Morality Policymaking and Indian Gaming: Negotiating a Different Terrain

Kathryn R.L. Rand, J.D.
Floyd B. Sperry Professor & Associate Dean
University of North Dakota School of Law

Steven Andrew Light, Ph.D.
Associate Professor
University of North Dakota Dep’t of Political Science & Public Administration

Co-Directors
Institute for the Study of Tribal Gaming Law and Policy

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Gambling and the American Moral Landscape
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I. Introduction
II. What Is Indian Gaming?

Gaming conducted by “Indian tribe” on “Indian lands,” as defined by 1988 Indian Gaming Regulatory Act (IGRA)
Indian Gaming Industry

- 30 states
- 230 tribes
- 400 gaming facilities
- 2006 gross revenue: over $25 billion
States With Indian Gaming

Foxwoods Resort Casino
Mashantucket Pequot Tribal Nation
Ledyard, CT
Spirit Lake Casino & Resort
Spirit Lake Nation
Devils Lake, ND
## Indian Gaming Operations By Revenue, 2006

<table>
<thead>
<tr>
<th>Gaming Revenue</th>
<th>Number of Operations</th>
<th>Revenue (in millions)</th>
<th>% Total Operations</th>
<th>% Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>$250 million or more</td>
<td>23</td>
<td>11,214</td>
<td>5.9</td>
<td>44.7</td>
</tr>
<tr>
<td>$100 million to $250 million</td>
<td>40</td>
<td>6,730</td>
<td>10.3</td>
<td>26.8</td>
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<tr>
<td>$50 million to $100 million</td>
<td>45</td>
<td>3,186</td>
<td>11.6</td>
<td>12.7</td>
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<tr>
<td>$25 million to $50 million</td>
<td>64</td>
<td>2,241</td>
<td>16.5</td>
<td>8.9</td>
</tr>
<tr>
<td>$10 million to $25 million</td>
<td>72</td>
<td>1,229</td>
<td>18.6</td>
<td>4.9</td>
</tr>
<tr>
<td>$3 million to $10 million</td>
<td>66</td>
<td>412</td>
<td>17.1</td>
<td>1.6</td>
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<tr>
<td>Under $3 million</td>
<td>77</td>
<td>61</td>
<td>19.9</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>387</strong></td>
<td><strong>25,075</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

III. Gambling Regulation
Three Regulatory Models

• Commercial casinos
  – Nevada vs. New Jersey approach
  – Conducted by private sector

• Charitable gambling and state lotteries
  – Limited gambling “for a good cause”
  – Public gambling

• Indian gaming
  – Similar in scope to commercial casinos
  – Similar in purpose to state lotteries
A Brief History of Indian Gaming

  – Indian gaming is aspect of tribal sovereignty
  – States may not regulate Indian gaming

• 1988 Indian Gaming Regulatory Act (IGRA)
  – Purposes: Promote tribal economic development, self-sufficiency, and strong tribal governments
  – Delegated some regulatory authority to states via tribal-state compact requirement for casino-style gaming
IV. Morality Policymaking and Legalized Gambling

A. *Process*, or how gov’t considers gambling policy

B. *Outcome*, or policy adopted by gov’t
Explaining the Process

• Different policy generates different politics (Lowi)

• Social regulatory or morality policy
  – Strongly held core values (religious beliefs)
  – Non-technical issues
  – High citizen interest and participation
  – E.g., abortion, capital punishment, GLBT rights, pornography, school prayer, gambling
Informing the Outcome

• “Normal” vices, like gambling, don’t have clear moral consensus

• Non-technical and uncompromising opinions influence outcomes
  – Policy decisions without good information

• Policy outcomes are inconsistent, unpredictable, highly dynamic, and underinformed
V. The Different Terrain of Indian Gaming
Three Fundamental Differences

• 1. Tribal sovereignty

• 2. Indian gaming is public gaming

• 3. Socioeconomic deficits of tribes
Tribal Sovereignty

- Tribes: Extra-constitutional political entities
- States ordinarily lack authority
- *Cabazon* and IGRA recognize gaming as aspect of tribal sovereignty
- State and federal control over tribe’s gambling policy decisions problematic
Indian Gaming is Public Gaming

• IGRA’s goals: Promoting tribal economic development, self-sufficiency, and strong tribal governments

• Akin to state lotteries, but broader in public policy scope:
  – Primary source of gov’t funding for many tribes
  – Job creation, economic diversification
  – Obligations of “full service” government; e.g., law enforcement, emergency services, public housing, social programs, cultural programs
Socioeconomic Deficits and Reservation Quality of Life

• 1990
  – 1/3 of American Indians live in poverty (up to 60% in some communities)
  – Reservation unemployment exceeds 50% (up to 90% in some areas)
  – Extreme poverty linked to mortality rates, suicide, substance abuse, crime

• 2000
  – Some improvement
  – Indians still lag behind general population in most socioeconomic indicators
VI. Moral Policymaking and Indian Gaming
Explaining the Process

- Indian gaming is technically complex issue
- Strongly held convictions of state citizens influence tribal rights and tribes’ ability to effectively respond to members’ needs
- Indians as “invisible minority”
- Higher stakes for tribes & tribal members
- Process must take into account differences
Informing the Outcome

• IGRA grounded in Indian gaming’s differences

• Importance of job creation & functioning economies

• Tribal institutional capacity building

• Cooperative policymaking

• “Good” of Indian gaming must take into account benefits to tribal communities & reservation poverty and unemployment
Informed Moral Policymaking on Indian Gaming

• 1. What is the moral responsibility of tribal governments to serve the public interest?

• 2. What is the moral responsibility of non-tribal governments to serve the public interest, including that of tribal governments and tribal members?

• 3. Indian gaming’s three differences should guide non-tribal governments’ moral policymaking re. tribal gaming
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rand@law.und.edu

Steven Andrew Light, Ph.D.
steven_light@und.nodak.edu

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