BOOK REVIEW

Gambling with the Future: The Evolution of Aboriginal Gaming in Canada

Yale D. Belanger

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Indian gaming[1] is an outright phenomenon by any measure in the United States. The subject of landmark U.S. Supreme Court decisions, groundbreaking federal legislation, and intense public debate, tribal gaming has developed into a $25 billion industry in little more than two decades. For the more than 220 tribes that operate some 400 gaming establishments, there is no doubt that Indian gaming has changed lives in the United States.

Though tribal gaming exists in Canada, where it is known as First Nations gaming or Aboriginal gaming, the dozen or so First Nations casinos scattered across five provinces[2] are a far cry from the U.S. Indian gaming industry (Lazarus, 2006; Lipton, n.d.). Yet, as Yale Belanger, an assistant professor of Native American Studies at the University of Lethbridge, describes it in *Gambling with the Future*, Aboriginal gaming in Canada shares many similarities with tribal gaming in the United States.

The most notable similarity is the impetus for Indian gaming. First Nations, like tribes in the United States, conceived of gaming as a means of alleviating the dire socioeconomic conditions that shaped the daily lives of many Indians, especially those living on reserves (or reservations, as tribal lands are called in the United States) (see, e.g., Rhodes, 2007). High levels of poverty and unemployment on reserves were the by-products of patterns of colonization and federal assimilationist policies paralleling, in large part, those in the United States (see Light & Rand, 2005: 25–35, 98–99). Having failed to solve the so-called "Indian problem," the federal governments in Canada and the United States

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[1] "Indian gaming" is a legal term that is firmly imbedded in the mainstream lexicon in the United States I use Indian gaming and tribal gaming interchangeably to refer to gaming conducted by American Indian tribes in the United States and First Nations in Canada.

[2] For an up-to-date list of casino and racino facilities in Canada by province, see Rhys Stevens, *Canada Casinos*, available through the Alberta Gaming Research Institute Web site, <http://www.abgaminginstitute.ualberta.ca/>.

encouraged tribal self-sufficiency. But with few on-reserve opportunities for economic development, tribal options to provide jobs to their members and raise revenue for government services were limited. Like tribes in the United States, First Nations looked to gaming, possibly as "a last-ditch effort at generating the revenue necessary for reserve economic development" (Belanger: 56).

In the late 1980s, as First Nations lobbied for reserve-based gaming, the U.S. Supreme Court decided *California v. Cabazon Band of Mission Indians* (480 U.S. 202 (1987)). The Court recognized tribal authority to regulate on-reservation gaming operations free of state interference. As such, the Court's decision very much was rooted in tribal sovereignty and tribes' unique status in the American political system.

The Cabazon Band operated a bingo parlor on its reservation. Because the high-stakes bingo games offered by the tribe violated California's stringent regulation of bingo, state officials threatened to close the Band's bingo hall. California's theory was that although states generally have no authority over tribes under U.S. law, Congress had provided that California law applied to tribes through Public Law 280 (Act of August 15, 1953, ch. 505, 67 Stat. 588–590), a termination-era federal statute that gave certain states jurisdiction over tribes within the state's borders. Pub. L. 280 gave states a broad grant of criminal jurisdiction, but only a limited grant of civil jurisdiction. In an earlier case, *Bryan v. Itasca County* (426 U.S. 373 (1976)), the Supreme Court had ruled that Pub. L. 280's grant of civil jurisdiction was not a broad authority for states to regulate tribes generally, as that "would result in the destruction of tribal institutions and values" (*Cabazon*: 208).

"In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery," the *Cabazon* Court reasoned, "we must conclude that California regulates rather than prohibits gambling in general and bingo in particular" (ibid.: 210–11). As a result, California could not impose its laws on tribal gaming operations.

While the peculiarities of Pub. L. 280 were at the heart of the *Cabazon* case, the Court's reasoning reflected the long-recognized political and legal status of tribes under U.S. law (see Light & Rand, 2005: 17–37). On the heels of the *Cabazon* decision, Congress's passage of the Indian Gaming Regulatory Act of 1988 (IGRA) (25 U.S.C. §§ 2701–21) codified tribes' right to conduct gaming, and at the same time limited it by requiring a tribal-state compact for casino-style gaming (see Light & Rand, 2005: 35–37). Nevertheless, Congress intended IGRA to promote strong tribal governments along with reservation economic development and tribal self-sufficiency (25 U.S.C. § 2702).

Cabazon and IGRA opened the door to Indian gaming as it exists in the United States, setting the stage for the explosion of the industry and for continuing controversy (see Light, 2007). In contrast, the status of First Nations as governments and their right to conduct gaming have taken a very different direction under Canadian law.

During what Professor I. Nelson Rose has labeled the "third wave" of gambling policy (Rose, 1999), legalized gambling took hold in both the United States and Canada. In 1985, Canada's federal Criminal Code was amended to give provincial governments authority to conduct and regulate gambling, including lotteries and casino-style gaming (Belanger: 52). Soon after, the Shawanaga First Nation in Ontario asserted a sovereign right to conduct gaming on its reserve (ibid.: 84–85).

