

Indian Gaming in the U.S.: A Broad Introduction

(TRIPTYCH CASE FRAMING: ECONOMICS, SOCIAL – CULTURAL and POLITICAL FRAMES)

By

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“The tribes need to really be more successful about framing their message back to the public—who are they, what are they about. It's not enough to say we've used gaming to overcome generations of poverty. It's not enough to say we've created healthy rural economies that wouldn't otherwise exist. They have to be able to show the public that the tribal ethic continues to be the dominant ethic that the tribes' role in society continues to be what it historically has been...the original people of this land, the caretakers of the American dream, the custodians of the earth. That's the role. If you know the tribal people, you know that's the common vision.”

-- Professor Alan Parker, J.D., Evergreen State College, Chippewa Cree Tribal Nation, and Commissioner with the Washington State Gambling Commission

A Brief History

Historically, Native Americans have endured a “long history of warfare, imported disease, land loss, cultural suppression, racism, and paternalistic federal control of reservations” that have had a negative impact to the present (Cornell and Kalt, “Sovereignty and Nation-Building: The Development Challenge in Indian Country Today”). Mainstream “indifference, misconceptions, misapprehensions, and distortions of the truth” have been issues that affect the “forced march to oblivion for many indigenous peoples” (Davidson, 1993, p. 2).

These various factors led to a major decline in the Native American population. “And always the numbers dwindled. In 1850, the U.S. Census counted only 400,764 Native Americans. Twenty years later, the official count was 313,712; by 1890 it stood at 248,253. Then something amazing and quite unexpected happened: the indigenous peoples of North America began to make a comeback. In 1938, John Collier, Commissioner of Indian Affairs, reported the ‘astounding and heartening fact’ that the Indians were increasing in numbers faster than any other segment of the American population. Said Collier, ‘For nearly three hundred years white Americans, in our zeal to carve out a nation made to order, have dealt with the Indians on the erroneous, yet tragic assumption that...(they) were a dying race’” (Davidson, 1993, p. 10).

US federal policies strove to assimilate Native Americans in what many perceived to be genocidal and ill-conceived, through erasure of cultural, religious and language differences and Native American land ownership. “Since late in the nineteenth century,

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federal policy toward American Indian tribes has repeatedly vacillated between efforts to assimilate individual Indians and break up reservation communities and policies of federal support of various kinds for tribal communities and reservations. These divergent and often conflicting policy approaches have had at least one thing in common: until the late 1970s, all of them failed to ameliorate the crushing poverty and abject social conditions on Indian lands” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. ii).

Light and Rand describe 200 years of “byzantine federal Indian law and policy” (2005, p. 5) and overlapping jurisdictional issues. “Reservation *and* urban Indians remained among the poorest of the poor, and this poverty accelerated a political resurgence that began to call for greater Indian control over Indian affairs” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. 5). Janisch describes the “failed” federal policies as that of “relocation, allotment, assimilation, and termination” (Nov. 2006, p. 353).

Those who survived were the only main repositories and purveyors of authentic Native American languages and cultures. “The 1990 U.S. Census counted one million nine hundred thousand Native Americans, one-fourth of whom were Cherokees and Navajos. Most of the five hundred and forty-two other tribes listed had fewer than a thousand members. And some tribes had only a handful of members, the last living repositories of their people’s customs and ties to the land” (Davidson, 1993, p. 10).

Central concerns for the Native Americans today have been the overall well-being of Native Americans everywhere and tribal sovereignty and rights.

“Freedom for indigenous peoples wherever they are—this is my cause... We defend our roots not only to preserve them, but that they may flourish and bear fruit. In our struggle to gain respect for economic, social, cultural, civil, and political rights, we cannot agree to symbolic recognition or superficial concessions. Our aim is that all those rights should become effective at all levels: local, regional, and national. None of the grave and deep-rooted problems of the world can be resolved without the full participation of the indigenous peoples. Similarly, the indigenous peoples require the cooperation of the other sectors of society.

“Many people have said that indigenous peoples are myths of the past, ruins that have died. But the indigenous community is not a vestige of the past, nor is it a myth. It is full of vitality and has a course and a future. It has much wisdom and richness to contribute. They have not killed us and they will not kill us now. We are stepping forth to say, ‘No, we are here. We live.’”

-- Rigoberta Menchu, Nobel Peace Prize Winner (Davidson, 1993, p. ix)

Tribal Sovereignty and Rights

The issue of tribal sovereignty has been referred to as the “central legitimating issue” for tribal gaming (Fenelon, Nov. 2006, p. 388). In a law article on fundraising for Indian gaming and mega casinos, sovereignty was described as “a matter not only of sensitivity and legal nuance” but also “the crux of a dispute” (Elinson, Jan. 19, 2007, n.p.).

Tribal sovereignty predates many of the formal laws regarding Native Americans. It is understood as a basic right of a peoples and their nations. It's a nation's supreme authority to govern its own citizens and interact with other nations. "Sovereignty connotes political legitimacy and autonomy rooted in self-governance, the freedom and independence of a nation to determine its future. Sovereignty can be both absolute and non-absolute, reflecting the divergence between political theory and the coexistence of nations in the real world. Absolute in its extent and character, the supreme and inherent nature of sovereignty cannot be denied. Yet in practice, the *scope* of sovereign authority may be limited by mutual concession or by political or legal imposition" (Light and Rand, 2005, p. 5).

In the face of cultural declines, many Native Americans pushed for self-sufficiency and sovereignty in the 1960s to 1970s in the civil rights era. Along with this endeavor were the efforts towards using Indian gaming as an economic strategy to support Native tribal leadership and Native peoples. "By the end of the 1970s, there was growing political opposition to federal support for tribal authority and rights. This coincided with Reagan-era goals of decreasing federal spending, downsizing federal programs, and 'devolution,' or increasing state and local control over government services. The Reagan administration's Indian policy reflected its general approach of reducing reliance on federal programs. Couched as a necessary part of self-determination, President Reagan focused on 'removing the obstacles of self-government and...creating a more favorable environment for the development of healthy reservation economies' in order to ultimately 'reduce (tribes') dependence on Federal funds'" (Light and Rand, 2005, p. 34).

This push for Native sovereignty has raised a lot of questions about relationships, policies, and short- and long-term effects. "For example, does sovereignty mean an end to the federal fiduciary relationship between Indians and the Federal government? What will sovereignty mean to the trust status of Indian lands? Will sovereignty legitimate us as Nations, states, or municipalities?" (Akiwenzie, Jan. 1996, p. 2). The efforts towards economic development also raised questions of identity and culture. "Another similarly discussed, but never resolved issue in Indian country is to how best balance traditional cultural practices and moral belief systems with economic development" (Akiwenzie, Jan. 1996, p. 2). Popp and Stehwien (2002) observe "the economic and social ambiguities of gambling" and offer some social cost-benefit equations (Popp and Stehwien, 2002, pp. 320 – 321).

