

Gambling in Indian Country

(August 13, 2016)

- I. History of gambling in Indian Country
 - Traditional games (e.g., Navajo “shoe” game)
 - By early 1980s a number of tribes had opened high stakes bingo halls or card clubs

- II. California v. Cabazon Bands of Mission Indians (1987)
 - California tried to shut down Cabazon gaming, based on violation of state criminal laws. (California has P.L. 280 state jurisdiction.)
 - Cabazon argued that California’s gaming policy was permissive/regulatory and therefore the state had no jurisdiction.
 - U.S. Supreme Court held that California regulates gaming (civil jurisdiction), but does not prohibit it (criminal jurisdiction).

- III. Indian Gaming Regulatory Act (1988)
 - Congress reacted to increasing pressure after the Cabazon decision (including concerns about organized crime) by enacting IGRA to regulate high-stakes gaming in Indian Country
 - IGRA established federal standards for Indian gaming and created a new federal agency, National Indian Gaming Commission (NIGC) to oversee the application of IGRA in Indian Country.
 - IGRA divided gaming into three classes:
 - (a) Class I games are traditional and social games regulated exclusively by tribes.
 - (b) Class II games are bingo and games similar to bingo. These games are regulated by tribes, subject to NIGC oversight.
 - (c) Class III games are casino-style games, slot machines and lotteries. These games must be conducted pursuant to tribal-state compacts approved by the Secretary of the Interior.
 - Net revenues from tribal gaming may only be used for certain purposes:
 - (a) Fund tribal government services, operations, programs;
 - (b) Promote tribal general welfare;
 - (c) Promote tribal economic development;
 - (d) Make charitable contributions;
 - (e) Help fund local government (no-tribal) services.
 - NIGC must approve casino management contracts.

- IV. Tribal-State Compacts required under IGRA.
 - Class III gaming on Indian Lands is subject to a tribal-state compact.
 - Dispute resolution, cooperative regulation of Class III gaming, revenue sharing, reimbursement of fees/costs

- Automatic amendments to maintain equality with other tribes in the state
- Seminole Tribe v. Florida (1996) upheld a state challenge to IGRA. Congress does not have authority to waive state sovereign immunity by requiring states to negotiate compacts with tribes.

V. Licensing requirements under IGRA.

- Licensing requirements were established by IGRA to insure that the individuals who are running the casinos and the businesses that provide sales and service to the casinos are suitable and qualified.
- Annual background checks must be completed in accordance with federal, tribal and state requirements. (Applications – including financial suitability, fingerprints, photographs, badges).
 - (a) Casino management. Casino management has overall responsibility for ensuring that the casinos are well-run, successful, and in compliance with legal requirements; these are key employees and primary management officials who establish casino policies, determine the general direction of casino operations, purchase and maintain facilities, slot machines and other gaming equipment, provide financial accountability, advertising, employee compensation and benefits, and report to the board of directors, the regulatory agency and/or other entities.
 - (b) Casino employees. Operations is the day-to-day business of running the casinos; these are the people who receive, distribute and track funds on the casino floor, assist casino patrons, staff games like bingo or poker, run a gift shop, operate food services, and provide site maintenance/security.
 - (c) Casino vendors. Licensing requirements were established by IGRA to insure that the individuals who are running the businesses that provide sales and service to the casinos are suitable and qualified, including gaming and non-gaming vendors (e.g., manufacturers, suppliers, financiers, locksmiths and electricians).
 - (d) Regulatory staff and tribal commissioners. Regulators work with their regulatory counterparts at the federal level (NIGC) and at the state level to make sure that the people who run the casinos are in compliance with all legal requirements.
- Types of individual licenses: Class III (NIGC-Tribe-State), Class II (NIGC-Tribe), Conditional, Non-gaming.
- Facility licenses: proof of insurance, health and safety inspections, authorization for Class II/III games.
- Acceptance of a license constitutes an agreement by the licensee to be bound by Tribal laws/regulations.
- Sanctions: license revocation/suspension, civil penalties, citations, removal.
- Indian Civil Rights Act notice/due process protections: appeal procedures.

