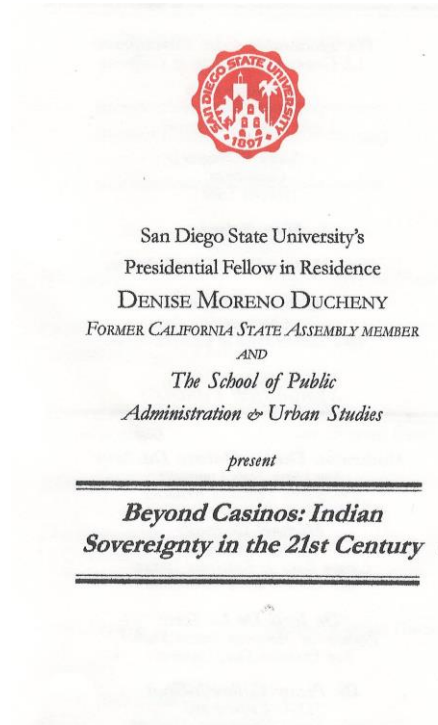


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Tribal Government: Managing Indian Nations in the 21st Century
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In 1988, Congress established the Indian Gaming Regulatory Act (IGRA), which created the statutory basis for Indian gaming as a method of “promoting tribal economic development, self-sufficiency, and strong governments.”¹ What resulted from this Act was a revenue base for gaming Tribes that has allowed tribes across the United States to develop infrastructure on their land, provide services to their people, offer jobs to their tribal members, and build a strong basis for their future prosperity and autonomy. An epiphenomena has occurred with the neighboring communities benefiting from the reinvestment of the tribes into the local economies.

Gaming has resulted in many new responsibilities and burdens for those tribes that have selected Casinos as a method to obtain economic prosperity. Gaming has changed the face of governance for tribes and promises to bring more changes in the years ahead. This paper will address the changing nature of tribal governments in this new era and propose suggestions for meeting those challenges.

What is Tribal Government?

Not much is written about the scope and role of tribal governments in modern time. In one study, the authors reference this lack of information, commenting that, “Library shelves are filled with

¹California, Tribal-State Class III Gaming Compact, Preamble, 22 August 2001.

works on other American and foreign governments, but an inquirer must learn about tribal government incidentally and in piecemeal fashion.”²

What is clear about tribal governments is that they predate the Constitution of the United States and continued after the Constitution was established. The “Doctrine of Tribal Sovereignty,” concedes that “Indian governmental powers, with some exceptions are not delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereignty that have never been extinguished.”³ Tribes have self-governed and managed for centuries.

In modern times, a clear understanding of tribal governments emerges from Supreme Court action where the Court declared that tribes have “unique aggregations possessing attributes of sovereignty over both their members and their territory.”⁴ Pommersheim suggested that sovereignty has two key components. First, it recognizes the freedom of authority of the nation over its people and land without intrusions from other sovereigns in that society. Second, it recognizes the nation’s authority to create rules and laws that may be different from those of other sovereigns, including a dominant sovereign.⁵

For Indian nations, tribal government is the primary mechanism to convey sovereign rights. It is through its governing structure that it creates laws, provides services, and ensures that its members are afforded the rights not specifically limited by Congress. Although the Supreme Court has confirmed that Indian sovereignty is unlike that of federal, state, or local governments,⁶ tribal governments have taken responsibility for many of the services generally provided by state and local governments. Tribes may provide a full range of services, including health, welfare, education, public utilities, law enforcement, justice systems, economic development, and capital infrastructure. Specifically defined, Tribes as sovereign nations have rights and powers to do the following:⁷ Establish a form of government, determine membership, provide police power, administer justice, exclude persons from their reservations, charter business organizations, and possess sovereign immunity. These powers and responsibilities become the basis for tribal government.

²James L. Lopach, Margery Hunter Brown, and Richmond L. Clow, Tribal Government Today: Politics on Montana Indian Reservations, Rev. Ed. (Niwolt, CO: University Press of Colorado, 1998), Preface.

³Indian Justice Center, Federal Indian Law: Resource Handbook (Reno, NV: 13-15 July 1998), 84.

