

The Misconceptions and Misrepresentations of Indian Gaming Rights

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Most Americans have a strong, emotional disposition surrounding the topic of Indian gaming rights. It is one of the most contentious issues when it comes to interactions between Native American's and their non-native neighbors, as it has had a monumental impact on the lives of all parties involved. Since the first high stakes bingo parlour was built on the Seminole Tribe's reservation in Florida, the issue has become one of legal, social, and economic importance for states and tribes alike. There lies a problem however in the understanding of what Indian gambling rights are, how they came to be, why they came to be, and the impacts they have had on tribes. Most people immediately assume that Native Americans are using some special legal loopholes to make billions of dollars off the American people. Although there are examples of wildly successful tribes, the issue is much more complex, with some tribes not being as well off. Indian gaming rights are a product of the sovereignty given to tribes throughout history, and the misrepresentation of Native American gaming in media and popular culture has created a sense of resentment towards those that run them, when in reality gaming is providing for tribes in a way that the government has failed.

A Daily Mail article titled "Inside the Richest Native American Tribe In the U.S. Where Casino Profits Pay One Million Dollars a Year to EVERY Member" published in August of 2012 highlights one of the major misconceptions surrounding Indian gambling. People are fascinated with the supposed riches of tribal gaming, when in reality not all Indian tribes who engage in gaming are successful, and for many it has led to unrelenting and fatal financial complications. In 2003, gaming brought in just shy of eighty billion dollars in revenue, with Indian gaming accounting for seventeen billion dollars, less than a quarter of the industry's total

revenue¹. For those Indian tribes however, the financial prospects of entering the industry often outweigh the risks. Historically, Native Americans are worse off economically than their white counterparts, with one in four indigenous peoples below the national poverty line². On a local level, Native Americans in Oregon are impoverished at a rate of nineteen percent in comparison to the statewide poverty rate of ten percent³. Tribes such as the The Confederated Tribes of Warm Springs, located outside of Bend, try and combat this through projects such as the Indian Head Casino, which is projected to bring in close to ten million dollars in annual revenue for the tribe after its opening in 2012⁴. The general manager of the casino, Ken Billingsley said, "This is the one law that Congress has created for Indian people that is truly working". This success however is not shared by all gaming ventures. Located just over fourteen miles North of the Indian Head Casino, the Kah-Nee-Ta Resort lies abandoned. In September of 2018, the casino resort was closed permanently, and 146 employees lost their jobs. According to interim general manager Marie Kay Williams, the resort was no longer financially viable, saying "the resort cannot continue operating below a self-sustaining level"⁵. Competition and financial mismanagement were the final blows to the resort, and the Kah-Nee-Ta joined the ranks of the many struggling casinos across the nation. One quarter of the United State's Indian casinos make less than three million dollars annually, just enough for them to keep their doors open and sustain operation⁶. The belief that all Indian gaming pursuits are financial successes with money raining

¹ "Indian Gaming & Tribal Sovereignty: the Casino Compromise." *Indian Gaming & Tribal Sovereignty: the Casino Compromise*, by Steven Andrew. Light and Kathryn R. L. Rand, University Press of Kansas, 2005, p. 7.

² Pew Research Center 2014

³ Kaiser Family Foundation 2017

⁴ Marlowe, Erin Foote. "A New Beginning: Indian Head Casino Gives Warm Springs Chance for Economic Development." *Bend Source*, The Source Weekly - Bend, 25 July 2019.

⁵ Hale, Jamie. "Kah-Nee-Ta Resort Will Close This Summer, Laying off 146 Employees." *Oregon Live*, Aug. 2018.

⁶ "Indian Gaming & Tribal Sovereignty: the Casino Compromise." *Indian Gaming & Tribal Sovereignty: the Casino Compromise*, by Steven Andrew. Light and Kathryn R. L. Rand, University Press of Kansas, 2005, p. 10.

down upon tribes is false. Just like any other business venture, there is risk involved and in many cases, failure occurs. The problem however that comes with these failures is that the idea of Native Americans finding overwhelming success in the gaming industry has led to resentment and insensitivity towards tribal members and their cultures as a whole.