- Examples of licensing hearings

VI. Tribal governing body responsibilities:

- Enact gaming laws
- Establish a Tribal regulatory entity (e.g., Tribal Gaming Commission)
- Conduct negotiations with state government officials (e.g., Tribal-State Compacts)
- Enter into cooperative agreements with other jurisdictions
- Make decisions about where Tribal casinos will be located and selection of casino management.
- Appoint Commissioners to the TGC
- Approve the annual budget for the TGC
- Oversee Class I gaming

VII. The TGC is responsible for carrying out the following day-to-day regulatory functions:

- Adopt and enforce policies, rules, regulations and forms for:
 - (a) Background investigations
 - (b) Licensing
 - (c) Commission hearings (appeals from an adverse licensing decision by the Gaming Director)
 - (d) Compliance audits
 - (e) Surveillance (24/7)
- Adopt/enforce Class II and Class III Minimum Internal Control Standards (MICS), based on federal (NIGC) standards, with operational requirements/safeguards that protect tribal assets and minimize the chances of theft, collusion, or other potential threats.
- Monitor casino operations:
 - (a) Promotions
 - (b) Compliance with internal casino operating procedures (e.g., accounting, money handlers, count requirements)
 - (c) Player tracking systems
 - (d) Annual financial audit of operations (and follow up, as needed, to insure casino compliance)
 - (e) Environment, public health and safety issues in casino facilities (e.g., fire exits, sprinkler systems)
 - (f) Location/construction of new casinos (e.g., must be located on "Indian Lands" as defined by IGRA)
 - (g) Continuing power supplies (e.g. back-up generators)
- TGC personnel include a Gaming Director (who oversees day-to-day regulatory operations), Tribal Gaming Agents (who monitor casino operations on the floor of Tribal casinos), Surveillance Operators (who monitor casino operations --with cameras-- from behind the scenes), Background Investigators, Compliance Officer(s), Internal Auditor(s), Attorney(s) and support staff.

- VIII. Other entities involved in casino regulation, enforcement, protection
- Internal Revenue Service audits under the Bank Secrecy Act
 - External auditors
 - Tribal law enforcement
 - Local (non-Indian) services such as fire, police, ambulance.
 - Laboratories with expertise in distinguishing between Class II and Class III gaming machines and compliance with legal standards
 - Tribal enforcement of environment, public health and safety standards
- IX. Casino patrons
- Scams, cheating and other fraudulent activities
 - Responsible gambling (barring/exclusion)
 - Alcohol (over service, underage drinking)
 - Health and safety issues (e.g., fire safety, parking lot lighting)
- X. National organizations which support Tribes with casinos
- National Indian Gaming Association: a non-profit organization of Indian Tribes which provides training and updates on key gaming issues. Acts as a “watchdog” over Tribal gaming issues in DC.
 - National Tribal Gaming Commissioners/Regulators: focuses on regulatory/compliance issues for gaming in Indian Country, provides training and updates on regulatory issues.
- XI. Contemporary tribes with gaming operations
- 246 tribes with 460 gaming facilities located in 28 states
 - Total annual revenue is nearly \$30 billion
 - About one-third of tribes have revenue allocation plans (required for per capita distributions)
 - Shakopee Mdewakanton Sioux Community (Mystic Lake Casino located 25 miles southwest of Minneapolis/St. Paul, MN)
 - 2010 charitable giving: \$28,546,620
 - 2006 divorce case filed in state court by husband (wife was tribal member): court ruled that per capita is marital property so husband was entitled to receive half of wife’s monthly per capita (\$84,000)
 - Mashantucket Pequot (Foxwoods Casino and Resort)
 - Connecticut gets \$80 million or 25% of slots revenue
 - August 2010 revenues: \$59.2 million
 - Most tribes use gaming revenues to fund government operations (e.g., police, courts, fire protection, infrastructure, health care, schools, social services, museums)
 - Tribes pay federal taxes on gaming operations. Any payments to state and local governments are based on agreements through Tribal-State Compacts (e.g., revenue sharing).