⁴American Indian Lawyer Training Program, Indian Tribes as Sovereign Governments: A Sourcebook on Federal-Tribal History, Law, and Policy (Oakland, CA: AIRI Press, 1988), 35.

⁵Frank Pommersheim, Braid of Feathers: American Indian Law and Contemporary Tribal Life (Berkeley, CA: University of California Press, 1995), 100.

⁶Indian Justice Center, 84.

⁷*Ibid.*, 36-39.

How Does Gaming Impact Tribal Governments?

American Indian tribes have a long history of entrepreneurial activity, including mining, logging, fishing, and agriculture. While these activities have provided resources for tribes, poverty continues to be substantial throughout Indian Country.⁸ With the advent of gaming, tribes received a new economic tool but one that triggers many changes for Indian Country. Pommersheim comments on the nature of this new economic tool:

In recent years, Indian gaming has become the single most powerful economic force in Indian country. It has generated significant income for many tribes, accentuated tribal-state tensions and interdependence, and posed new issues concerning wealth and power among the tribes themselves.⁹

In 1999, National Indian Gaming Association (NIGA) reported that gaming generated over \$9.6 billion in revenue and resulted in approximately 200,000 jobs.¹⁰ These revenues have enabled both gaming and non-gaming tribes to provide education, health and welfare, jobs, recreation, utilities, and many other services to their members. The revenues have also allowed major contributions to the local non-Indian communities. In 1998 alone, NIGA stated that gaming tribes contributed at least \$68 million in charitable giving. The \$68 million statistic is particularly noteworthy when compared to the giving of non-Indian gaming institutions. NIGA indicated that although Indian gaming accounts for only 14 percent of the gaming sector and only ten percent of total gaming revenues, it has given \$10 million more than the rest of the industry.¹¹

The Indian Gaming Regulatory Act stipulates that revenue from gaming may only be spent for one of five purposes:¹²

1. To fund tribal government operations or programs,
2. To provide for the general welfare of the Indian tribe and its members,
3. To promote tribal economic development,
4. To donate to charitable organizations, or
5. To help fund operations of local government agencies.

These revenues make it possible for many tribes to offer a full range of services to their members and to focus upon the act of governing. In fact, under the tribal-state gaming compact in California, tribal governments are key in meeting the conditions for gaming. In the preamble to

⁸Pommersheim, 162.

⁹Ibid., 179.

¹⁰National Indian Gaming Association (NIGA) on the Web, "Indian Gaming Facts," 12 June 2001, <http://www.indiangaming.org>.

¹¹National Indian Gaming Association (NIGA) on the Web, "Survey Results of Indian Gaming Nation Charitable Giving," 12 June 2001, <http://www.indiangaming.org>.

¹²Indian Gaming Regulatory Act, 25 USC 2710 [Sec. 11].

the model compact, “the Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.”¹³ These *sovereign interests* specifically require tribes to regulate themselves as it pertains to gaming-related projects. These include environmental protection, water and wastewater standards, health code regulations for food and beverage, risk management, gaming regulation, judicial component for claims review, and building code standards. Although tribes provided many of these governmental services prior to gaming, their documentation and function became more complex when entering into partnership with the State, as created in the compact in California.

Gaming also created an interdependent relationship with the market sector that tribes conduct business in to compete for the gaming dollar. This includes competing for the labor as well as for the customer. It forces the tribe to manage not only its revenue and services but also to manage its multi-million dollar businesses. Since sovereignty applies to businesses owned by a tribe, its government becomes much more complex than those of the local government or state.

Traditional structures for tribal government were not created for the interdependent, market-driven, regulatory environment. Even the act of documenting procedures and rules is foreign to some tribal governments. How can a tribe manage with such complexity and uniqueness as that created by sovereignty in this dynamic world?

Challenges for Tribal Governments

Tribal governments are faced with many new challenges in the 21st century. The following recommendations are proposed to address these challenges.

