million annual budget funded almost entirely by the federal government, to, in 2007, 10,500 employees and a \$130 million annual budget coming from federal funding that honors treaty obligations. This is supplemented by revenue from tribal economic development and funds a variety of services. The tribe owns

60 businesses, including motels, restaurants, travel plazas, gaming centers, a chocolate factory, radio stations, a newspaper, and a bank.

Economic Development

- Solara Health Care operates eight hospitals in several states, employing 1,000 people.
- Chickasaw Nation Industries is a family of companies working across multiple fields, including construction, manufacturing, property management, and technology.
- Bank2 is a Native American-owned full-service bank that specializes in Native American home loans. Bank2 has won numerous awards.

Education

- \$7 million for education grants, scholarships, and incentive programs
- More than 1,000 Chickasaws from Oklahoma and other states attend Chickasaw Summer Camp/Academy annually
- Child care center
- Internship program

- School-to-work program
- Chickasaw Nation Aviation and Space Academy
- Chickasaw Nation Summer Arts Academy
- Chickasaw Nation Press (the first tribally owned/operated academic press)

Health Care

- New Chickasaw Nation Medical Center facility to opening in 2010, to be the largest Indian health care facility in the United States

Culture

- Chickasaw Cultural Center in Sulphur, Oklahoma, to open in 2009

Housing and Tribal Development

- Chuka Chukmasi ("beautiful home") loan program
- Lighthorse Police Department

Source: Chickasaw Nation Progress Report 2007. See: http://www.chickasaw.net/governor/docs/2007_progress_report.pdf



INDIAN GAMING IN THE STATES DISPELLING MYTHS AND HIGHLIGHTING ADVANTAGES

Sia Davis and Jane Feustel

INTRODUCTION

During the past decade, nearly 40 percent of Indian tribes have become involved in gaming since their right to do so was confirmed by Congress. Compacts or agreements between tribes, governors and state legislatures are in place, based upon the

From Sia Davis and Jane Feustel, *Indian Gaming in the States: Dispelling Myths and Highlighting Advantages*. Building New Traditions Series. Denver: National Conference of State Legislatures, States and Tribes, 2005, pp. 1-11.

Indian Gaming Regulatory Act (IGRA) of 1988. The huge financial success of a few Indian casinos has created the perception that most Indian tribes across the country are involved in gaming ventures and have achieved significant financial prosperity for their tribes. Such a misconception often brings a negative view that besieges gaming and includes concerns about crowds, traffic congestion, organized crime and potential societal problems such as alcoholism, increased crime and gambling addiction.

ORIGINS OF INDIAN GAMING

After several decades of restrictions, the popularity of gambling began to grow in the 1980s. States began to approve lotteries. At the same time, a few Indian tribes opened bingo halls on their reservations. Legal debates followed between states and gaming tribes over regulation. The Seminole Tribe in Florida was one of the first tribes to open a high-stakes bingo hall. The state sued the tribe, citing that the bingo parlor did not comply with state laws. The resulting 1979 court decision in *Seminole Tribe vs. Butterworth* concluded that this type of gaming fell within the capacity of the Seminole Tribe's inherent self-governing authority. A subsequent court case, *California vs. Cabazon and Morongo Bands of Mission Indians*, was decided by the Supreme Court in 1987. It ruled that California could not impose its bingo laws upon tribal governments. The court recognized that tribes are independent from state governments and, in states where gaming is allowed, the tribes have the right to operate gaming operations.

THE INDIAN GAMING REGULATORY ACT (IGRA)

To mitigate future litigation between states and tribes, to affirm the inherent sovereignty of tribal governments, and to promote an opportunity to generate needed revenue, Congress passed the Indian Gaming Regulatory Act in 1988. Among many major aspects of the act, it created the jurisdictional framework for regulating Indian gaming and affirmed the right of tribes to conduct gaming, but also diminished some aspects of that sovereignty to meet the financial and regulatory concerns of states. Part of IGRA's strategy was to support economic development on reservations, strengthen tribal governments, and provide states a role in the negotiation of gaming compacts.