Economic Development in Indian Country **(August 13, 2016)**

Southern Ute Tribe (www.southern-ute.nsn.us)

- Originally composed of seven bands of Utes
- 1750 treaty with Spain/1803 Louisiana Purchase included Ute lands/1848 Treaty of Guadalupe-Hidalgo/1849 treaty with the U.S./1858 placer gold discovered near eastern foothills of Colorado Rockies (Denver)/1868 treaty with U.S. (ceded lands east of Continental Divide)/1873 Brunot Treaty (additional land cession; Utes retained hunting and fishing rights)
- 1880 reservations established: four bands in Utah on the Northern Ute reservation (Tabeguache, Yampa, White River and Grand River); three bands in Colorado: two bands on the Southern Ute reservation (Mouache + Capote) and one band on the Ute Mountain Ute reservation (Weeminuche)
- Checkerboard reservation (size of Rhode Island) w/approx. 1,400 members.
- By 1980s, energy boom was in full swing.
- In 1990 there were 63 oil and gas companies operating on S. Ute tribal land.
- Red Willow Production Co., established by tribal council in 1993, started buying back existing wells/leases.
- Permanent Fund, established in 2000, receives 75% of energy royalties and profits from Sky Ute Casino – money invested in securities. Former Exxon executive is Operating Director and Tribal member is Executive Director. Funds tribal government operations and pays monthly allotments to tribal members.
- Growth Fund receives 25% of royalties + profits from tribe's energy and real-estate holdings. Runs tribal businesses, distributes 10% of profits to adults under 60 and underwrites the annual elder pension.
- Elementary school built to teach Southern Ute language and traditions.
- Recreation center built in 2000
- Tribal business center built in 2007
- Established apprenticeship program for tribal members to train leaders for tribal businesses.
- Algae farm established in 2009, harvests oil from algae (biodiesel) to be used as a substitute for gasoline and diesel. Alternative energy idea connected with tribe's long history of herbal medicine.
- Museum and Cultural Center opened in 2011.

Navajo Nation (www.navajo-nsn.gov)

- Reservation lands span three states: Arizona, New Mexico, Utah (size of West Virginia) with tribal membership over 300,000.
- 1864-1866 Long Walk to Bosque Redondo in New Mexico/Treaty of 1868/Executive Orders/checkerboard area (most of these lands are in NM).
- No constitution -- a nation of laws.
- Under tribal law: NN has right of first refusal for any property sold on NN.

- Kerr McGee v. Navajo Nation (1985) -- approval of BIA not required for Navajo Nation tax of non-Indian company doing business on reservation.
- NNOGC established in 1993 as a wholly-owned corporation of the Navajo Nation (www.nnogc.com); Section 17 federal charter obtained in 1997.
- Board of directors includes non-Indians with industry experience.
- NN started buying back oil and gas leases in 2003/entered into cooperative agreement with experienced company + additional agreements in "Areas of Mutual Interest" (AMI) to enable development.
- Running Horse Pipeline (Montezuma Creek, Utah) is NNOGC subsidiary that owns and operates an 87 mile crude oil pipeline.
- NNOGC owns and operates gas stations and convenience stores, with rights to Chevron and Texaco brands and is promoting Navajo petroleum brand.
- New office building in Window Rock area; already needs more offices.
- NNOGC has \$200 million in net assets + lines of credit with 9 banks.
- Provides two full scholarships every year for tribal members interested in the petroleum industry; provides additional funding through Navajo Nation Chapters for education of tribal members.
- 1985 KTNN established as a Navajo language AM radio station broadcasting from Window Rock, AZ (the capital of the Navajo Nation)
- There are four casinos operated by the Navajo Nation located in Shiprock, Church Rock, Flagstaff and Farmington.

Tulalip Tribes (www.tulaliptribes-nsn.gov)

- Located along I-5, approximately 30 minutes north of Seattle and about 100 miles from Vancouver, BC, Canada (3,600 members)
- 1855 Treaty of Point Elliot (Snohomish, Snoqualmie, Skykomish and other allied coastal Salish tribes and bands) + 1873 Executive Order
- Organized under the 1934 Indian Reorganization Act
- 1974 Judge Boldt affirmed treaty fishing rights in the Pacific Northwest
- 1992 Tribal casino offered opportunity for economic diversification
- The consolidated borough of Quil Ceda Village, a 2,000 acre political subdivision of the tribe, located on the Tulalip Reservation, emerged in 1990s, became a federally chartered city in 2001 (like Washington, DC).
- Quil Ceda Village Business Park has 110 designer/name brand outlets, Home Depot, Wal-Mart and Tulalip Resort Casino, which draws six million visitors a year, generates over 800 jobs and has an annual payroll of \$15 million.
- Charitable donations over 15 years: \$26 million
- Cooperative agreements with local jurisdictions
- The Greater *Marysville Tulalip* Chamber of Commerce
- Future plans include building a Tribal Cultural Center and Museum
- One of three Tribes participating in a 2014 pilot project implementing the Violence Against Women Act of 2013 which restored criminal jurisdiction over non-Indians charged with domestic violence, dating violence and violation of protection orders on Indian reservations