Dual Sovereignty. Fenelon coined the term "dual sovereignty" (2002) to describe the confused status of Native Americans in the light of US policies and laws (Fenelon, Nov. 2006, p. 382). How Native American sovereignty is defined into the future will certainly depend on plenty of social dialogue, legal wrangling, legal precedent, policy debate and moral arguments.

Native American Poverty

Indian country has had a history of poor economic conditions due to a variety of factors. Pre-gaming economic conditions were quite dire. "The available evidence on pre-gaming economic conditions in Indian Country provides a long list of alarming comparisons between tribal economic and social conditions and U.S. national averages:

Indian per capita income is about 40% of the national average, the Indian poverty rate is almost four times the national average, the incidence of Indian homes lacking complete plumbing is over 14 times the national average, alcoholism death rates are more than five times the national average for Indian adults and more than 17 times the national average for Indian youths, and so on” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. iii).

Indian Gaming

Indian gaming is a highly defined and regulated activity. Federal law defines it as “gaming conducted by an ‘Indian tribe’ on ‘Indian lands’ – that is, by a federally recognized tribal government on a federal reservation or on trust lands. Tribal gaming is different than commercial gambling not because of race or ethnicity, but because it is conducted by tribal governments for the primary benefit of tribal members” (Light and Rand, 2005, p. 3). Anthropologist and former lawyer Darian-Smith writes of Indian gaming that “no other activity presents so many cultural conflicts and misunderstandings between Indian and non-Indian populations” (2004, p. 6).

The Indian Gaming Regulatory Act (IGRA). In 1988, the US Congress passed the Indian Gaming Regulatory Act (IGRA, or Public Law 100-497) in response to a court case *California v. Cabazon and Morongo Bands of Mission Indians*. This ruling was widely seen then as the preemption of state law by the federal government’s interest in tribal self-sufficiency and economic development.

IGRA provisions require tribal governments to establish their own gaming regulatory systems. Under IGRA, the tribes must be the one sole owner of the casinos. “If a tribe contracts with an operator to manage the casino, IGRA caps the fee at 30% of net revenue and the term at five years unless the Commission can be convinced the capital investment and income projections require a higher fee or longer term, in which case the maximum is 40% and seven years. In addition, the net revenues of the facility must be dedicated to the following purposes:

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Indian tribe and its members;
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organizations; or
- (v) to help fund operations of local government agencies.

If tribes choose to allocate any casino income to members individually, they must file a plan that details how they will spend all casino net income to accomplish the above purposes. The Commission must approve the Gaming Revenue Allocation Plan particularly as it applies to numbers (i) and (iii) above, and recipients of per capita distributions must pay federal income tax on their distributions. Finally, tribes must conduct annual audits of their facilities and all contracts greater than \$25,000 in value.

“Tribes are also required to establish by ordinance a regulatory system that:

- conducts background investigations on key gaming personnel and notifies NIGC (National Indian Gaming Commission) of results;
- issues licenses for key personnel and notifies the NIGC (National Indian Gaming Commission) of such licenses, and
- sets standards for employment.

“Typically, tribes comply with these requirements by establishing gaming commissions whose powers—aside from those specified in IGRA—differ from tribe to tribe, in large measure because of the different ways tribes establish their gaming commissions within their governing structures” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, pp. 18 - 19).

Gaming proceeds must be spent in particular guided ways. “All expenditures of gaming proceeds are allocated to five categories: 1) tribal operations, government, and programs, 2) promotion of tribal economic development, 3) general welfare of tribe and tribal members, 4) donations to charitable organizations, and 5) assistance to the operations of local governments” (Galbraith and Stiles, Aug. 2003, p. 101).

Projects Funded from Tribal Gaming Enterprises. Given the above restrictions and those posed by the many layers of governance affecting tribal gaming, various tribes across the country have funded a variety of pro-social enterprises: alcohol and drug programs, a sheriff’s department, clubs for children, a cancer fund, a child welfare program, moneys fro those with catastrophic illnesses, churches, food banks, sporting sponsorships, a symphony, arts center, snow removal, public transit, museum / cultural endeavors, a library, a youth hockey league, and language and culture programs (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. 66). Others have engaged in land “reclamation” purchases. Others provide nutrition for the elderly, hold district powwows, support burial programs, and maintain roads.

For the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe (Oyate), their revenues have contributed to a lot of social good but have not been a panacea, contrary to some mainstream perceptions. “Gaming revenue has aided in the creation of a full-time tribal council, a staff attorney, health care, education, infrastructure, program development and implementation, and the overall general welfare of the community,” writes Janisch. “Nonetheless, it has not been the solution to Indians’ problems overall. It has simply been used as a tool to narrow the gap between on-Indian and Indian communities” (Nov. 2006, p. 361).

Repaying Debt / Reinvestment. Another controversial factor is that much of the profits from Indian gaming have gone back to service the massive loans taken out to create the casinos in the first place (Janisch, Nov. 2006, p. 365). While many positive effects have come from Indian gaming, there have been different types of strife. Factional tensions have been reported between tribes. Others Native Americans have decried the loss of traditional identities and cultures.

A Variety of Entrepreneurial Endeavors. Native tribal economies feature a range of entrepreneurial endeavors. Their reservation-based businesses include the following: construction companies, gas and convenience stores, smoke shops, RV park and campground, gift shops, motels, restaurants, arts and crafts stores, wholesale electricity marketing, general contracting enterprise, aqua culture, retail shopping center, an outdoor amphitheatre, tobacco outlets, nursing home, airport hotel, industrial park, electronics manufacturing facility, cellular communications company, commercial real estate development, printing enterprise, golf course, promotions company, specialty store, full service bank, internet service enterprise, air charter service, automotive components manufacturing, cleaning service company, interior furnishings supplier, property management / real estate, marina / lakeside recreation area, sport hunting and fishing, sawmill, ski resort and hotel, light manufacturing, museum and conference center

(Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. 38). Others have buffalo farms (Janisch, Nov. 2006, p. 357).

