

# GAMING AND IGRA: *A Tool for Self-determination or Elimination*

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What is required to make sustainable Native communities in the twenty-first century? Many suggestions and proposals for nation building have been discussed over the past 30 years at tribal, academic, and federal government levels. Two questions emerge from this discourse. What is it that Native People want? And what do they need to do to get it? Many would express the desire to have their right to self-determination recognized. This is the key for everything else to follow. But others would argue that a healthy and sustainable community requires more than a theoretical concept of nationhood, it requires an economic base to meet the needs of its citizenship. Without some form of economic development in place, communities are forced to survive upon the federal payments that usually fall short of community needs. As a result, many communities have adopted or are in the process of adopting gaming as a tool in the nation building process. Many leaders view casinos as the solution to all the social problems in their communities. With the proceeds from gaming operations, social programs can be built to heal the community and strengthen cultural ties. Many others do not agree with this position and assert that gaming compacts destroy the sovereign nature of tribal governments because compacts allow state governments to assert even

more jurisdiction over communities, lands, and resources.

Are Native peoples jumping on the gaming bandwagon without really considering the ultimate consequences to their communities? What of the rights of other communities that might be directly or indirectly affected by the decisions that we make today? Do we have the right to jeopardize the continued existence of other communities? Gaming compacts are complex and very difficult concepts for many people accept. Economic gain does not translate to political freedom in the eyes of many and these leaders and traditional people would urge caution to any community contemplating entering into a gaming compact.

If this is a matter of sovereignty as many suggest, should we not as Native peoples be aware of the adverse affects gaming is having on the very self-determination many are fighting so hard for. Native nations in the United States are sovereign and have the right as such to operate gaming operations if they desire. The sovereign right exists to do so, but the minute a tribe decides to follow that path many find their self-determination eroding out from under them. Gaming as a means to economic stability has instead become another way for state governments to exploit Native resources. In a very real

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sense the need to overcome the social problems in many communities has forced Native peoples into a precarious situation, one that has many communities debating the true meaning of sovereignty.

### Sovereignty

Prior to exploring the issue of gaming compacts and the loss of tribal sovereignty to state governments we need to first understand the concept of sovereignty. The nature of tribal sovereignty is of vital importance for the survival of Native peoples as distinct entities. But often we do not know what it really encompasses. Is sovereignty even the correct concept to describe the structural reality of various Native communities whose traditional forms of governance are very different in origin and meaning? While there is ongoing discourse regarding the use of this term as a catchall to describe community realities, the term has stuck and is the phrase of the day for defining the political aspirations of many Native peoples in the United States and Canada.

Is sovereignty an understanding that you must have complete control and jurisdiction over all aspects that affect your community or is it a concept that can survive being sliced up and sections utilized? This is a very important question that must be kept in mind as we explore the ways in which communities struggle to deal with survival as distinct peoples in the wake of assaults at both the federal and state levels. Gaming in many ways is at the centre of this debate.

The dispute centres on the Indian Gaming Regulatory Act passed by Congress on 7 October 1988. Federal officials viewed IGRA as a real source of securing economic stability in Native communities. IGRA would allow Native communities to build and operate tribal gaming operations could be used as a tool to self-sufficiency. Native communities were informed that their gaming operations were prime targets for organized crime. Under IGRA, gaming would be regulated on four distinct levels: Tribal government; State government; the National Indian Gaming Commission; and federal agencies such as the U.S. Justice Department, the FBI, the IRS, and the Bureau of Indian Affairs (Tribes lead in the stringent regulation of Indian Gaming, 1996).

Beginning in the 1970s, tribes began to participate in charity gaming. The Seminole Nation

in Florida took it to a new level when they decided to ignore Florida's imposed prize limits and implement their own with prizes. Broward County Sheriff, Robert Butterworth, filed criminal charges against the tribe and sought to close down operations. In 1981, the Seminole challenged the right to offer games without state limits was upheld by a federal court of appeals. Florida then appealed to the Supreme Court, who refused to review the ruling in 1982. The key to the case was that bingo was legal in Florida resulting in the tribe only violating the manner in which the games were being played. The Supreme Court also ruled in 1987 that regulation by any non-tribal entity could take place only if a specific act of Congress called for such measures (Thompson, 1999: 46).