Confederated Tribes of the Colville Reservation (www.colvilletribes.com)

- 1807: first trading post established on the Columbia River
- 1846 Treaty between the U.S. and Canada established their boundary line at the 49th parallel (cutting through several traditional tribal homelands).
- 1853: Washington Territory established
- 1865: 1st BIA agent was sent to the area
- The Colville Reservation was established by Presidential Executive Order on April 9, 1872 and was originally twice as large as it is today. It was reduced to the current size on July 2, 1872, by a second executive order. Hunting and fishing rights in the “North Half” were reserved by the Tribes.
- None of the 12 aboriginal nations placed on the Colville reservation were consulted. Chief Joseph (Nez Perce) is buried here.
- Colville Tribes organized under the 1934 Indian Reorganization Act
- Grand Coulee Dam was constructed in the 1930s on the Columbia River. The huge hydroelectric dam destroyed traditional agriculture, gathering, fishing and home sites on the Colville Reservation. Hundreds of graves had to be relocated.
- Termination was rejected by one vote of the Council.
- Colville Tribal Enterprise Corporation (CTEC) [now, the Colville Tribal Federal Corporation (CTFC)] was chartered by the Colville Business Council in 1984. CTFC oversees more than a dozen tribal enterprises, including a gaming division and three casinos (Coulee Dam Casino, Mill Bay Casino and Okanogon Casino).

Pueblo of Isleta (www.isletapueblo.com)

- One of 20 pueblos in New Mexico (Tanoan language: Isletan Tiwa)
- Located 15 miles south of Albuquerque on I-25.
- 1540 Coronado explored the region, unsuccessful in his search for the riches of another Aztec empire.
- 1598 Juan de Onate came north from Mexico, claiming land in the name of Spain, imposing a system of tribute and force labor. Natives were compelled to attend mass and receive Catholic instruction. Pueblos were required to establish governments (headed by a village governor) modeled on Spanish colonial rule.
- 1598 All Indian Pueblo Council was established to represent the pueblos of New Mexico (www.aipcnm.org). One of the oldest mutual alliances in the world.
- 1680 revolt by pueblos, organized by Pope, a medicine man from the Pueblo of San Juan. By 1693 Spanish rule had returned.
- 1821 Mexico declared independence from Spain.
- 1846 New Mexico came under U.S. rule following a 3-month war between Mexico and the U.S.
- 1848 Treaty of Guadalupe Hidalgo (included US citizenship)
- 1864 President Lincoln issued land grants to the majority of the pueblos, acknowledging title to their lands.
- 1872 BIA began providing services to the pueblos
- 1876 U.S. Supreme Court ruled that the pueblos were “civilized” and therefore were not legally considered Indians (U.S. v. Joseph).

- 1913 U.S. Supreme Court overturned the Joseph decision and declared the pueblo Indians wards of the federal government (US v. Sandoval).
- Indian Pueblo Culture Center is owned and operated by pueblos in New Mexico with a museum, restaurant, gift shops and traditional dances. (www.indianpueblo.org).
- Isleta Hotel/Casino, Isleta Eagle Golf Club, Isleta Lakes Recreational Complex
- Feast Day is held annually on September 4th (open to the public). St. Augustine is Isleta's patron saint

Seneca Nation of Indians (www.sni.org) (www.senecanation.org)