Poorer Tribes and Native Gaming. Research into the Native tribes that have pursued gaming as a revenue stream found that those that were poorer tend to open casinos. “While these nationwide statistics are arresting, our research indicates that the tribes that have opened casinos faced particularly desperate conditions. For example, within a sample of the 75 most populous tribes in the country (as of the 1990 census), 17 of the poorest 20 opened casinos. Furthermore, the group of tribes signing state gaming compacts had higher unemployment in 1989 than their non-compacting counterparts” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. iii).

Positives to Indian Casino Development. A range of possible benefits to the building of Indian casinos has been observed such as the drawing of older and more affluent clientele from within a state and even from across state boundaries. New casinos may be developed in rural areas and lead to a redistribution of wealth from urban to poorer areas. Many casino jobs are full-time ones and include health benefits. The complementary goods (products and services that consumers use alongside the consumption of another good) with gaming for both day-trippers and overnighters may result in the stimulation of the local economy. That is, those who would take part in Indian gaming may also want to go to restaurants, shop, visit local spas and stay in local hotels, for example. In some cases, local property values may rise, and there may be an upward pressure on some rural wages. There may well be a reduction in public assistance and transfer payments (Rephann, Dalton, Stair and Isserman, n.d., p. 3).

Detractors of Indian Gaming

Detractors of Indian Gaming. Corporate casinos, some religious groups, some political groups, and some Native American tribes and groups have fought the proliferation of Indian gaming. Their stances relate to the protection of turf and potential profit for corporate casinos. For religious groups, some feel that gaming is negative and harmful to families and individuals. Some political groups think that Native gaming involves the giving over of special privileges (gaming) to a particular “racial group.” Others take an ethical stance against gaming, which doesn’t add value to an economy but merely redistributes wealth. And some Native tribes and groups stand against Indian gaming because of cultural and ethical / moral reasons. Also, some feel that the sacred tribal lands may be better used than for tourism and gaming.

To take a stand one way or another, it helps to understand the beliefs of all sides. From the various stances and arguments, a more cogent argument may be made one way or another. Arguments against Indian gaming include some of the following points:

Economic and Financial Challenges regarding Indian Gaming

- **No New Wealth Creation:** Indian gaming adds no increased value to society but rather redistributes existing funds (Garrett, Jan. – Feb. 2004, p. 12). “Some economists have argued that gambling inherently ‘produces...no new wealth’ and thus ‘makes no genuine contribution to economic development.’ On the other hand, it appears difficult to argue with the proposition that gambling creates both

- positive and negative externalities—benefits as well as costs—that flow from gambling transactions. The impacts of these externalities ripple outward beyond any one individual’s decision, rational or otherwise, to drop a quarter into an electronic slot machine and the resultant payment—or, more likely, disappointment” (Light and Rand, 2005, p. 78).
- **Less Taxation for State Coffers:** Indian gaming does not result in as much taxation as for corporately owned casinos and do not hire as much labor from the general labor market (Garrett, Jan. – Feb. 2004, p. 12). Indian gaming profits are not taxed. Research has found that counties with reservations are different from those that do not. “The same level of employment and weekly wage will generate 18.4% less taxable gross receipts in reservation counties compared to nonreservation counties... This indicates that individuals may be substituting casino gaming for spending on taxable items” (Popp and Stehwien, 2002, pp. 327 - 328). Revenue displacement has been found in other research, particularly in substitutes to casino gaming, “most likely to be other forms of gambling, such as horse racing, bingo, Internet gaming, and lotteries” (Siegel and Anders, 2001, p. 142). However, contrary to some mainstream misconceptions, all “Indian people pay federal income, FICA, and social security taxes. Only the small percentage of Indians who live and work on their own federally recognized reservations—not unlike soldiers and their families living on military installations—are exempt from paying state income and property taxes. However, they still pay sales taxes and all other special and excise taxes” (Darian-Smith, 2004, p. 115). **The Other Side:** R.L. Skeen questions whether some state compacts may be resulting in an “illegal tax on tribal enterprises engaged upon tribal lands” (Skeen, 2006, p. 1). He defines one of the cruxes on which this decision be made on whether the charges act as a tax or a fee, based on three criteria: “(1) whether the primary purpose of the assessment is regulatory rather than revenue raising; (2) whether the assessment is proportionate to the services provided; and (3) whether the assessment is for a service voluntarily undertaken by the payor” (Skeen, 2006, p. 13). In other words, are the assessments proportional to the costs borne by the State? (p. 18) Skeen cites a range of some 8 to 25% of net wins being collected by various states in tribal-state compacts (2006, pp. 19 – 20). His research found that such compacts’ “substantial exclusivity” conditionals may also have been diluted by various states allowing non-Indian gaming competitors to set up their businesses (p. 22).
 - **Self-Contained Benefits to Indian Casinos:** Some Indian mega-casinos tend to be self-contained with their own restaurants, shops, and hotels, so the “complementary goods” benefits do not spill over into the larger community. In such cases, communities bear the burden of the extra responsibilities in hosting a nearby casino (the additional traffic, the attendant crime, increased volatility in property values, and other factors) but with less shared financial gain.
 - **Recycling of Tribal Moneys:** One market study found that 80% of the customers to one casino were Native Americans from the tribe, so the “earnings” were “recycled” funds from its own members (Janisch, Nov. 2006, p. 367). In other words, a successful Native gaming establishment must draw clientele from the larger local area, and preferably even from multiple states.

- **High Opportunity Costs for the Tribe:** The opportunity costs of Indian gaming are too high. An opportunity cost may be defined as an opportunity foregone (the second best alternative) in choosing one route over all others. In other words, the choices of pursuing development for Indian gaming may mean other economic opportunities may be ignored or left. Some even argue that various members in Indian Country have not fully considered the implications of their choices in their decision-making to go with gaming: “The problems are practically uniform throughout Indian country. Disorganized, factionalized, and historically poor communities with limited infrastructure and little-to-no experience managing large sums of money are now being confronted with the daunting task of effectively managing a multi-million dollar corporation. Given the obvious enticements of Indian gaming, it should come as no surprise that many of the actual members from these reserves have accepted gaming with a less than perfect understanding of what they were getting into and, perhaps have made some less than ideal management decisions. This poor understanding of what gaming and sovereignty actually mean portends disaster for a disturbingly large number of tribes” (Akiwenzie, Jan. 1996, p. 1).