What was acknowledged in the Supreme Court decision was the fact that states had no jurisdiction to interfere in the economic activities of Native communities. At that point both the Seminole Tribe in Florida and the Cabazon Mission Indians of California were operating profitable businesses that held a promise of providing a sound economic base from which to diversify and strengthen their nations socially, politically and economically.

State governments who saw their own sovereignty questioned took action against many tribes and the federal government. In the process at least 49 governors declared their plans to avoid the original intent of IGRA (Hill, 1994: 61). State governments disagreed with the act because they argue it forced them to negotiate with tribes, putting them at a distinct disadvantage. Section 3(a) states that:

Any Indian Tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the state in which such lands are located to enter into negotiations for the purpose of entering a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the state shall negotiate with the Indian tribe in good faith to enter into such a compact (National Indian Gaming Commission, no date).

*As a result, IGRA created three classes of gaming:*

Class I—social games solely for prizes of minimal value or traditional forms of Indian gaming as a part of tribal ceremonies or celebrations;

Class II—bingo and related games, including pulltabs, lotto, punch boards, tip jars, instant bingo and some card games, excluding house banking card games such as blackjack and baccarat; and

Class III—all forms of gaming that are not Class I or Class II, including slot machines and blackjack (“TRIBES LEAD IN THE STRINGENT REGULATION OF INDIAN GAMING”, 1996).

To varied extents, each class of gaming existed within state jurisdiction in the form of “Las Vegas” charity nights prior to the influx of gaming on Indian reservations. The passage of IGRA recognized the rights of tribes to operate facilities with those games on tribal lands. For example, if a state allowed class III gaming in any form for any reason then Native communities in their casinos could adopt that level of gaming. Unfortunately, IGRA also created a situation in which individual tribes had to surrender various aspects of their sovereignty to the state as a concession to operating a gaming facility or including a class of gaming not legal in the state. This compact between the state and a tribe would set out the agreement through which gaming would be undertaken and implemented.

*Section 3(c) states that any Tribe-State compact negotiated under subparagraph (A) may include provisions relating to:*

1. The application of criminal and civil law and regulations of the Indian tribe or the State that are directly related to, and necessary for the licensing and regulation of such activity;
2. The allocation of criminal and civil jurisdiction between the state and the Indian tribe necessary for the enforcement of such laws and regulations;
3. The assessment by the state of such activity in such amounts as are necessary to defray the costs of regulating such activity;
4. Taxation of the tribe of such activities in such amounts assessed by the state for comparable activities;
5. Remedies for breach of contract;
6. Standards for the operation of such activity and maintenance of the gaming facility
7. Any other subjects that are directly related to the operation of the gaming activities (National Indian Gaming Commission, “Indian Gaming Regulatory Act”).

One of the only benefits of the Indian Gaming Regulatory Act was that it contained dispute resolution mechanisms for when states refused to negotiate compacts, but these mechanisms have now reached an impasse. The original act authorized tribes to sue in federal court when a state refused to negotiate in good faith and enabled the department of the interior to issue alternative procedures when a state refused to ratify the compact selected by the court appointed mediator (Allen, 1999).

No state may refuse to enter into negotiations described in paragraph Section (3)(A) If, in any action described in subparagraph (A)(I), the court finds that the state has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the state and tribe to conclude such a compact within a 60 day period (National Indian Gaming Commission, “Indian Gaming Regulatory Act”).

If the state still refuses, a mediator is appointed and then another 60 day limit imposed, if the state fails to submit a signed compact, then the Secretary of the Interior will prescribe procedures that are consistent with state law in consultation with the tribe in question. This was the avenue taken by the Mashantucket Pequot in their effort to open a casino on their reservation in Connecticut.

In a very real sense, state control through gaming compacts builds on the damage already done to tribal jurisdiction through Public Law 280, which was first passed in 1958 and encompassed six states including Alaska, California, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs) and Wisconsin. With the enactment of Public Law 280, those states affected received Criminal jurisdiction over reservation Indians. In addition, Public Law 280 opened state courts to civil litigation that previously had been possible only in tribal or federal courts. In the six states named in Public Law 280, the federal government gave up its entire special criminal jurisdiction involving Indian perpetrators or victims (Goldberg, 2000).

