

INDIAN GAMING LAW AND POLICY

SECOND EDITION

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PREFACE AND ACKNOWLEDGMENTS

We are fortunate to have the chance to publish this second edition of a book whose subject, the world of casinos owned and operated by American Indian tribes, is incredibly dynamic, despite its foundation in a federal law whose text has remained the same since we last visited it eight years ago. In that time, so-called “Indian gaming”—as an economic development tool, an industry, and a cultural phenomenon—has continued to grow and change.

In 2006, we observed that legalized gambling had become prevalent in popular culture, noting that one could hardly flip the television dial without seeing a show glamorizing Las Vegas, featuring a high-stakes poker tournament, or depicting tribal casinos. The same observation could be made today, except more so, what with the ubiquity of Powerball, the legalization of online gaming in three states (so far), the potential spread of commercial casinos to states like New York or Massachusetts, and the expansion of political contestation over tribes’ “off-reservation” casinos. As it has become increasingly normalized, the novelty of legalized gambling’s spread has, to some degree, worn off, but Indian gaming still seems to be in the news all the time, whether the story is about a state seeking a cut of a tribe’s casino profits, or a tribe’s attempts to acquire new trust land to open a casino.

Today there is much more and, we think, much better journalism about Indian gaming, and a greater number of scholars in diverse fields have taken up the challenge to develop broader, deeper, and more contextualized accounts of tribal gaming. Gaming law is taught at a number of law schools, universities, and tribal colleges, using books like this one, and there are many more attorneys who have developed a successful gaming practice or become gaming commissioners. The ranks have swelled dramatically in the number of American Indian lawyers and judges, policymakers, and human resource managers—not to mention tribal regulators—who have both training and experience in gaming law and policy.

Yet the body of knowledge about Indian gaming remains incomplete and, at times, ill-informed, both “in the field” and in the educational or day-to-day

journalistic arenas. As such, we believe the second edition of this book will continue to fill an important gap by providing an accurate and complete account of *Indian gaming now*—how it came about, what it is, how it is regulated, and why it is so highly politicized.

The law and policy of tribal gaming are the most complicated and politically fraught of any area of tribal-state-federal relations today. These two domains—law and policy—are inextricably linked in the field of Indian gaming, and indeed, due largely to the complex history of the federal government's relationship to tribes, in any area related to American Indians. And so, we ask: Can a legal practitioner negotiate the parameters of the law of Indian gaming without delving into the politics that create the law and shape its application? Can a lawmaker effectively and fairly weigh policy options without comprehending the complex legal and regulatory environment of tribal gaming? And can anyone fully understand Indian gaming without being aware of the significance of tribal sovereignty as it relates to the law, politics, and policy of Indian gaming? We think the answers to these questions are a resounding “No,” again providing a compelling rationale for the existence of this book and related accounts of tribal gaming.

The first edition of this book grew out of our own search for materials that straightforwardly and fully explained the law and policy of Indian gaming. By assembling such information in a single text, we hoped to provide a readily accessible resource for practitioners and policymakers, students and scholars, and anyone else interested in Indian gaming.

Succeeding well enough in that endeavor leads us to the second edition of this book, along with our excitement over the fact that the Indian gaming industry has grown, changed, and matured in ways that have been advantaged by what we set out to accomplish: to provide accurate and complete information that people want and need. In this second edition, we include updates addressing the U.S. Supreme Court's landmark 2009 *Carciere* decision, recent state and federal efforts toward legalization of online gaming and the accompanying opportunities and pitfalls for tribes, the maturation of the tribal gaming industry, impacts of the recent national economic recession and the law (or lack thereof) governing tribal casino bankruptcy, the continuing politicized nature of tribal-state compact negotiations including recent federal court decisions on revenue sharing and the legality of administrative compacts, unionization at tribal casinos, and the ongoing integration of Indian gaming into tribal, national, and state economies, laws, and politics.

Our own collaboration to develop and promote greater understanding of Indian gaming issues began nearly two decades ago, when the industry was in its relative infancy compared to today. We have found that our respective disciplines—law, and political science and public administration—perhaps

uniquely position us to take an interdisciplinary approach to researching what inherently is a field that crosses disciplines. At the University of North Dakota, we founded the Institute for the Study of Tribal Gaming Law and Policy more than a decade ago to facilitate quality research and informed public discourse on Indian gaming.¹ Our fundamental belief is that to serve the public good, accurate and complete information, along with a foundational respect for tribal sovereignty, should drive the law and policy of Indian gaming.

* * *

Thanks to our colleagues at the University of North Dakota School of Law and the Department of Political Science and Public Administration in the University of North Dakota College of Business and Public Administration, as well as in the Office of the Provost and Vice President for Academic Affairs, for their ongoing support. As we each have advanced our professional careers in ways we could not have foreseen eight years ago, including the move into university administration, we continue to be thankful for the opportunity to maintain our footing in teaching, research, and service related to Indian gaming.

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1. The Institute is a component of the University of North Dakota School of Law's Northern Plains Indian Law Center. See Institute for the Study of Tribal Gaming Law and Policy, <http://www.law.und.nodak.edu/npilc/gaming/index.php> (last visited Mar. 23, 2014).