Social Challenges re: Native Gaming

- **Undue Infrastructure and Public Services Burden on the Local Community:** Research has found that a new casino often involves in greater traffic, higher crime, greater volatility in property values, and a greater need for public services. “He recites a litany of woes: Casinos have a negative impact on roads, water and land consumption, fire, police, ambulance service, air pollution, and traffic” (Golab, Sept. 2004, p. 26).
- **Rise in Area Crime:** The building of a casino often results in a rise in crime in all categories measured. However, “those casino communities reporting crime figures with visitor numbers factored in indicated no significant increase” (Braunlich, 1996, as cited by Janes and Collison, 2004, p. 14). Others argue that an increase in police attention leads to a greater reporting of crime.
- **“Unfair” Support for a Particular Segment of Society:** There may be a perception of “fundamental unfairness” in supporting Native gaming over other commercial gaming interests (Kelso, 1996, pp. 1 – 2). After all, there are other citizens who are also pursuing various types of gaming and would welcome tax breaks or policies that may support this endeavor.

Tribal Relationships and Respective Indian Cultures

- **Inter-Tribal Strife and Competition:** The IGRA pits Native American tribes against each other based on the various tribes’ different degrees of assimilation economically and culturally in the US. It forces tribes to be more similar and less diverse. Competition between states and tribes may affect casino adoptions (Furlong, 1998, p. 380). Coming into money has also caused some strife, such as the ousting of some self-professing tribal members (Light and Rand, 2005, p. 101; Fenelon, Nov. 2006, p. 386). Fenelon describes another case of inter-tribal

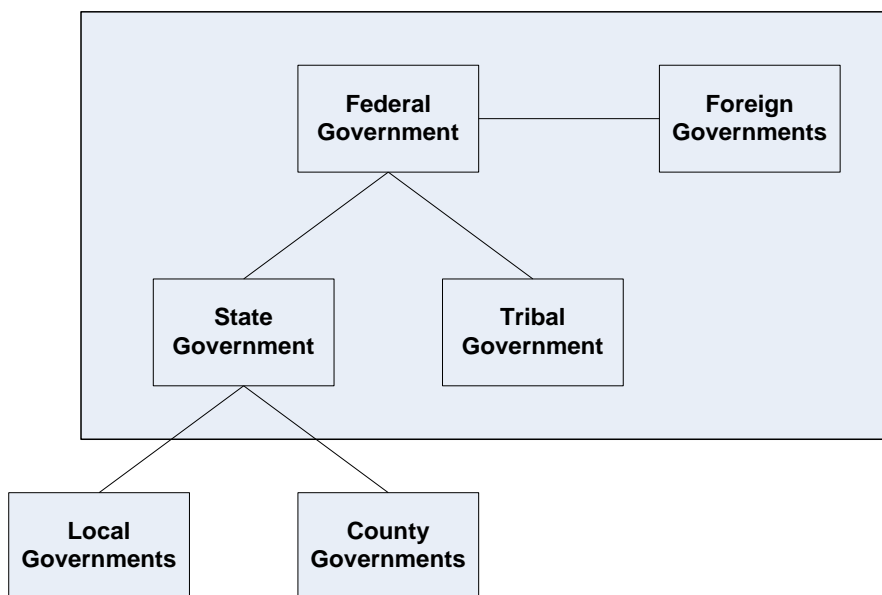
conflict: “In a similar manner, the remnant Wyandot in Kansas, once removed from Ohio, had recently won recognition for burial grounds in Kansas City to become enlarged trust lands open to gaming, against the protest of the Potawatamie of Kansas, who have been negotiating with the state” (Fenelon, Nov. 2006, p. 386). Cornell (1988), however, sees a “supra-tribalism” emerging with the increased mobility of Indian peoples through the powwow circuit and recent activist social movements, which may lead to a sharing of benefits and more unity in Indian Country (as cited by Fenelon, Nov. 2006, p. 395).

- **Misuse of Sacred Lands:** Some Native lands are rich with forests, plains and rivers. Traditionally, these lands have been used as housing and farmland. Some have archaeological sites with “petroglyphs, effigy and conical mounds, ancient villages, campsites, and other traditional cultural properties” (Cornell, Kalt, Krepps, and Taylor, July 31, 1998, p. 69). In some areas, the idea of building casinos along with restaurants, shopping centers and hotels, rankle because of traditional sacred land usage and the respect for nature. Traditionally, in a horticultural society typified by sharing, Native Americans held religious and social activities on their lands. They used lands for “burial grounds, religious ceremonies and sacred retreats.” Shared lands were used for “common grazing.” (Galbraith and Stiles, Aug. 2003, p. 96).
- **Gaming Counter-cultural for some Tribes:** Some tribal values against gambling harken back many years to the stories of detrimental effects of gambling (Light and Rand, 2005, p. 102). People are seen as enslaving themselves to gambling. (Light and Rand, 2005, p. 103). Traditional Native gaming also has deep symbolic, ritual, mythological and religious meanings and was never (prior to the 20th century) used for profit-making (Darian-Smith, 2004, pp. 56 – 57).
- **Resultant Social Changes:** Outsiders who marry into tribes in order to benefit from Indian gaming wealth has been an expressed concern, with a resulting “cultural decay” (Fenelon, Nov. 2006, p. 392). This researcher observes a “complex interplay between resistance, survival, and social betterment” brought to a fore with the issue of Indian gaming. (p. 392) Others express fear that gaming wealth will encourage the Native peoples to be more materialistic and less spiritual (Fenelon, Nov. 2006, p. 396). **Fewer Cultural Protections:** “Earlier attempts at invasive, dominating forms of social control of everyday life produced deep dependence on and devolution of existing traditional patterns of social values. These patterns have resulted in the disappearance of normal cultural mechanisms that protect traditional peoples from the negative forces of modernity,” writes Fenelon (Nov. 2006, p. 397). One such shift may be a focus on individualism vs. communality (p. 400).
- **Conflict with Native American Lifestyles:** Some assert that having full-service casinos may change the lifestyles of those who reside on Indian reservations. The lifestyles go beyond the increased traffic or potential noise. A concern has been for any Indian gaming effects on “traditional social structures or cultural practices still in place among the designated people” (Fenelon, Nov. 2006, p. 385).

Ethical and / or Moral Effects

- **Promotion of Problem Gambling:** Indian casino gaming, like other casino enterprises, may promote problem gambling. Problem gambling occurs when an individual risks money irresponsibly in the hope of increasing wealth or personal gain. He / she is engaging in problem gambling when their gaming impacts themselves, their partner, family or friends in a negative way. “Researchers have estimated the social costs at between \$12,000 and \$50,000 for each problem gambler (Thompson, Gazel, and Rickman 1995, as cited by Anders, Mar. 1998, p. 104).