IGRA categorized gaming into three types—Class I, Class II and Class III. Class I gaming is traditional Indian and social gaming for nominal prizes, such as tribal celebrations or rodeos. Class II gaming covers "games of chance," such as bingo and certain card games where individuals play against each other as opposed to playing against the house. More popular is Class III gaming, and it is under this type of gaming that some tribes have prospered. Usually referred to as "casino-style gaming," this activity includes slot machines, roulette, black jack and other table games. Tribes have regulatory authority over Class III gaming.

They share regulatory authority over Class II gaming with the National Indian Gaming Commission. To conduct Class III gaming, tribes first must negotiate compacts with states that outline how the tribe's gaming activities will be conducted. Even though such an agreement is negotiated between a tribe and a state, the secretary of the interior must approve the compact.

IGRA also specifies that gaming revenue should be used for five purposes:

- To fund tribal government programs,
- To fund the operation of local government agencies,
- To provide for the welfare of tribal citizens,
- To donate toward charitable contributions, and
- To promote economic development.

These guidelines were developed with the intent that revenue from gaming would be spent to improve local roads and highways, provide health and education services to tribal members, preserve cultural heritage, and provide seed money for the development of new businesses, among other things. Once services are funded and if a revenue allocation plan has been approved by the secretary of interior, a tribe can allocate revenue, in the form of a per capita payments, to members of the tribe.

IGRA also established the National Indian Gaming Commission, the federal agency with oversight over Indian gaming activities. The commission oversees class II and III gaming activities and is charged with ensuring that Indian tribes are the primary beneficiaries of gaming revenue and that gaming is conducted fairly by both casinos and customers. It also is involved in approving gaming compacts and management contracts.

INDIAN GAMING TODAY

How widespread is Indian gaming in the United States? In reality, about 220 of 562 tribes are involved in gaming. Many tribes limit themselves to games of bingo. Fewer than 20 tribes have experienced significant economic success through gaming. The gaming ventures deemed most successful are located near metropolitan areas. Yet, the majority of Indian tribes in the United States are located in rural, remote locations that are too isolated to support a profitable casino on their reservations.

Rarely mentioned are those Indian tribes that oppose gaming altogether; these include the nation's

largest tribe, the Navajo Nation, and the smaller Hopi Nation in Arizona. Although the Navajo Nation recently authorized gaming in one small area, these two tribes raise revenue in other ways, despite an unemployment rate of 50 percent on both reservations. Steadfast religious and cultural beliefs have influenced the decision to keep most gaming off their land. Some tribal members, including members of gaming tribes, believe gaming could destroy their culture and traditional ways and lead to future problems.

In many cases, gaming success extends off the reservation into non-Indian communities, and that fact is not always readily noticed. Indian gaming created almost 500,000 jobs nationwide in 2003. For example, Indian gaming is one of the top 10 employers in Minnesota, where more than half the gaming workforce is non-Indian. The Seminole Tribe of Florida, which opened two new casinos in 2004, employs 8,000 people, the majority of whom are non-Indian.

Gaming clearly has offered a successful method to improve economies for some tribal communities in the absence of alternative business endeavors. Where gaming has flourished, it has helped tribes become self-sufficient and has provided revenue that has allowed them to diversify their economic prospects. In addition, the revenue funds many social services that the state or federal government

would generally pay for or that would otherwise be unfunded.

GAMING SUCCESS HAS NOT BEEN CONSISTENT

Two tribes that have found gaming to be financially lucrative are the Band of Kumeyaay Indians in California—who operate several casinos, including the Golden Acorn Casino and the Barona Resort and Casino—and the Mashantucket Pequot Tribal Nation in Connecticut, which operates Foxwoods, one of the world's largest casinos. Successful casinos have provided tribes with the resources to diversify their businesses, which remains key to maintaining a sustainable economy.