First, the structure of tribal governments will need to evolve to be able to manage the complexity of the environment. Many have suggested that one of the biggest challenges for tribal governments to overcome is the need to separate politics from business. Lopach, Brown, and Clow state that “many reservation problems stem from a lack of separation of powers.”¹⁴ In a recent article in Indian Business, Ho-Chunk President, Lance Morgan, emphasizes the need for this separation:

It’s very unusual for a government, outside of tribal governments, to be involved in businesses....the problem is that no government-run businesses are going to be that efficient, especially tribal-government-run businesses. Running a business through tribal-government meetings is just not the most efficient way of doing it.¹⁵

Second, the need for accountable, professional support and expertise is essential. The range and scope of the work to be done is vast and broad. Expecting an elected body to be able to learn and manage within this complexity while handling the policy decisions is unrealistic. As well, for a

¹³California, Tribal-State Class III Gaming Compact, Preamble Paragraph F, 22 August 2001.

¹⁴ Lopach, et al., 195.

¹⁵“Nebraska Winnebago: Economic Development—Freedom Pays Off!” in Indian Business, Fall 2001.

successful outcome, accountability of those serving the tribe is critical. Lopach et al noted, “Reservations would be better served by accountable policy makers, professional administrators, and an independent judiciary.”¹⁶

Third, diversification of a revenue base is vital to ensure that tribes can remain self-determined and viable to serve future generations. Tribes have had to work hard to maintain the victories they have seen over the years. Erosion of tribal sovereignty is a continuous battle. Sole reliance on gaming revenues can leave the tribe vulnerable to changes in market conditions and the legal environment. Using gaming revenues to seed other economic ventures is necessary to ensure long-term economic health. The governing structure and organizational goals need to support this diversification.

Fourth, tribes must exercise sovereignty and ensure programs and systems that strengthen their autonomy and uniqueness as sovereign nations. For example, as sovereign nations, tribes have the right to adjudicate matters involving their members. Without a tribal court system, the task of adjudication falls to the local court system and an opportunity is lost to preserve the values, customs, and traditions of the tribe. The same applies to the welfare of tribal children. While tribes have the right to care for their children, the lack of a program or structure to exercise this right leaves the children in the hands of the county rather than in the hands of the tribe.

Fifth, establishing boundary-spanning functions within tribal government will assist the tribe in adapting to changes off the reservation, which can impact the tribe’s success. Many tribes are geographically isolated and have chosen out of preservation to be socially isolated. While this has served to protect members and the culture, it may become a hindrance when competing and governing in an interdependent world. Strong, visible relationships on a government-to-government level will assist in future compact negotiations and will help address criticism that tribes are not considering the needs of the surrounding communities. It will also help to educate the general public on the nature and purpose of sovereignty and status as sovereign nations.

Finally, as tribal governments evolve, they must continue to reflect the values of the tribe. The established theory of public organizations in America may not fit the needs of American Indian tribes. Designing tribal government structures may require a new or different way of looking at structure and governing. On the other hand, it may just require a new version of an old structure that is buried deep within the Indian tradition. Indian tribes have survived despite extraordinary obstacles and are the most unique and adaptable people in the United States. Looking inward to their history, culture, and values will likely present the most appropriate form of government structure.

Conclusion

Tribal governments have been a part of the American landscape longer than the US Constitution. While the powers and rights of tribal governments are firmly embedded in the notion of sovereignty, they are not well understood by the non-Indian. Indian nations are major contributors in the local economy and as sovereign nations they represent key leadership for the 21st century. Given the emerging roles of Indian tribes in the economy, it becomes important for

¹⁶Lopach, et al, 195.

the non-Indian to understand the nature of sovereignty and concepts of tribal governance. As well, as tribes become more resource dependent upon revenue from gaming, it becomes necessary for tribal governments to adapt to an interdependent, market driven economy and to become proficient in dealing with the leadership of their external environment.

Gaming has created an interdependent world between the tribal nation and its surrounding communities. For both the Indian nation and the local governments, this means developing a new understanding of each other--one that recognizes and honors the history, rights, and values of both worlds. The challenges presented by gaming are great but no greater than those that historically have been overcome by Indian nations. For those of us serving Indian nations from outside the Indian heritage, the challenge is to keep foremost in mind that we are serving sovereign governments and to do so requires that we perpetuate the values of the sovereign nation and not those of our own culture.

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