Political Issues



The U.S. Constitution Explicitly Recognizes Four Sovereigns (Contreras, Nov. 2006, p. 318)

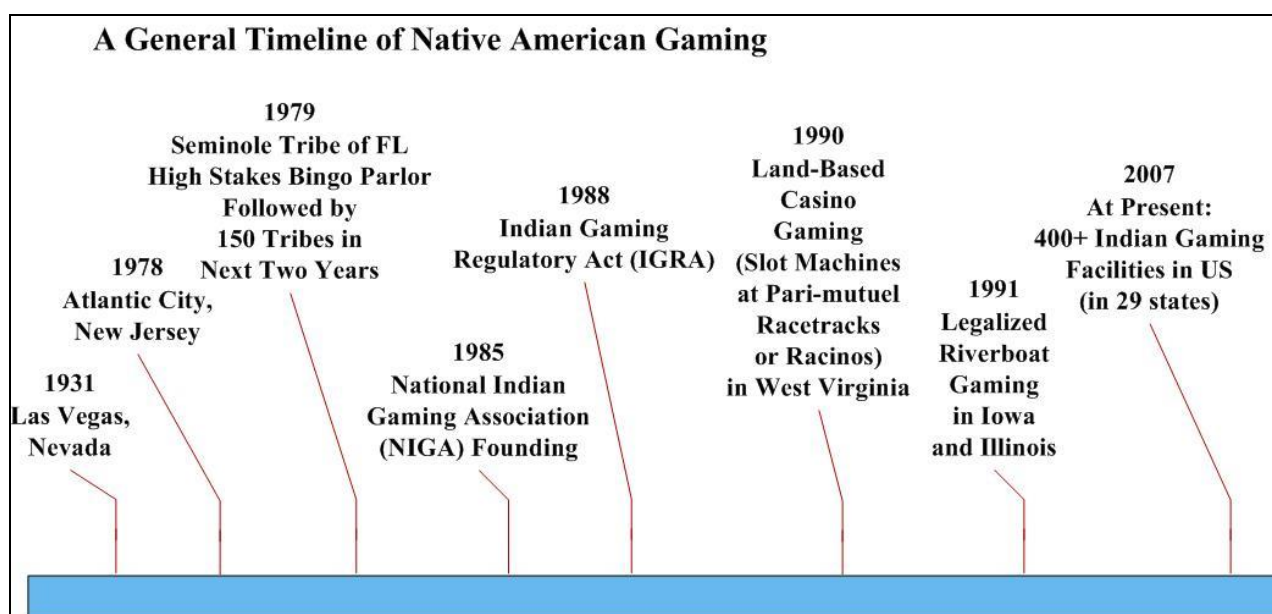
- **Buying Political Power:** Some believe that the rising of the Native American population may be unduly enhanced by a change in their financial status. “Indian gaming revenue can generate political leverage to advance policy agendas related to gaming and other tribal interests. Although tribes always have pursued their interests and sought to influence political outcomes, especially at the federal level, tribal casino profits have increased tribes’ political influence at all levels of government. As political scientist and Indian law scholar David Wilkins noted, ‘Indian gaming has wrought a revolutionary shift in the involvement of some tribes in state and federal politics on an unprecedented scale’ (Light and Rand, 2005, p. 65). There are ambivalent feelings about the role of power among Native Americans and wide debate on how such new power should be used.
- **Image-Changing for Native Americans:** One researcher shows how the highly successful Foxwoods Casino has changed broader perceptions of Native Americans. “It (Foxwoods) has become a cultural icon, separated from and yet known to the broader Native world. Indian people of all backgrounds may choose to go there or not. Cultural representations are on the surface level, even stereotypical, yet have a major impact on the rest of Native America and Indian Country. And as leaders in the Indian gaming industry, they influence policy decisions on a national level” (Fenelon, Nov. 2006, p. 387). This author notes that “sociopolitical constructs arriving from negotiations with state governments” are two-edged swords that threaten sovereignty and introduce economic risks (Fenelon, Nov. 2006, p. 402). The image of Native Americans as capable businesspeople has a salutary effect on their fund-raising through the capital markets (vs. the typical methods of using bank loans or government grants), especially given that many tribes pursuing Indian gaming are turning to such markets (Elinson, Jan. 19, 2007).
- **A Compromising of Indian Nationhood and Sovereignty:** Some see Indian nations negotiating with states for certain rights as a kind of compromise of their innate and legal sovereignty. “Thus, the Standing Rock Council, long resistant to forces of assimilation including the BIA, finds itself negotiating as a nation with a state of the United States that can revisit the proposed laws through its legislatures. Ultimately, the traditionalists are not finding problems with any particular form of gambling on Standing Rock but rather, with a general weakening of the cultural forms that have sustained resistance for more than 100 years” (Fenelon, Nov. 2006, p. 394).
- **Mainstream Economic Assimilation:** As “anomalies within American governance,” Native Americans have been treated with an incoherence by Congress that leads to the “widespread variation, uncertainty, and conflict” in terms of tribal gaming policies. “U.S. policy makers have historically conceptualized tribes in a number of different ways: as wards, minorities, rights holders and corporations, as well as nations with sovereign governments,” observes Steinman (Nov. 2006, p. 297). Each of these conceptualizations of Native Americans affect policy (Steinman, Nov. 2006, p. 305). Wetzel echoes Deloria’s observation (1995) that this issue of Indian gaming is a “tactical shift, transforming the mechanism of state dominance of tribes from relocation and trust elimination to a more insidious, less overt economy of power” (Nov. 2006, p.

289). This author notes that self-determination “imposes on tribes new bureaucratic rules, structures, and obligations” (p. 289). Indeed, Wetzel suggests that a reconciling of opposing forces or “syncretism” may need to occur for Indian gaming to go forward.

In this era of self-determination, tribes have had varying economic successes. The residual effects of institutional dependencies have left many without the tribal leadership structures needed for nation building. The remoteness of many Native reservation lands has made it difficult to start and develop businesses that would bring many customers. Rather, the leadership earlier had focused on the distribution of government resources.

Timeline for Native Gaming

Timeline Note: In the timeline below, note that Indian gaming was not considered legally sanctioned until 1988. However, some instances of Indian gaming had already existed earlier in a fund-raising capacity. Prior to legalized Indian gaming, gaming had already existed in the US for many decades.



The Resurgence in the Native Population Today

Native Americans are seen by many as coming into their own in recent years. Tribal gaming has been linked to that resurgence in terms of contributing to the financial and political clout of the Native peoples of the U.S. “Today 4.1 million Americans claim American Indian ancestry—about 1.5 percent of the nation’s population. There are 567 federally recognized Indian tribes in the United States, which include 226 Alaska Native villages and 341 Indian tribes in the lower 48 states. Roughly 65 percent of Indian tribes in the lower 48 states use Indian gaming to generate government revenue.