On the other hand, several tribes attempted gaming on their reservation, but did not reap the benefits they anticipated. The presence of a casino on the Rosebud Reservation in South Dakota has not reduced the Lakota Tribe's 80 percent unemployment rate. Similarly, economic conditions for the Standing Rock Sioux Tribe in North Dakota remained dismal following commencement of its gaming operations in the 1990s. Some casinos have marginal success—not flourishing, but not failing—but do well enough to stay in business and provide a few jobs. For some tribes, the goal is simply to provide this handful of new job opportunities in their community.

CASE STUDIES

THE MASHANTUCKET PEQUOT TRIBAL NATION

CONNECTICUT

Since it opened in 1992, the Foxwoods Resort Casino, operated by the Mashantucket Pequot Tribal Nation, has directly created 13,000 jobs and introduced a total of 41,000 jobs in the state of Connecticut. The gaming operations have had a significant effect on the surrounding communities and the entire state.

- Many believe the resort's presence has helped maintain positive residential property values.
- More than 70 percent of visitors to the resort are from out of state, thereby increasing tourism.

- The tribe pays millions of dollars annually to the state in revenue sharing payments.

After the tribe was named the state's most disadvantaged group in the 1990 census, the Mashantucket Pequots made a drastic rebound as a result of gaming operations. The tribe has been able to diversify its economy and now owns additional businesses, including a pharmaceutical company. Profits from gaming funded the construction of a Native American Museum, which provides both cultural preservation and additional tourism.

THE MOHEGAN TRIBE

CONNECTICUT

The Mohegan Tribe established the Mohegan Sun Casino in 1996. The tribal government receives 46 percent of the total revenue. By 1997, the casino was so successful the tribe was able to return \$3 million to the federal Department of Housing and Urban Development to be used for other tribes in need.

Benefits of Mohegan Tribal gaming operations to the state include:

- Along with the Pequot tribe, the Mohegans paid the state more than \$400 million from casinos in 2003.
- An additional \$500,000 yearly goes to local governments.
- The tribe has contributed to the Connecticut Council on Problem Gambling.

- The tribe developed a workforce readiness policy to help low-income individuals maintain full-time jobs.
- The tribe offers its members a large range of assistance and funding opportunities, including funding for full-time college students and continuing education students, medical care, day care assistance, low-income housing, a public safety department, and cultural and language projects.

Sources: Fred Carstensen et al. *The Economic Impact of the Mashantucket Pequot Tribal Nation Operations on Connecticut*. (Storrs, Conn.: Connecticut Center for Economic Analysis, University of Connecticut, November 2000); Stephen Cornell et al. *American Indian Gaming and Its Socio-Economic Effects: A Report to the National Gambling Impact Study Commission*. (Cambridge Mass.: The Economic Resource Group Inc., July 1998).

GAMING REVENUE AND ALLOCATION

Both state and tribal governments use revenues for similar purposes. State revenue comes from a combination of sources that may include property, income and sales taxes; federal aid; and some forms of gambling (lotteries, bingo, pari-mutuel racing or other approved endeavors). States spend that revenue on public education, social services, road maintenance, law enforcement and a host of other needs of their citizens.

IGRA's provisions maintain that tribes must similarly use the revenue earned from their casinos for services on their reservations such as police and fire departments, medical clinics, housing, child care and education. In addition to providing these services, some Indian tribes also have used gaming proceeds as a major means of promoting economic development and providing employment on reservations.

COEUR D'ALENE, KOOTENAI, NEZ PERCE, AND SHOSHONE-BANNOCK

IDAHO

The Coeur d'Alene, Kootenai, Nez Perce, and Shoshone-Bannock tribes operate five gaming facilities in Idaho. In all, Idaho Indian gaming operations have directly created 2,196 jobs and indirectly created 2,259 more due to tourists who visit tribal gaming facilities. The gaming facilities alone provided \$44.8 million in wages and earnings, and indirectly generated an additional \$39 million in wages.