It is apparent that IGRA has become an instrument through which state governments can control Native peoples and their economic and natural resources. This form of exploitation was not allocated to those affected states in Public Law 280, which gave states only law enforcement

and civil judicial authority, not regulatory power. States may not apply laws related to such matters as environmental control, land use, gambling, and licenses if those laws are part of a general state regulatory scheme. It also denied the states the power to legislate concerning certain matters, particularly property held in trust by the United States and federally guaranteed hunting, trapping, and fishing rights (Goldberg, 2000).

Although Public Law 280 was already in effect in 1983 when the Indian Gaming Regulatory Act was passed by Congress, IGRA has proceeded to dissolve tribal sovereignty by forcing tribes into gaming compacts with states who demand jurisdiction over many areas not included in Public Law 280.

Any possible benefit to tribes retaining any real form of sovereignty under IGRA disintegrated in 1996 when the Supreme Court affirmed the states' immunity from tribal suits in the Seminole decision, which created a malfunction in the dispute resolution mechanism (Allen, 1999). IGRA had allowed tribes to sue the state if they failed to negotiate a compact in good faith. This allowed some bit of autonomy to communities to redress compact disputes.

State governments have argued that IGRA is unconstitutional because of the 11th Amendment which says that states are sovereign units and cannot be sued in federal court except by other states, foreign countries, or the federal government (Tribes lead in the stringent regulation of Indian Gaming, 1996). The decision effectively rendered IGRA unenforceable and, according to Interior Secretary Bruce Babbitt, put tribes such as the Santa Ana in New Mexico in an "untenable position": in need of a compact to continue gaming, yet without recourse if a state refused to grant them one or attached extortionate conditions. So when the New Mexico legislature demanded a fat piece of the pie in 1997 — 16 per cent of slot proceeds plus regulatory fees take it or leave it — the tribes registered a protest but signed. "[The compacts] haven't been negotiated," complained Frank Chaves, co-chairman of the New Mexico Indian Gaming Association. "They were dictated" (Abaurrea, 1996).

But many tribal and federal officials continue to argue that IGRA represents a catalyst for economic and political self-determination. Executive Director of the National Indian Gaming Association, Tim Wapato said, gaming is

the one thing that has worked in the 200 years of Federal Indian Policy (Cozzetto, 1995: 120). The belief in gaming by tribal officials has been exasperated by the desperate conditions on many reservations. It is as former Cherokee Nation Chief Wilma Mankiller puts forth, federal resources are continually disappearing and tribal leaders must compensate for that somehow. They must provide the same services to a growing population (Cozzetto, 1995).

As of 1996, 141 tribes in 25 states operate class III gaming facilities, or high stakes gaming operations on reservations under federally approved state-tribal compacts (Ribis & Ribis, 1996: 10). "Indian tribes have never had the resources before, and now they've become real players with everyone else," states Gary Kingman, Director of Public Relations and the Seminar Institute at the National Indian gaming Association (Rossi, 1997). The Mashantucket Pequots, who own the most successful casino in the world, agree whole-heartedly. "If we want a police force we just go out and buy one, that's true sovereignty, and that's something that not many tribes have had the opportunity to really exercise nationally (Harvey, 1996: 147).

The Narragansett Tribe in nearby Rhode Island, and the only tribe to been singled out and excluded from gaming concur. "In order to have strong government you must think of the word Autonomy. I've heard the word sovereignty mentioned but I haven't heard of autonomy ... that's defined by Congress as the right and the condition of self-government.... Tribes need income to support their autonomy so they can have full-fledged sovereignty and actually practice it" (Ribis & Ribis, 1996: 10).

Native peoples have persisted, and are poised now to restore many of the conditions of sovereignty and self-reliance that they had when Europeans first arrived. We are reminded again at this point of the Pequot Case, while sovereignty is crucial to tribal development, it seems to develop simultaneously with a sound economy (Harvey, 1996: 149). The Harvard Project on American Indian Development argues that the Pequots are so successful because they have the crucial piece of the development puzzle: they have the power to make decisions about their own future (Harvey, 1996: 187).

Gaming is the most important tool Native people have today for national renewal (Thompson, 1999: 43). The Indian Gaming Regulatory Act many argue continues to be important



because it assuaged federal laws so that American Indians could build up their economies.

