

third  
edition

# NATIVE AMERICAN VOICES: A READER

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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

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](http://www.chickasaw.net/governor/docs/2007_progress_report.pdf)

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# 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 H 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.

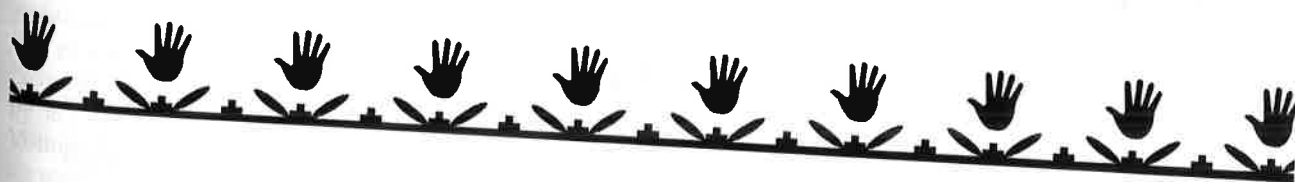
Gambling in general has a history of criminal involvement, and casinos everywhere deal with the issue. No reports have been officially substantiated that criminal activity increased because of an Indian casino. Moreover, there is no evidence that organized crime has infiltrated Indian gaming. Preventing 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 Bomberly

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