As a result of tribal gaming in Idaho, unemployment levels on reservations have decreased. With more people working, total state and federal subsidies for programs such as welfare and Medicaid have been reduced by approximately \$6.2 million

due to gaming employment. Employment boosts self-esteem and the quality of life of many citizens who previously needed public assistance.

In 2002, the state passed Proposition One, the Indian Gaming and Self-Reliance Act, clarifying the definition of tribal video gaming machines and providing tribal contribution of 5 percent of annual net gaming revenue for schools and educational programs on or near reservations.

Source: Steven Peterson and Michael DiNoto, *The Economic Impacts of Indian Gaming and Tribal Operations in Idaho*. (Moscow, Idaho: University of Idaho, August 2002). (Sponsored by the Idaho Coalition for Indian Self-Reliance).

In an effort to mitigate the effects of casinos on nearby communities, a number of tribes share their gaming revenue not only with the state but also with nearby cities and counties. In 2004, the Pechanga Band of Luiseno Indians in California helped fund highway improvements, a new fire station, the hiring of extra county sheriff deputies and a tribal liaison to the district attorney in Temecula. State, local and city governments in Arizona receive revenue from gaming tribes to help support trauma and emergency services, the Arizona Wildlife Conservation Fund and the state's tourism fund. Under a compact with Louisiana, the Coushatta Tribe contributes money to local governments to offset the effects of its casino on the community. Much of the money goes to a local school board and is used to fund building projects, equipment and computers, and bonuses for school employees. Similarly, the Coeur d'Alene Indian tribe in Idaho has been awarding grants to local schools in the northern part of the state since 1994.

National charities also benefit from gaming revenue. Tribes have contributed to popular programs such as Crime Stoppers, the Special Olympics, the Muscular Dystrophy Association, the American Cancer Society and the Juvenile Diabetes Association.

Some tribes also voluntarily contribute to local school districts and local universities and colleges.

LAND ACQUISITION AND GAMING

The Indian Gaming Regulatory Act requires that Indian gaming occur on Indian land. On a reservation, lands might be held in fee by the tribe or held in trust by the United States. Land-into-trust is a policy process where the title of "fee" or private land is converted to federal title. The U.S. Department of Interior owns the property and holds it in trust for the benefit of an Indian tribe. This policy restores portions of land to tribes whose land previously was taken away.

An often misunderstood section of IGRA is section 2719, regarding gaming on lands procured after IGRA's 1988 enactment. Indian gaming is not permitted on lands acquired by tribes after October 17, 1988, unless certain conditions are met.

Since the passage of IGRA, only land located within or adjacent to land that already is part of a reservation or land that was part of a tribe's original reservation (for tribes who currently have no land holdings) can be used for gaming. These conditions can be lifted if it is determined that a gaming establishment on newly-obtained land would be in the

THE UNITED AUBURN INDIAN COMMUNITY CALIFORNIA

In February 2002, an agreement between California and the United Auburn Indian Community was approved by the U.S. Department of Interior that allowed 49 acres of land to be placed into trust for construction of a gaming facility.

The land, located in Placer County, California, would house a Class III gaming facility that would allow the Indian community a means of earning revenue to become self-sufficient. Components of the compact required that the United Auburn Indian Community agree to:

- Contribute to the state's Revenue Sharing Trust Fund and the California Council on Problem Gambling.
- Pay for public services as compensation for the revenue lost from taking the property off the tax

rolls under a memorandum of understanding with Placer County.

- Employ county welfare-to-work participants in the casino.
- Comply with county zoning and building codes during construction of the facility.
- Construct an on-site wastewater treatment plant.
- Comply with the California Environmental Quality Act.

In reviewing the application, the Bureau of Indian Affairs consulted with state, county and local officials and with the public, and negotiations resulted in approval of the application to the satisfaction of both the Indian community and the state.

best interest of the tribe and its members, but would not be detrimental to the surrounding community. Such a decision can be finalized only if the governor of that state consents and approval is given by the secretary of interior.