The portrayal of Native Americans in popular media often paints a picture of greedy Indians making their fortune, all at the expense of the innocent white man. This perpetuates a stereotype that Indians entered gaming out of greed, rather than financial necessity as well as bolsters the feelings of uneasiness surrounding their sovereign right to gaming. In a 1999 episode of *Family Guy* titled “The Son Also Draws” the following conversation takes place between a Native casino manager and his accountant. The manager enters a monologue saying “I guess we’ve lost touch with our noble roots, I mean sure this casino has brought our tribe money and prosperity, but what is the price of our souls?” To which his accountant responds, “Six million dollars a week.” And the manager responds with a guilty smile “That sounds about right”⁷.

Although much of the episode is meant as satire, it is hard to miss the obvious connection the show is making between Indians right to gamble and their apparent greed. The idea that Indians are selling out their culture in pursuit of money is blatantly false. Native Americans entered into the industry in pursuit of helping their tribes. The Indian Gaming Regulatory Act defines the purpose of allowing tribes to gamble as a “means of promoting tribal economic development, self-sufficiency, and strong tribal governments.”⁸ The show also fails in the fact that it makes it seem as if there's a special advantage being given to Native Americans, and this portrayal further pushes the narrative that casinos are not entities intended to help pull Natives out of poverty but

⁷ Affleck, Neil. “The Son Also Draws.” *Family Guy*, season 1, episode 6, FOX, 1999.

⁸ Indian Gaming Regulatory Act, 25 U.S.C. § 2702(1).

rather vehicles for Natives to circumvent the law. Virginia McLaurin from the University of Massachusetts Amherst summarizes this by saying “Where non-Natives feel threatened or disadvantaged by Native economic strategies, it is likely that tensions between Natives and non-Natives will run high, as it has been demonstrated that they have historically when any Native threat has been perceived⁹.” Non-natives want to think that they are equal to natives and that they share the same rights, and while this is true in many ways, inevitably these separate rights stem from the fact that Indian Nations are sovereign nations in the eyes of United States law. Another example of the media failing Native Americans is in the Comedy Central show *South Park* by Matt Stone and Trey Parker. In an episode titled “*Red Man’s Greed*” an Indian Casino derails the entire community and kicks the non-native residents off of their land. In what is supposed to be a satirical take on how the United States treated Indians, the show still misses the bar in the way it enforces some of the traditional stereotypes surrounding Indian Gambling. However, it is worth noting that the episode as a whole does a wonderful job in telling the story of troubles of Native Peoples in the United States through an ironic, backwards version. This does not negate the fact that the show, just like *Family Guy*, portrays Indians as greedy rather than self sustaining independent people exercising their legal rights. The casinos leader is painted in an evil light, sitting in an office above the pit, taking advantage of the innocent Non-Natives misfortune. This is a real problem in modern day culture that Indians are defined only by the success of a few casinos, rather than the thousands of years of established culture that preceded their right to host gambling. When a television show represents only one side of Indian Gambling and does nothing to show why it has come to be, it imprints an image on the viewer

⁹ McLaurin, Virginia A. “Stereotypes of Contemporary Native American Indian Characters in Recent Popular Media.” *University of Massachusetts Amherst, Scholar Works*, 2012, p. 42.

that Indians have no right or justification to have such a special privilege. To leave out much if not all of the context surrounding the development of Indian Gambling is an unfair representation of one of the few positive rights entitled to Native Americans by the federal government.

Just outside of Portland there lies a struggling movement due to the perpetual hardships placed on Native Americans exercising their sovereignty. The Cowlitz tribe of Southern Washington and Northern Oregon received immediate protest to the building of a casino just sixteen miles outside of Portland, Oregon. The Cowlitz tribe, following the story of many Indian tribes, were trying to improve the economic state of their tribe through a casino resort and were guaranteed the right to do so through years of legislation and developments in Indian Law. The state however took exception to this particular casino because it thought that it would negatively impact Oregon's revenue from the state run lottery, one which receives a majority of its players from the population centers surrounding Portland. A state report, summarized in a 2016 Oregonian article holds a clear tone of resentment towards the project. The article describes the projected loss to the state as "\$65 million a year in lost Oregon Lottery funds that would otherwise go to schools, housing, economic development projects and state parks"¹⁰. Another quote from a local resident in the same article read "As a government that provides health, education and housing for its citizens, those impacts would be devastating." The total irony in this is that it is lost upon the people in the article that the Cowlitz are trying to do the exact same thing as the state is claiming to do with their gambling profits. The obvious sentiment being conveyed through this article is that the state is the victim in this situation, not the Indian tribes