That would be a wonderful accomplishment, if IGRA did not create a situation in which state governments can enforce more jurisdictions over communities, their lands and their resources. Gaming operations can lead to erosion of sovereignty. Many tribes opposed the 1952 legislation that allowed state police officials to have jurisdiction on their lands in six states. Now many of these same tribes have negotiated gaming compacts that will do the same thing. John Dyer, Lecturer at Syracuse University, argues against the merits of casinos, "Gaming is not the panacea to solve all of our problems ... if we compromise land and sovereignty so we can end up with a pile of money ... well I don't know about you, but I don't want to be the one to say to my grandson, Well, son we used to have sovereignty, but now we have a Mercedes" (Ribis & Ribis, 1996: 11).

The passage of IGRA and subsequent negotiations conducted between tribes and the states that have negotiated gaming compacts came at a cost affecting Indian Sovereignty across the board. IGRA has added another layer of legislation over the right of Native peoples to self-governance (Johnson, 1995: 20).

John Mohawk is also skeptical of gaming's benefits. He states that the window of opportunity from casinos is short term. Those who have the best chance of making it long term are communities who have a solid cultural base as their foundation, those who invest in education, caring for the elderly, and revitalizing language. Greed will inevitably play a role in gaming considerations, and tribes can expect this issue as another complication (Ribis & Ribis, 1996: 11).

Others would not agree. When asked what impact Foxwoods Casino has had on the Pequot Nation, tribal member Wayne Reels stated, "The casino is good. Without it we would not have been able to buy back the land. This has all been a struggle, they never said to us, hey here's your casino" (Ribis & Ribbs, 1995: 12). Many Mashantucket people would agree. For them the casino has been a windfall of opportunity to rebuild their nation to the prominence it once had at first contact with the English in the early 17th century. Jo-Ann Issac argues that a casino was their only option, "Gaming came into play because we couldn't borrow money from the bank. To build an economic base for us to be able to live and work in our own community was

a very hard struggle, for a long time" (Ribis & Ribis, 1995: 12). For Tribal members of the Mashantucket Pequot Nation, their dreams of community revitalization only happened through the adoption of gaming.

Gaming has been utilized to implement social and economic development on the Mashantucket reservation over the past twenty years or so. Tribal members have tried a variety of nation building approaches including a garden project, maple syrup, wood sales, swine project, greenhouse project, sand and gravel operation, land acquisition, housing, water system, health administration building, community services, Pharmacy, post office, daycare, community centre, and the museum and research centre. Various hotels, restaurants, shipbuilding, and manufacturing businesses can be added to the list, leaving us with the undeniable fact that the Pequots are the most diversified economically of any tribe in North America and the casino made that possible.

The Pequots had a lot less to work with in the beginning than many other communities. The Mashantucket people were really starting from scratch. They had a reservation, but in the mid 1970s there was one house and a couple of trailers and three elderly women who were mounting resistance against the State of Connecticut who at the time was trying to terminate the reservation. It is from this point that nation building began. Skip Hayward, vice chairman, and former tribal chairman, created the atmosphere in which many Pequots returned to Mashantucket from all over the country. State recognized, the Pequots submitted a petition to the federal government to have their sovereignty acknowledged again. This happened in 1983 through an act of Congress, which is very different than the normal recognition process other tribes have had to rely upon. The Pequots were fortunate that the State of Connecticut admitted to having committed a historic injustice by having sold away most of their reservation against federal law.

Mashantucket was the earliest reservation established in the country, with over 2,000 acres put aside in 1666. Robin Cassacinamon the British leader at the time had requested land be set aside at the headwater of the Mystic River which was the traditional homelands of the Pequot people, but the British refused and put aside the land in what is now adjacent to Ledyard. In 1761 the General Assembly passed a resolution that reduced the reservation to 989 acres. In

1856, the Pequots lands were once again stolen and they were left with 180 acres after an Indian agent sold away over 600 acres at a public auction.

In 1983 when the Pequots submitted their land claim, they had less than 200 acres. Connecticut recognized their responsibility in having been a part of that process that led to the political, social, and economic demise in southern New England. Connecticut supported the Pequot claim and President Reagan signed the bill in 1983 that settled their land claim and recognized the special nation-to-nation relationship that the Pequots claimed existed since the contact period. With the acknowledgement and land came a \$900,000 settlement in which the Pequots begin to use to fund the nation building process. State support disappeared very quickly though when the issue turned to gaming.