Gaming operations also can be established on land recently acquired as part of a land claim settlement, federally recognized as part of an Indian tribe's original reservation, or on land restored to an Indian tribe that is reestablished as federally recognized. In the 16 years since the passage of IGRA, just 23 land-into-trust acquisitions have been granted for gaming purposes and only three of these were off-reservation acquisitions. Trust status can be granted only by an act of Congress, a court decision, or application to the U.S. Department of Interior. Some misconceptions exist regarding the trust land issue because of a perception that Indian tribes want to acquire land specifically for gaming purposes. Most trust land acquisitions involve land for Indian housing, schools, health care facilities and agricultural use.

REGULATION OF INDIAN GAMING

When gaming operations first began, there were inconsistencies in gaming regulation from tribe to tribe. These inconsistencies helped to create the perception that Indian casinos were not adequately regulated. Regulation comes from three sources. An individual tribe's gaming commission has primary regulation over gaming operations. In addition, states hold some regulatory authority; specifically over matters that relate to state-tribal compacts. Federally, the National Indian Gaming Commission is the chief entity that oversees tribal casinos. The commission's role is to monitor and corroborate the work of the tribe's regulation commission, and it is responsible for establishing licensing rules, reviewing yearly audits for gaming operations, approving tribal gaming ordinances and inspecting casinos, among other things. Also at the federal level, the U.S. departments of Interior, Justice and Treasury maintain some regulatory authority.

ECONOMIC DIVERSIFICATION AS A RESULT OF GAMING

Gaming revenues, especially from Class III gaming, frequently provide start-up capital for tribes to initiate other types of business on their reservations. By using gaming revenue as a catalyst to launch or invest in non-gaming businesses, many tribes have experienced the successful growth of diversified economies. Achieving this diversification could ensure future economic stability.

No matter how well a casino flourishes, the establishment of new businesses derived from gaming revenue does not occur overnight and, in most instances, new, non-gaming businesses are small. The creation of certain businesses—such as restaurants or hotels—can directly support a casino. Other businesses—golf courses, RV parks or convenience stores, for example—can cater to reservation visitors or tourists who do not gamble.

Whether large or small, some businesses established with gaming revenue can grow to provide alternative revenue that can help to financially support a tribe. Examples of successful economic diversification include the following.

- The Oneida Nation in New York recently started a charter airline service. Four Directions Air Inc., provides charter service for corporate business travelers.
- The San Manuel Band of Mission Indians in California owns a water bottling plant.
- The White Mountain Apache in Arizona owns and operates a ski resort and hotel.
- The Mescalero Apache in New Mexico owns and manages the Inn of The Mountain Gods, a \$20 million luxury resort.
- The Ho-Chunk Nation in Wisconsin owns a construction company, smoke shop, and RV park and campground.
- Perdido River Farms, run by the Poarch Band of Creek Indians in Alabama, leases crop land to area farmers; grows corn, cotton and soybeans, and operates a catfish farm.

Gaming revenue is not always a prerequisite to economic diversity. Well known for the economic diversification they have achieved, The Mississippi Band of Choctaw Indians opened one of its first businesses in 1969—a home construction company. During the next two decades, the tribe expanded its ventures to include a retail shopping center, a printing company, an industrial park, a nursing home and several other companies. Because its other economic development ventures were quite successful, the tribe's first gaming facility did not open until July 1994.

COMMON CONCERNS REGARDING INDIAN GAMING

Gaming, whether in Las Vegas, Atlantic City or on tribal land, conjures up negative images for many. Some view Indian gaming as a concern because of its close proximity to local communities in many states and because of common misperceptions about it,

such as nonpayment of taxes, increased crime, and addiction to alcohol and gambling.