¹⁰Tims, Dana. "Cowlitz Casino On Track, Still Stirring Controversy." *Oregon Live*, The Oregonian - Portland, June 2016.

who have been forced onto a new land, been mistreated by society, and underprivileged economically for hundreds of years. The article goes on to express how opponents are arguing that the casino is being built on land that may not actually have been ancestral to the Cowlitz, commonly known as reservation shopping. Opponents in the article push for this argument saying that if they had built the casino just fourteen miles up the road that this would not have been an issue, as these were better documented tribal lands. This however was easily counteracted by the subtle yet crucial statement that Portland was also once their ancestral lands, yet there was no prospect of them building within the city itself. The scenario is a modern example of how much of the United States views Indians as being greedy businessmen looking to bring casinos closer and closer to the white population centers, when in reality the story can just as easily be read as one where Native Americans are trying to improve their economy by utilizing their ancestral lands. Although much of the history of Native Americans and their unfair management by the United States as a whole is a complicated and lengthy story, it consistently appears that this history has been completely forgotten or ignored when it comes to viewing projects of economic development for those that have been oppressed for hundreds of years. The article fails to address any of the context surrounding the Cowlitz and their pursuit which proves to be a consistent theme in the representation Indian gaming.

In 1987, the United States Supreme Court Case *California v. Cabazon Band of Mission Indians* was decided in favor of the Native Americans, striking down any law that prevented them from exercising their right to gamble. To understand this ruling and the complicated legal status of Indians that has led to the aforementioned problems, it is important to return to the history of sovereignty. When Indian nations were being moved off their original lands and onto

reservations, the United States Government, through the Bureau of Indian Affairs, issued treaties with these tribes. This effectively recognized tribes as sovereign nations, and entitled the tribes to self government. Tribal nations began to rapidly incorporate gambling into their economies and from that point on, Indian Casinos would become almost as notable as Indians themselves in the eyes of many Americans. The 1988 Indian Gaming Regulatory Act expanded the rights of Indian Casinos, and the industry would continue to take off until it reached the point it is at today.¹¹ It outlined what gaming activities were allowed and the various levels of governmental oversight required. The various categories of gaming outlined by the IGRA are

Class I. Social games for prizes of minimal value and traditional forms of Indian gaming engaged in as part of tribal ceremonies or celebration;

Class II. Bingo and games similar to it such as, pull tabs, tip jars, and certain non-banking card games

Class III. All other forms of gaming including banking card games, slot machines, craps, pari-mutuel horse racing, dog racing, and lotteries.

Within these various classes of gaming, there were varying levels of regulation and various levels of government intervention, with at the high end of Class III requiring authorization by a NIGC-approved tribal ordinance and agreed upon by a tribal-state compact¹². Another chapter of the story of Indian gambling in this country is that after the passing of this act, a new debate was sparked surrounding whether or not Indian Nations were sovereign if their ability to dictate their own operations was dependent upon regulation from a United States authority. The very act of

¹¹ Rand, Kathryn R.L. "Caught in the Middle: How State Politics, State Law, and State Courts Constrain Tribal Influence over Indian Gaming." *Marquette Law Review*, vol. 90, no. 4, 2007.

¹² Evans, William N, and Julie H Topoleski. "The Social and Economic Impact of Native American Casinos." National Bureau of Economic Research, Sept. 2002.

the United States regulating Indian gaming at all meant that they have yet to achieve their full autonomy ensured to them by sovereignty. This is an area that legal scholars and tribal leaders have been addressing since the very conception of the initial treaties with Native American tribes, and there still to this day is no clear definition of what the sovereignty Indians have actually entails. What is important to recognize however is that courts have consistently respected and insured that Indians are legal in their right to gamble and both parties recognize it as some of the most effective legislation in terms of helping indigenous people alleviate themselves from poverty.