“Across the country, 221 tribes in the lower 48 and two Alaska Native villages operate 413 Indian gaming facilities, including 286 casino operations and 127 bingo halls, travel plazas and pull tab operations. (As a comparison, 78 percent of the 50 states and the District of Columbia use state lotteries to generate government revenue.) In 2005, Tribal government gaming generated \$22.6 billion in gross tribal government revenues and created more than 600,000 jobs” (Indian Gaming: 2005 Economic Impact Report: An Analysis of the Economic Impact of Indian Gaming in 2005, 2006, p. 27).

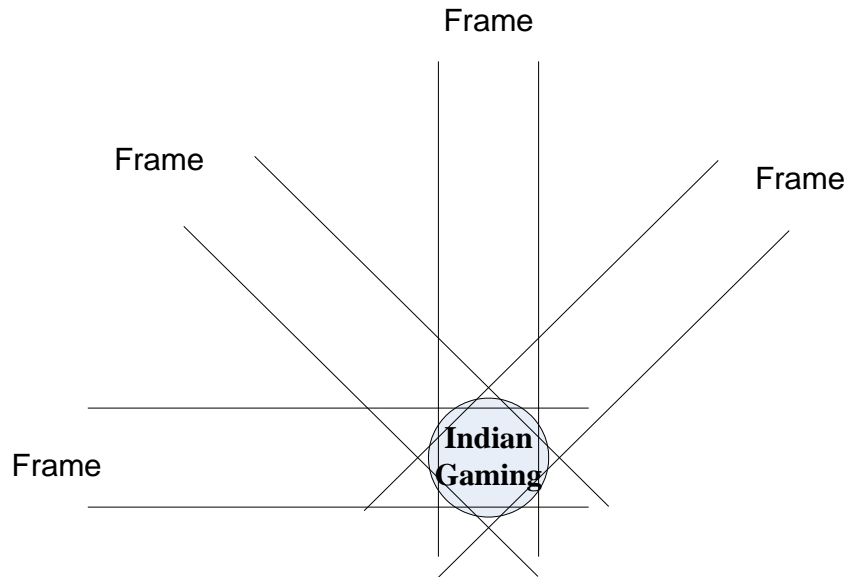
An estimated \$22.6 billion was generated in gross revenues through Indian gaming, a \$19.6 billion gross increase in revenues as compared to 2004. “Through Indian gaming, tribal governments generated 600,000 jobs nationwide last year. In 2005, Indian gaming generated \$7.6 billion in Federal revenues and revenue savings (\$6.1 billion in employer and employee social security taxes, personal and corporate income taxes, and excise taxes. \$1.5 billion in reduced welfare and unemployment taxes).” Indian gaming generated \$2.1 billion in state government revenue, “including revenue sharing, state income, sales and excise taxes generated by wages, vendor payments and purchases by Tribal gaming operations and related businesses, taxes on ancillary economic activity generated by gaming.”

“Tribes fund over 3,430 regulatory employees and budget over \$323 million for regulation at the tribe, state, and Federal levels” (McGuire, National Indian Gaming Association, July 11, 2006, p. 1).

Three Case Study Approaches

The following three case studies use separate frames to approach this complex issue.

1. The economics frame (“[All In? Economic Factors to Consider in Native Gaming](#)”) provides a view of Indian gaming from the perspective of financial revitalization of Indian reservations.
2. The social - cultural frame (“[Smallpox or New Buffalo: What’s the Right Analogy for Indian Gaming?](#)”) offers insights on the cultural arguments for and against Indian gaming. This also examines cultural mitigations that may support Indian gaming on reservations.
3. The political frame (“[Setting the Rules for Native Gaming](#)”) looks at the different layers of government oversight to Indian gaming and the lobbying efforts of the various stakeholders to Indian gaming.



Using Frames to Approach Indian Gaming: This image shows how the phenomena of Indian gaming may be approached and visualized through a number of different frames. Each angle may provide some other insights on Indian gaming. These case studies offer some limited perspectives, and others certainly are possible.

*** Notes to the Instructor:** Sidebar Assignments may be seen as extra-curricular and just for fun. These may be made as extra credit. Or, these may be used as fillers.

Q&A with Alan Parker, a Commissioner with the Washington State Gambling Commission

**By Shalin Hai-Jew
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Biographical Overview for Alan Parker

Alan Parker, a Chippewa-Cree from Rocky Boy's Reservation in Montana, has served on the Washington State Gambling Commission for five years.

He was first appointed by then-Governor Gary Locke in 2001 and was reappointed by Governor Christine Gregoire in Spring 2006 and confirmed for an appointment until June 2008. The WSGC meets one and a half days a month to review tribal compacts and changes, gaming regulations and policy, and to dispose of administrative appeals to license forfeitures.

Washington State gaming is a billion dollar industry the 27 tribes who have compacts with the state.

Parker served as the Chief of Staff to the US Senate Committee on Indian Affairs from 1987 - 1990, including when the Indian Gaming Regulatory Act (1988) was passed by the US Congress. "I was thus familiar with the intent of our committee version of the bill and of the political negotiations surrounding passage of the bill," Parker writes.

Parker practiced law in Washington, D.C. from 1977 - 1997 before joining The Evergreen State College (TESC) faculty. Since 2002, he has taught tribal government studies in the Masters of Public Administration program, a series of courses designed collaboratively with Dr. Linda Moon Stumpff. "We are the only college or university in the US that offers an advanced/grad level program in tribal government studies. This includes a course we call "the tribal economy and the role of tribal government that includes an in-depth look at tribal gaming."

Questions: What are the main points of contention regarding Native American gaming in Washington State? Why?

Answer: In Washington State, you have a history of public policy holders who have always responded to the public sentiment about expanding gambling. In opinion polls and in testimony before public hearings a strong public sentiment has consistently been expressed against any expansion of gambling in Washington State. They (the public) don't want to be driving down the freeway and see signs for new casinos or hearing about new laws or regulations for new gaming. Some of that spills over to Indian casinos. However, on the other hand, the polls have been consistent in reflecting public sentiment that as long as tribal gaming's taking place on Indian land, they don't view that as an expansion of gambling.