Indian casinos do not have to pay taxes on gaming revenues to the state or federal government, just as states do not pay taxes on power ball, scratch or other lottery revenues. Tribal businesses do pay wage, occupational and employment taxes. In terms of federal income taxes, Indian tribes are governments and are not required to pay federal taxes on the income generated by the tribe. Although profits generated by the tribes are not taxed at the state or federal level, per capita payments made to tribal members are taxable. Tribes also pay fees—based on a percentage of net revenue from Class II and Class III operations—to fund the National Indian Gaming Commission.

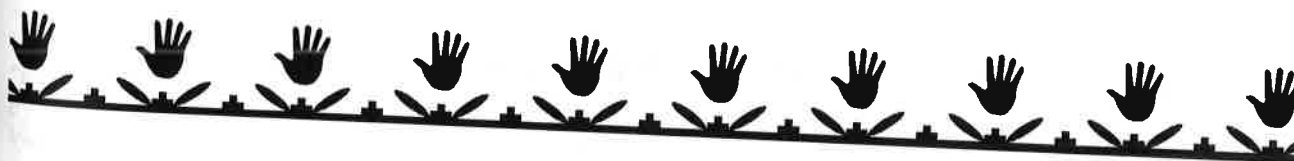
Gambling in general has a history of criminal involvement, and casinos everywhere deal with the issue. No reports have been officially substantiated that criminal activity increased because of an Indian casino. Moreover, there is no evidence that organized crime has infiltrated Indian gaming. Preventing criminal activity is achieved through tribal, state and federal regulation. One federal law sets the punishment for cheating or embezzling from an Indian casino at a maximum 10-year prison sentence.

Many tribes have implemented programs to mitigate or treat their patrons' gambling addiction or alcoholism problems. The Standing Rock Sioux in North Dakota help fund a hotline for compulsive gamblers, and the Sault Ste. Marie Chippewa in

Michigan initiated a gaming rehabilitation program for problem gamblers. In addition, a number of Indian casinos completely ban alcohol.

CONCLUSION

Not all Indian tribes view gaming as their ultimate and only source of revenue. In light of federal shortfalls in funding, however, gaming has provided a basis for economic development for some Indian tribes. The media seldom publicizes—and the public does not always recognize—the fact that most gaming tribes experience only a modest profit from their casinos and that the remote areas, where a majority of tribes live, are a major disincentive to gaming. These locations also make it difficult to establish other types of economic ventures. American Indians have been, and currently are, living in the most poverty-stricken communities in the nation, at a poverty rate of almost 25 percent, compared to the national average of 12.4 percent. To help overcome poverty, tribes—not the federal government—initiated gaming, and this gave them control over their own economies. In those situations where casinos have been successful, the livelihood of both Indians on reservations and non-Indians residing nearby has improved. A tribal government's responsibility to meet its citizen's needs are similar to those of state governments, and gaming has helped some tribes meet these needs.



¡EVO PRESIDENTE!

Victoria Bomberry

In the ancient ruins of Tiwanaku located in the high desert of the Andean cordillera, Evo Morales Ayma was made Mallku on January 21, 2006. Mallku, which means condor, is the highest leadership position in Andean communities. Aymara yatiris who performed the ceremony gave the staff of authority to Evo Morales. Although the official Presidential inauguration would take place on Sunday, January 23, this ceremony expressed the aspirations and revindication of almost two and a half million Indigenous peoples in Bolivia. In Bolivia, the more than thirty-six Indigenous nations hold the majority population, however, they had been virtually locked out of the political process until the early 1990s. On December 18, 2005, in a stunning victory of 53.7 percent of the vote, Evo

Morales became the first Indigenous person in the history of the Republic to be elected president. He is also the first Indigenous person to be President in South America.

On April 22, 2008, President Morales was the first head of state to address the United Nations Forum on Indigenous People, where he presented ten points for saving the planet. This speech resonated with Indigenous peoples who have diligently worked for self-determination and sovereignty in all of its manifestations throughout the Americas. The continuity of an Indigenous worldview represented by Evo Morales was tremendously moving. Thirty-one years earlier the Haudosaunee of North America presented *Basic Call to Consciousness* at the United Nations that outlined an