Like the Cabazon Band, the Shawanaga opened a modest high-stakes bingo hall on its reserve. Like California authorities, the Ontario Provincial Police charged Shawanaga Chief Howard Pamajewon and former Chief Howard Jones with violating the province's gambling regulations (ibid.: 85–86). Both were convicted, leading to the landmark Canadian Supreme Court case of *R. v. Pamajewon* ([1996] 2 S.C.R. 821).

Canada's Constitution Act of 1982 recognizes certain "Aboriginal rights" tied to the traditions and customs of First Nations. To qualify as an Aboriginal right, the activity must be "a defining feature of the culture in question" (ibid., quoting *R. v. Van der Peet*, [1996] 2 S.C.R. 507). Quoting the lower court opinion, the *Pamajewon* Court opined that "commercial lotteries such as bingo are a twentieth century phenomena and nothing of the kind existed amongst Aboriginal peoples and was never part of the

means by which those societies were traditionally sustained or socialized" (ibid.). Gambling, the Court held, simply was not an integral part of the distinctive culture of the Shawanaga (ibid.; Belanger: 87–88).[3]

As a result of *Pamajewon*, First Nations do not have a recognized Aboriginal right to conduct gaming on their reserves, unless a First Nation can show that gaming is a defining feature of its distinctive culture. Without such a finding, though, First Nations may operate casinos only with a provincial license and in accordance with provincial regulations (e.g., Lipton, n.d.).[4]

The limited conception of First Nations' Aboriginal right to conduct gaming is of both legal and practical significance. Legally, it is a fundamental distinction between U.S. and Canadian tribal gaming law; practically, it explains in large part the very different tribal gaming industries in the United States and Canada. The relatively limited growth of First Nations gaming under provincial control arguably proves the point Representative Morris Udall (D-Ariz.) made during the legislative debate over IGRA. Referencing arguments for state regulation of Indian gaming in the United States, he said, "Conferring state jurisdiction over tribal governments and their gaming activities would not insure [sic] a 'level playing field,' but would guarantee that Indian tribes could not gamble at all" (H.R. Rep. No. 488, 99th Cong., 2d Sess. 29 (1986) (supplemental views of Rep. Morris Udall (D-Ariz.))).

Clearly written and accessible to a general audience, *Gambling with the Future* sets out the circumstances giving rise to Aboriginal gaming in detail, providing a very useful introduction to those unfamiliar with Canadian gambling law and policy or First Nations. Belanger utilizes in-depth case studies of First Nations gaming in Saskatchewan, Manitoba, and Alberta to provide detailed descriptions of Aboriginal peoples' experience with both gaming and provincial control. Throughout, Belanger discusses the efforts of First Nations leaders to assert the right of self-determination and self-government.

Although the scholarly and practical literature on Indian gaming in the United States is steadily growing, it remains an understudied area of law and policy. There is an even greater dearth of scholarly attention paid to Aboriginal gaming in Canada: "Had First Nations leaders interested in pursuing reserve casinos approached their investigation the same way Canadian academics have pursued the study of First Nations gaming," writes Belanger, "the industry would never have emerged" (Belanger: 168). As Belanger concludes, the lack of scholarly research hinders the development of effective tribal gaming policy, as sound public policymaking requires quality information to answer a number of salient questions regarding tribal gaming's socioeconomic effects and "best practices" for the industry (ibid.: 173).[5] Toward that end, *Gambling with the Future* is a much-needed overview of the legal, political, and socioeconomic issues surrounding First Nations gaming in Canada.

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[3] "In fact," the Chief Justice's opinion stated, "the only evidence presented at either trial dealing with the question of the importance of gambling was that [a witness] who testified ... with regards to the importance and prevalence of gaming in Ojibwa culture. While [the] evidence does demonstrate that the Ojibwa gambled, it does not demonstrate that gambling was of central significance to the Ojibwa people.... [or] the extent to which this gambling was the subject of regulation by the Ojibwa community. His account is of informal gambling activities taking place on a small scale; he does not describe large-scale activities, subject to community regulation, of the sort at issue in this appeal" (*Pamajewon*).

[4] Lazarus, Monzon, & Wodnicki (2006: 376) point out that "[t]he Supreme Court of Canada did not rule that the Ojibwa and Eagle Lake First Nations do not have the aboriginal right to conduct and regulate gaming but, rather, it found that the evidence presented was insufficient to support the existence of such a right." They go on to make a convincing case that there is evidence supporting an Aboriginal right to conduct gaming for the Mohawks of Kahnawá:ke.

[5] The same certainly can be said in the United States, where "[p]olicymakers at all levels are neither fully cognizant of nor acting upon sufficient and complete information about legalized gambling generally and Indian gaming specifically" (Rand & Light, 2006: 441).

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