Which brings us back to the creation of the Pequot gaming enterprise. The Pequots approached the State of Connecticut with a proposal for a compact early in 1989, just after Congress had passed the Indian Gaming Regulatory Act. IGRA provisions required the state to negotiate with the Mashantucket Pequots in good faith. The state refused. The Pequots filed a complaint and took the state to federal court. Although the court ordered the state to negotiate, the state still refused. The court appointed a mediator to facilitate the process, and required the state to submit a compact proposal to the mediator. Then governor Weicker did so but had included slots as part of the compact, a class of gaming not even legal in the state. The Pequots submitted their own proposal for a compact but the Bureau of Indian Affairs chose the one submitted by state. Weicker was under fire from the Connecticut General Assembly for having listed a class of gaming they considered not legal in the state refused to sign the compact and demanded it back. Instead, the BIA accepted the compact as binding. The state still refused to sign. Simply stated, there is no compact between the State of Connecticut and the Mashantucket Pequot Tribe.

The gaming activity on the reservation is governed exclusively by procedures promulgated by the Secretary of the Interior pursuant to IGRA (Blumenthal, 1984). The Pequots had their right to build and operate a casino on their land base up held by the court and had a compact negotiated at the federal level. But the state was still insisted that class III gaming in Connecticut was illegal. The tribe attempted to evade

federal provisions, but in the end they made a deal with Weicker that gave them all the slots they wanted at the casino. But in return the Mashantucket Pequots signed away 25 per cent of their slot revenue in a permanent agreement. So while the tribe is very lucrative, they signed away enormous revenue to the State of Connecticut and allowed state jurisdiction on the reservation. But that was their decision; a decision they thought would ultimately lead to greater increases in revenue. And as Tribal Member Wayne Reels stated earlier, they now had the economic standing to buy back land that would strengthen their community.

If it were just the Mashantucket people who would be affected by the deal they made with the state then that would be one thing, but as we shall see, that deal made it impossible for other tribes in the state to seek a compact without agreeing to the provisions of the Pequot compact and side agreement. The bottom line was that the Pequot deal did nothing to settle the legality of slot machines in the state. The deal between Weicker and the Mashantuckets guaranteed the state 25 per cent of the slot revenue in return for the right to have slots in their casino. Since slots were still illegal it effectively gave the Pequots a monopoly on slots. This became a problem when the Mohegans negotiated to open a second casino in Connecticut in 1994 (Thompson, 1999: 53).

Attorney General Blumenthal and other state officials were highly concerned how the Mohegan recognition and subsequent right to negotiate for a gaming compact would affect the deal they had made with the Pequots.

If Connecticut legalizes any gaming operations other than the Mashantucket Pequots, the tribe no longer has to pay the 25% of slot revenue to the state ("Mohegan Tribal Gaming Authority", 1997).

This was not a matter to be taken lightly; the Pequots were paying out an average \$40 to \$50 million a month in slot revenues. Losing that amount of money was of dire consequences to the state when the Mohegans approached them with a proposal for a compact. But of course the state found a way around this, which enabled them to not only continue to collect the 25 per cent in slot revenues from Mashantucket but also brought the Mohegans under the same compact.

Like the Santa Ana Tribe in New Mexico, the Mohegan Tribe was forced into a compact that cost them land, revenue, and allowed state jurisdiction over the reservation. In essence the Mohegan Tribe gave up a substantial amount of sovereignty and self-determination as they were brought in under the Pequot model.

*The Mohegan Tribe has agreed:*

- (a) To settle any and all claims the Mohegan Tribe might have to any public or private lands in Connecticut.
- (b) To the extinguishment of any and all other claims against the state of Connecticut.
- (c) To limit the location of any tribal gaming operations ... to a single site not to exceed 700 acres.
- (d) To submit all gaming related development ... to the regulation of the State Traffic Commission and to adopt a health and safety code and fire and building code identical to or more stringent than the respective codes adopted by the State of Connecticut.
- (e) Upon enactment of federal legislation approving this agreement the tribe shall withdraw its land claim against the state.
- (f) To make payments in lieu of taxes on all additional tribal trust land acquired by the tribe after the transfer of it to the Fort Shantok property and the initial Indian reservation.
- (g) To the assumption by the state of Connecticut of criminal jurisdiction over the Mohegan tribal members on land or other natural resources owned by the tribe (Blumenthal, 1984).