The other source of contention is in 1997 the Legislature passed a law that authorized cardrooms to use a house-bank form of cardroom gambling. Instead of card tables with people playing against each other, the establishment becomes the house, and that changes the nature of the game. Shortly after that, these cardrooms began to advertise themselves as casinos. You can see the connection there. Literally overnight, people saw signs overnight saying "casino". The law never said they were casinos, but the gambling commission decided that they couldn't force them to not use that name on their establishments. This change in the law resulted in privately owned "casinos" competing with Indian tribes (over casino gaming markets).

The Cowlitz tribe that was newly recognized and is not land-based has petitioned for land that they're prepared to acquire and place in trust and operate a casino in the town of La Center, which is about 16 miles from the border (with Oregon) and adjacent to Portland. (Parker explained that the nearest Native casino, the Confederated Tribes of the Grande Ronde's Spirit Mountain Casino, is 80 miles away from Portland. The Cowlitz want to build a casino in La Center, with the help of the Mohegan Tribe of Connecticut, which has committed \$300 million to this venture.) The Cowlitz are a recognized tribe but do not now have a tribal reservation. They're proposal to build a mega-casino in La Center is pushing the envelope in terms of public acceptance of

gambling. There are three cardrooms in La Center, all with the same owner, and these provide 75% of the tax revenue to the local municipality.

The Snoqualmie Tribe of North Bend has been looking to build a casino, but they're not as far along as the Cowlitz. There's no established entity fighting them. (In general) it takes several years to start a tribal casino. There's the federal process of putting the land in trust, which is difficult and politically controversial, and the feds drag their feet. The Mohegans are supporting getting the land into trust. In Washington State, people are comfortable with tribal gaming if it is seen as benefiting Indians and on tribal lands.

The other point of contention is that there was a tradition of bingo games owned and operated by nonprofit organizations, some of which are linked to church groups. They have declined as a sector of the gaming market in Washington state over the past ten years and they claim that if it weren't for the cardrooms and tribal casinos, they'd be alive and well. There are not a lot of people who pay close attention to this phenomenon, but those who do are active in public testimony before the Commission. As it happens, these bingo games contribute only a small percentage of their net profits to charitable budgets-not more than 5 or 6%, so those who are familiar with how all this works know that it is not really inflicting a great hit on the nonprofit charitable sector.

The bingo games are not only being crowded out by these other players in the market. Their (bingo) customers are older people who are dying off. The gambling public primarily goes to tribal casinos; there's more entertainment; there's more choice. The cardrooms, on the other hand, have a loyal following of customers who prefer to patronize neighborhood bars,

Questions: Who are the main political players / lobbying groups regarding Native American gaming, both tribally and in the larger society? Who are the main proponents? Who are the main opponents?

Answer: The lobbying groups are the tribes who belong to and support the Washington Indian Gaming Association (WIGA), which functions as a trade group. These are the leadership of the tribes; they're often the same-those in casino management and the political leadership, which are interchangeable and inextricably intertwined.

Among the WIGA organization, there are three main tribes with the largest gaming organizations located the closest to the market population: the Puyallup, the Muckleshoot, and Tulalip. They're almost about the same size, maybe with the Tulalip a little bit bigger.

The opponents are the cardrooms (87 different cardroom license holders). They hold about a third of the market. And then there's an anti-gaming organizations who are really pretty much against all gaming. The legislature has evolved just in the time I've been here from being neutral to being largely supportive of tribal gaming. There are key

members of the legislature who have made the difference. These people are well known if you're active on these issues.

Questions: What is the role of the Washington State Gambling Commission? "Whose side" are you on? What sort of regulatory power do you have?

Answer: The state gambling commission is on the side of the public. We were set up as an independent regulatory body to oversee gambling. We're independent of the industry (and) of the government. We were appointed by the Governor and can only be removed for cause.

The commission has a history of being very progressive among state gambling commissions. If you compare Washington State and how we set up and regulate gambling, we compare very well to any comparable state. I believe there's a strong sense of professionalism among the commission staff. There's a rigorous adherence to neutrality. There's a good relationship between tribes and the gambling commission. We oversee and work well with the tribal regulatory agencies, yet, there's also an arm's length relationship. They're not always happy with what we do.

We try to look at the public interest primarily, in the context of politics as we know politics to be.

Question: What is the "public interest"?

Answer: Keep gambling safe. Keep it from being a corrupting influence on the society-on local jurisdictions, on local government. Keep it legal. Make sure all the laws and regulations are strictly enforced. Make sure that everybody who holds a license has been strictly scrutinized in their background. We've denied people who had any sign of organized crime. We've denied financing partners that don't pass the test (based on FBI background checks). If you know anything about gaming, you may have heard of gambling's ability to corrupt local officials, and it's our job to make sure that doesn't happen. We don't have any mafia here.

Question: What economic impacts have Native American casinos had in your state?

Answer: Well, I think it's been almost uniformly positive in terms of the tribal casinos in a way that most people don't understand. The tribes are like an economic engine within a rural economy that wouldn't otherwise have any other economic base. Generally a trend in the American economy, there's a flow from the rural to the urban, and the population in the rural have generally been declining, but the casinos have countered that by creating an economic base out of the ordinary.

Here as elsewhere, most of the employees are non-Native. The vendors and suppliers of the enterprise are not owned by the Natives, although that's changing. The revenue flows go from the casino operation to the local economy. The compacts provide

that the tribes set aside 2% of their gross revenues for economic impacts (of the casinos)-for local roads, for fire, for police, and those kinds of impact costs.

The tribes' success has transformed economically depressed tribal communities into economically healthy communities. Now, gaming as an enterprise is not necessarily a productive enterprise in the sense of producing wealth that is just sort of value-added. It's a transfer of wealth. It's a recreational enterprise. That said, it's overall true that the economic impacts have been almost uniformly positive.

The state lottery has its place, but it's not a threatening factor (towards Native casinos). In some states like Oregon, lottery has become a form of state-sponsored gambling that has taken away market share from Native casinos. A state gets hooked on its lotteries and adds new games all the time.

Questions: What is the optimal way to train for the position that you're serving currently on this commission? What are the skills that are most commonly used for your work here?

Answer: It's a political appointment. It's not like people look and say, "Well, do you have the skills?" (Parker explained that local tribal political leaders asked him to serve in this capacity in 1997 when he moved to Washington State. His name was put forth by the Native American tribal leaders, and he considered the offer for a year before agreeing. His expenses are paid for him to attend meetings, but he earns no compensation for his commission role.)

I don't think of this position as particularly powerful. I'm one of five policymakers in this agency, and it's an arena of public policy, which at times is more significant than others. It ebbs and flows. But it's the nature of the job. The job is to be an honest broker and a regulator for the public interest. The only thing unique about my role is the fact that I have this background as an Native American attorney and has worked in politics.