- One of original five nations of the Haudenosaunee, or Iroquois Confederacy.
- Known as the "Keeper of the Western Door"
- Composed of eight clans, with reputations as skilled warriors.
- 1784 Fort Stanwix Treaty between Six Nations and U.S.
- 1794 Canandaigua Treaty recognized and guaranteed the Seneca Nation's right to their land
- 1816 President James Madison approved a plan to move all NY tribes west.
- 1826 Seneca Nation sold land to NY land companies (This sale technically violated 1790 U.S. law forbidding land transactions with Indians by anyone except the federal government.)
- 1831 Seneca-Cayugas resettled from Ohio to Oklahoma
- 1833 Seneca Nation adopted first written constitution.
- 1838 Ogden Land Company signed highly questionable treaty with the Seneca Nation for their remaining NY land. US Senate voted on treaty ratification three times with a tie vote. Finally, in 1840, President Martin Van Buren proclaimed the treaty in force even though the Senate had not approved it.
- 1849 compromise treaty returned some of the lost lands.
- 1928 Army Corps of Engineers began surveying the Allegany Reservation, preparing to build a large reservoir.
- 1956 Congress appropriated money for construction of the reservoir (without Seneca input or consent)
- 1964 Congress appropriate \$15 million to Seneca Nation. Included was a requirement that the Seneca Nation submit a plan for termination.
- 1965 Kinzua Dam completed, flooding ancestral lands, farms, hunting and fishing sites, cemeteries and homes. More than 3,000 graves were relocated
- 1967 Seneca Nation submitted a termination plan (required for reparations), but by then the US termination policy had been discredited and the plan was ignored.
- Currently 7,800 members and five reservations
- Seneca-Iroquois National Museum in Salamanca, NY.
- Seneca Broadcasting Company
- Seneca Gaming Corporation manages the Seneca Nation's three gaming operations (Seneca Alleghany Casino and Hotel, Seneca Niagara Casino and Hotel, Seneca Buffalo Creek Casino)
- 2011 Seneca Today magazine launched

Cultural Sovereignty

Political Sovereignty

- External “Federal Indian Law”
- U.S. jurisprudence (“domestic dependent nations” + “federal trust responsibility”)
- Treaties (diminished geographical boundaries and “territorial sovereignty”)
- “Plenary” power of U.S. Congress (e.g., Removal Act of 1830, Allotment Act of 1887, Indian Reorganization Act of 1934) (destruction of traditional custom and tradition, “diminishment” and/or “disestablishment” of reservation lands)
- Assimilation into Euro-Anglo “civilization” (“progressive” leadership created by federal agents, removed/reserved homelands, termination/restoration, relocation, boarding schools, religion, cultural genocide). “Kill the Indian, save the man.”
- Multiple tribal nations placed on one reservation and treated as one “federally recognized” tribe.
- Courts of Indian Offenses (“CFR” Courts); Limitations on tribal jurisdiction.
- Indian Civil Rights Act of 1968
- U.S. Supreme Court decisions:
 - Oliphant v. Suquamish Tribe (U.S. Sup.Ct. 1978): “implicit divestiture” of part of inherent sovereignty because of dependent status (no tribal court jurisdiction over crimes committed by non-Indians on reservations)
 - Duro v. Reina (U.S. Sup.Ct. 1990): No tribal jurisdiction over crimes by non-member Indians on reservations. [“Duro” fix by Congress, recognizing inherent tribal jurisdiction]
 - Montana v. U.S. (U.S. Sup.Ct. 1981): No tribal authority to regulate hunting + fishing by non-Indians on fee land within reservations. [Two exceptions: (1) consent to jurisdiction + (2) necessity because of important tribal interests.]

Cultural Sovereignty (*the bedrock of indigenous self-determination*)

- Utilizing internal norms and values (moral vision/indigenous spirituality)
- Protecting inherent sovereignty (independent of federal power), pre-Constitutional indigenous cultures/nations
- Teaching about traditional homelands, culture, language and community, e.g., relationships are fundamental (Navajo: “He acts as if he has no relatives.”)
- Ensuring that actions are “for the benefit of the 7th generation” (Iroquois)
- Establishing oral traditions (e.g., storytelling) as jurisdiction
- Utilizing customary law as unwritten constitution
- Reclaiming indigenous history
- Protecting the sacred relationship between Native people and the land (essential to cultural world view) (E.g., Black Hills as birthplace of Lakota people)
- Building tribal educational systems that are responsive to traditional values.
- Teaching tribal wisdom (songs, stories, knowledge, land and resources)
- Healing the harm done by destructive U.S. policies, colonialism and oppression based on attitudes of “superiority”+ forced assimilation into Euro-American values
- Overcoming difficulties of codifying customary law for diverse indigenous nations on one reservation.