At the time of this agreement the Mohegans had a land claim in the courts for over 20,000 acres. They had to withdraw it as a part of the deal. They agreed to allow state jurisdiction over all tribal members on the reservation and they would pay for any cost incurred by any state agency to providing services whether it was casino related or not. If this wasn't enough of an erosion of their sovereignty, they also agreed to sign away jurisdiction over all the air, water, and mineral rights on their reservation. This was all separate from the 25 per cent slot revenue that the state was to get every month for as long as the casino was in operation. This like the Pequot compact became a permanent agreement and is not up for renegotiation.

The Mohegan Tribe also agreed without any added persuasion from the state to compensate the town of Montville each year.

On June 16, 1994, the Tribe and the Town of Montville ("Town") entered into an agreement whereby the Tribe agreed to pay to the Town, beginning one year after the commencement of slot machine gaming activities, an annual payment of \$500,000 to minimize the impact to the town resulting from the removal of land from the Town's tax rolls into trust for the tribe ("Mohegan Tribal Gaming Authority," 1997: 7).

Although the last concession on the part of the Mohegan Tribe to the town of Montville was done so of their own accord, they did so believing that they would make up the revenue from their gaming operations.

As we go through the details of the compacts made between the State of Connecticut and Pequot and Mohegan Nations, it becomes harder to see the promise of IGRA reflected there. The Mohegan Tribe by virtue of coming under the Pequot compact had to agree to allow not just the expansion of state jurisdiction over their community and people part of which had already occurred under Public Law 280, but also jurisdiction over natural resources. While they agreed with it, like the Santa Anna Tribe and others what choice did they have when the precedents were already in place? The Mohegans, like the Pequots saw gaming as a means of strengthening their sovereignty. That is the danger of gaming under IGRA. The promise of economic stability has to be weighed equally with the loss of self-determination.

What about the issue of sustainability? There are serious questions concerning whether gaming is sustainable in Indian Country. Casino success stories, such as Foxwoods, prompt other communities (both Indian and non-Indian) to consider hosting other casinos. The problem is, that the gaming industry is chasing after finite consumer resources. Current casinos draw customers from a large area, but these areas shrink with each added casino. State officials are very worried about this issue in Connecticut and other states. Gaming has caused a huge backlash against the whole federal recognition process as is indicated in a letter to David Walker, GAO Comptroller General in which the State of Connecticut asked for the General Accounting Office

to investigate the BIA and their tribal recognition process.

The significance of a decision on tribal recognition claims has never been greater than at the present time. The recognition of an Indian tribe under federal law carries significant consequences, including: claims to land titles; establishment of tax-exempt trust lands that are beyond state and local regulatory control; and jurisdictional conflicts among federal, state, local, and tribal governments. In addition, under the Indian Gaming Regulatory Act, the newly acknowledged tribe may obtain the right to develop massive gaming facilities on its lands, regardless of the consequences or interests of surrounding communities.

Currently there are 227 tribal acknowledgement petitions. Fifty-four of these involve California groups. Seventeen groups seek acknowledgement in Michigan. In Connecticut, where there are eleven such petitions, every region of the state is confronted with land claims and gambling facilities. The same is true for other states (Wolf, 2000).

In addition he requested a list of:

1. All currently pending petitions and their status
2. All recognitions which have been granted by Congress in this century;
3. A list of all recognized tribes, in chronological order, noting those that operate gambling casinos and other forms of class three gambling (Wolf, 2000).

What is quite clear is the fact that Wolf and the State of Connecticut want to have an impact on the recognition process because they fear that every eligible tribe in the state will want to negotiate a compact and open a casino. It would not be a mistake to conclude that this is a popular sentiment of many state government officials at this point. The Pequots have been accused by town and local officials as being frauds and not Indian at all. According to Jeff Benedicts, the Pequots are a by-product of the casino. This accusation is simply not true. The Pequots are legitimate, and have historic ties to their land base going back to the early seventeenth century when the English first approached them to establish trade relations.

For the Pequots, the concept of economic sovereignty is more important to them than a theoretical concept of political sovereignty. Their

decision to open Foxwoods was weighted against many other considerations. In the end, they chose the concept of sovereignty that had the best chance of meeting the needs of their community. Mashantucket Pequot Tribal Nation enterprises have had on unemployment in the state of Connecticut and Southern New England in general. MPTN currently employs close to 14,000 people, many within the state and New London County. There are also the indirect benefits to other merchants and enterprises as a result of the casinos existence that have to be considered as well. MPTN has done a lot to support the region and the state. The Pequots have taken their responsibility to the surrounding region seriously; this is something that should also be recognized.