Question: What is the regulatory environment like for Native American casinos nationally?

Answer: I think generally speaking that it's hard to say, but the rule of thumb is that the political leadership of the tribes have recognized that it's very important not to lose the confidence of the public—that Native Gaming is honest and fair—So far the tribes have succeeded and their reputation has not been undermined by the threat of scandal, by the threat of corruption. For their own self-protection tribal leaders have gone to great efforts to preserve that integrity, and that reputation.

Now in each state, it's different. California, for example, has the largest number of gaming tribes, but also the weakest regulatory scheme from the state point of view. They didn't create any state gaming agency until that vote-in 2000—so they're behind, and they need to get up to speed. Arizona likewise has the reputation of weak regulation. New Mexico, Michigan...is considered strongly regulated. Washington State certainly is.

The National Indian Gaming Commission (NIGC) is the federal regulatory gaming agency. There are those who feel like it does not have enough power. US Senator John McCain, for example, doesn't, and he's pushed for legislation to strengthen this commission's powers. Tribes have strongly resisted that, and Congress has not acted on those bills.

Question: Internationally?

Answer: I'm aware of a few examples in Canada. This is not really an issue.

Question: What are the optimal ways to invest funds from Indian gaming, based on what you've seen?

Answer: When I worked in the Congress and when we passed the federal law, the IGRA, there were two important federal restrictions. Native casinos have to be entirely owned and controlled by the tribes. They couldn't share ownership. They could share management; they could enter into financing agreements, but the ownership had to rest with the tribal government.

That's a big control factor, and the other thing is how they invest their funds. There's a lot of interest in thinking about how tribes are going beyond their own local economies. If you have studied this, in nearly every case, representatives of the tribes make it a priority to maximize the diversification of the tribal economy before they try to invest funds outside of that economy. They've built out establishments, both horizontally and vertically. They've consolidated land. They've built golf courses. That's (been their) instincts pretty much across Indian country.

There are a few tribes who have gone beyond that. You may have heard that the Seminoles recently bought out 300 franchises of the Hard Rock Café (for an estimated \$965 million). That's the next wave. People are looking to buy into enterprises that are similar to the gaming enterprise that they've become comfortable with and have gained some knowledge over that industry.

There are some of us who argue that the next wave ought to be to invest in other sectors of the Indian economy, non-gaming parts like energy, agriculture, natural resource extraction, and various forms of recreational business...because to the extent that the tribes follow that direction, they're strengthening the overall Indian country economy, and that will be to their best interest. There will be ripple effects across Indian country. There will be a corresponding growth in the political strength of US tribes in US society.

The counter to that is that (investment) accelerates the influence of acculturation on these tribal societies. There's lots of discussion you can hear within the Indian community about how to deal with that and respond to that. They don't want to see tribal societies become dominated by capitalistic values. So that's the debate.

I think that tribal values, indigenous people values, are essential to preserve and see those values continue to be the dominant values of our tribal societies.

Questions: What is the possibility of a large shift in federal policy regarding Native gaming? State policy? How may Native American tribes face such a potential shift?

Answer: It depends on the ability of the tribes to preserve the integrity of their enterprises. You saw a huge threat with the so-called Abramoff scandal, and what you saw were tribes paying this lobbyist large amounts of money—and that itself was scandalous enough—and paying this lobbyist to keep other tribes from having the same opportunities they have. None of the tribes paying Abramoff were from Washington State, by the way. However, the scandal had an invidious impact on the standing of Native American Tribes as a group..

In each case, there's a story behind it (why various tribes worked with this lobbyist). Maybe there's a reason.

In New York State, some tribes have opposed a move from other tribes backed by outside financiers to cut a deal to open casinos. Now they want to come back, from, say, Oklahoma where they'd moved. They're pushing to have ancestral lands placed in trust. If you're a Republican governor of New York and there's a Republican administration in Washington DC, you may be able to accomplish that (putting lands in trust), but that has been viewed as carpet-bagging. Some tribes may question the bona fides of that. Many are motivated by the gaming opportunity. Such efforts undermine federal support and federal policies that preserve the existing paradigm.

Questions: What are some stereotypes of Indian gaming that are prevalent today? What are some strategies used to head off some of these stereotypes?

Answer: I guess the biggest stereotype is the fact that to some extent in the public, there's a growing view that it's all just about gaming among Indians and that Indians are only interested in making money and being successful in gaming. It's not true, but it's understandable how some people might think that's what it's really about. That's a stereotype. I wouldn't call it prevalent—but that's a threat.

The tribes need to really be more successful about framing their message back to the public—who are they, what are they about. It's not enough to say we've used gaming to overcome generations of poverty. It's not enough to say we've created healthy rural economies that wouldn't otherwise exist. They have to be able to show the public that the tribal ethic continues to be the dominant ethic that the tribes' role in society continues to be what it historically has been...the original people of this land, the caretakers of the American dream, the custodians of the earth. That's the role. If you know the tribal people, you know that's the common vision.

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Biography 2005



Alan Parker, faculty for Native American law and public policy The Evergreen State College, Olympia, Washington

Alan Parker is the Director of the Northwest Indian Applied Research Institute at The Evergreen State College where he also has served as a member of the faculty since September of 1997. A citizen of the Chippewa Cree Tribal Nation, Parker lived for many years with his family on the Rocky Boy's Reservation in Northern Montana. Alan graduated from the UCLA School of Law in 1972 and practiced law in Washington, DC for over twenty years before joining the Evergreen College faculty in 1997. While in Washington, DC, he directed research on tribal governments for the American Indian Policy Review Commission and was the first Native American to serve as Chief Counsel to the US Senate Committee on Indian Affairs. (1977-81, 1987-91)

During his service in the US Senate he was instrumental in securing passage of the Indian Child Welfare Act, the Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Tribal Self-governance Act, the American Indian Development Finance Corporation Act and numerous tribal land and water claims settlements. He also served as President of the American Indian National Bank from 1982 through 1987 and later organized the first "Native American think tank", the National Indian Policy Center at George Washington University. On May 21, 2000 Washington State Governor Gary Locke appointed Professor Parker as the first Native American attorney to serve on the Washington State Gambling Commission.

Professor Parker co-founded along with Prof. Linda Moon Stumpff the nation's first graduate school program in tribal management, *The Evergreen State College Master in Public Administration: Tribal Government*. His research interests are currently focused on integrating cultural revitalization, governance and sustainability through implementation of increasingly sophisticated approaches to tribal self-determination.