The understand sovereignty, however, one must look back to its roots in history. Focusing on Indian relations in the Pacific Northwest, there has long been a disconnect between Indigenous peoples and those who “discovered” the land they inhabit. Initially, in the early nineteenth hundreds, settlers and Native Americans had a mutually beneficial economic system. The Natives would contribute to the extremely valuable fur trade and the settlers would provide many advanced technological goods in return. This system was effective until the policies such as the “fur desert” and other harmful actions taken by the Hudson's Bay Company dismantled the industry. This led to an influx of settlers with very different intentions than the trappers moving into the area and creating a great deal of conflict. The settlers came with the intentions of making the land their own and therefore increasing the presence of the United States in the region. This meant solving the so called “Indian Problem”, the issue that Indians occupied valuable timberland, made the Northwest look uncivilized through cohabitation, and ruined the purity of the blood through intermarriage, all according to the non-Native whites¹³. The attempt at solving

¹³ Beda, Steven. “Making Indians”. Fall 2019.

this problem led to the centuries long oppression of Native Americans by the settlers, and put them at a massive economic disadvantage that still exists to this day. Tribes were removed from their land and their traditions and customs that they had used to survive off of for thousands of years were disregarded by their new “neighbors” (colonizers). When considering the impact of Native American gambling operations, there is often missing context as to why tribes entered the industry and the first place and their dire necessity for economic stimulation. In 1970, as Indian gambling was about to take off, the census reported that 8.6 percent of white families were in poverty. In contrast to this, 33.3 percent of Native American families were impoverished, and their per capita income was nearly half that of whites in the same year¹⁴. Healthcare has in the past and is in the present day a need that is massively under fulfilled in the lives of Indians. This led to high rates of alcoholism, drug abuse, and other health related problems on reservations¹⁵. In the late twentieth century, as Presidents such as Reagan and Clinton alike moved towards the decreased size of government¹⁶, Indians bore a disproportionate amount of the burden when it came to cutting many government programs, including the Department of Health and Human Services. Most Indians receive their federally guaranteed healthcare through the Indian Health Service, a branch of DHS. From the fiscal year 1994 to fiscal year 1995, the reduction of spending within DHS as a whole was 2.2% of full-time equivalents from the entire department, yet the Indian Health Service took a 7.7% cut¹⁷. Problems within the Indian Health Service eventually led to Native Americans heading up their own healthcare system. In very recent times,

¹⁴ 1970 United States Census

¹⁵ “Higher Rate of Substance Use among Native American Youth on Reservations.” *National Institute on Drug Abuse*, 2018.

¹⁶ Kunitz, Steven J. “Public Health Then and Now: The History and Politics of US Health Care Policy for American Indians and Alaskan Natives.” *American Journal of Public Health*, vol. 86, no. 10, Oct. 1996.

¹⁷ House Committee on Appropriations, Report 103-551 on H.R. 4602, Department of the Interior and Related Agencies Appropriations Bill, 1995, 103d Cong., 2d session, June 17, 1994.

the Eastern Band of Cherokee Indians have created their own clinic where their tribe receives care¹⁸. They pay for this using their profits from casino gambling on the reservation land. This example is one of many where Indian tribes are properly exercising their legal rights within sovereignty to better their tribes and the lives of those within them. According to the IHS, just about twenty percent of tribes have been granted permission to take over their own healthcare systems rather than relying on the federal government. This is one of the many ways in which Indians are slowly returning to autonomy and their traditions of taking care of their own people. The less than ideal reputation that Indian Casino Gambling has in the media and in society often leaves out the fact that casinos are saving lives as one of their many economic benefits to the people who operate them.

This narrative is often lost in popular culture that Native Americans did not enter the casino industry for riches, but rather as a means for survival. The American government has consistently in the past and present failed Indigenennous People and Casinos are one of the few routes they can take in order to establish themselves and their cultures. Through media and modern day projects alike, there is a constant misrepresentation of Native Americans. These representations are often the complete opposite of the reality for these Native tribes, and they reinforce negative views towards people who are trying to better their lives through their legal rights. Although progress has been made on better telling the story of Native Americans in this country and why they do what they do to survive now, there is still much work to be done as Natives are still disproportionately privileged to their white counterparts in almost every category. An assault on Indian Gambling and Indian Gaming Rights through misrepresentation

¹⁸ Ridderbusch, Katja. "How the Eastern Cherokee in North Carolina Use Casino Profits to Revamp Health Care ." *Charlotte Observer*, 2019.

and misconceptions only furthers the hardships placed on the people who were the first to call this land home.