Still, given all that, the Pequot compact has not only been utilized by Connecticut and other states as a mechanism to gain more control over Native peoples but to force state jurisdiction over natural resources. As stated at the beginning of this discussion, the issue here is not about the Mashantucket Pequot right to operate a casino they have that right as a sovereign nation. The issue is whether the compact they made under IGRA and agreement they made with the state has been carried forth as a model by the State of Connecticut in its dealings with other tribes such as the Mohegans. It is my argument that the agreement entered into by the Mohegans was identical to the Pequot compact and forced them to agree to similar conditions and enforced additional measures of control that would lessen their ability as a sovereign nation to have effective self-determination over their people.

The situation here is no different. Tribes who because of high unemployment are forced to accept government contracts that allow access to reservation in order to dump and store nuclear or toxic waste. The situation in many communities is so bad that these contracts are required to provide the funding necessary to meet community needs.

In reviewing gaming under IGRA, not only are tribes losing large aspects of sovereignty and self-determination, there is also the danger of being portrayed as rich Indians, leading to the general consensus that all Indians are financially secure and economically viable. Because of the success of Foxwoods and a few other Indian run gaming operations, people have this image in their minds that Indians are all economically sound.



The image has lurked behind various congressional efforts (unsuccessful, so far) to cut federal funds to reservations. Yet a trip into Indian country reveals what should come as no revelation at all: that most of America's 1.7 million Indians, and especially those living on reservations, are poor. Native Americans have a poverty rate 2 ½ times the national average, a suicide rate nearly twice as high, and an alcoholism rate six times greater. And while mega-resorts like billion-dollar-a-year Foxwoods (currently the largest casino on the planet) may be the symbols of Indian gaming, they are also its anomalies. Of the 556 federally recognized tribes, 361 have no gambling operations at all; of the 195 that do, just 23 accounts for 56 per cent of revenues — mostly very small tribes near very big population centres. Even fewer have made the sort of outsized payouts by which individual members could truthfully be called "rich" (Useem, 2000).

Where does it stop? Are we playing into their hands by agreeing to give up a substantial portion of our sovereign rights as a nation to both state and federal officials? How long will it be until we wake up and find that we have no sovereignty left at all? Are not political and economic sovereignty in terms of Native peoples so intertwined that they cannot be separated and sliced up?

I agree that we as Indians have the right to own and operate casinos as part of our sovereign rights as a nation I also believe that we have the responsibility to make sure our grandchildren still have a sovereign nation in which to be citizens. What would happen if the Pequots for example, decided to practice a random act of sovereignty and held back payment for a month or refused to pay at all? Before you say the state would shut them down, consider this: Non-payment of the slot revenue by the Pequots is something state officials have contemplated in the past, as there is a series of letters on the Attorney Generals web page concerning state options should the Mashantuckets decide to stop their payments. The options presented by the state were scant, and they seemed quite perplexed as to how they would enforce any options they took against the tribe that would not drastically affect the employees and therefore the state itself.

As Native people I believe that we have a responsibility to our communities first and foremost, but we must remember that what we

do affects our neighbours on this continent. My opinion leads me to conclude that I would have serious reservations in agreeing with accepting a solution that could spell social, political, or economic disaster to surrounding communities. Gaming under IGRA allows us to gain some sense of economic stability, perhaps even economic sovereignty, but at the expense of political sovereignty and self-determination something this author believes cannot be readily separated from economic, social, or spiritual considerations. Sovereignty is sovereignty. Either you have it or you don't. But first and for most you have to recognize the ways in which all the aspects that make up safe and sustainable communities must be protected at all costs.

Any tribes entering the compact negotiation process should take a serious look at what has gone before in their state. The Pequots ability to get what is in essence a federal compact should be explored further; the state should really have no part in the negotiation at all in respect to implementing their sovereignty over tribal land that belongs to a sovereign tribal nation.

In the end it is up to each nation. Each community is a sovereign nation with the right to gaming facilities if they so choose. Communities also have the sovereign right to refuse to be part of a system that will ultimately remove most of their self-determination. The fact that Tribes are required to drop below the federal level to negotiate with a state over gaming is contrary to the relationship established when Congress passed the first of the Trade And Intercourse Acts in 1790 that demanded the relationship over land sessions and commercial agreements remain at a federal level.

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