



The Future is Not Yet Written: The Importance of Adherence to Self-Determination Principles in the Next 30 Years of IGRA

by Jonodev Osceola Chaudhuri

Thirty years ago this October, the Indian Gaming Regulatory Act (IGRA) was signed into law, kicking off a new phase for a young, but established industry in Indian Country. The last 30 years have brought tremendous change and growth to the tribal gaming industry. And while now is certainly a time to celebrate the economic successes and benefits brought about by tribal gaming, it is also a time to reflect on the past 30 years and consider the path that got us to this point.

The history of federal Indian policy has demonstrated an ebb and flow between an expansive view of tribal sovereignty and a narrow one. These philosophical forces will compete to inform policy in the future. Federal policy has historically oscillated between two contrasting approaches to Indian affairs: on one end of the spectrum are policies that have recognized the importance of tribal self-determination and the upholding of federal trust responsibilities; and on the other are those that effectively undermined such tribal empowerment in lieu of federal or state authority. As an illustration of these oscillating poles of federal Indian policy, the allotment policy of the late 1800s and the termination and relocation policies of the 50s and 60s advanced assimilationist goals, while the Indian Reorganization Act of 1934 and the Indian Self-Determination Act of 1975 were the result of major shifts from and effective repudiations of those respective policies. The IRA and the Self-Determination Act reflect a strain of federal policy that harkens back to the foundational Indian law case of *Worcester v. Georgia* and its progeny that recognize the inherent authority of tribal nations over their lands. See, e.g., *Williams v. Lee*, 385 U.S. 217, 220 (1959) stated, “[A]bsent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.” Further, these acts essentially recognized the negative consequences of failing to bolster tribal capacity and decision-making, not just to tribal nations, but to the larger society.

And yet, regardless of where the pendulum of federal policy has swung in the past, we at the NIGC have seen the benefit of faithfully applying IGRA’s self-determination principles in the performance of our regulatory duties. We have witnessed firsthand how bolstering tribal capacity and decision-making advances sound regulation and creates an environment that fosters innovation. Because increasingly fast-paced technological changes are rapidly shaping the face of gaming, regulating consistent with self-determination principles is important now more than ever. Our adherence to tribal self-determination principles has guided our enforcement actions. Despite IGRA’s seemingly competing mandates of supporting tribal self-determination and federal regulatory oversight,

these two mandates can be harmonized if one pays close attention to the findings and stated policy purposes set forth in IGRA: to support “tribal economic development, tribal self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1). These purposes are, at their heart, tribal self-determination principles that flow from longstanding federal policy. The statutory framework for the regulation of Indian gaming that IGRA created was formed for the primary purpose of advancing self-determination principles, notwithstanding the many legislative compromises that led to IGRA and the limits IGRA imposes on the broad tribal authority that the Supreme Court recognized in *California v. Cabazon*. This is a significant lesson to take away from any discussion of the history of IGRA.

In this light, the extent to which IGRA maintained a federal commitment to tribal self-determination is notable. The 1987 *Cabazon* decision, by preserving the authority of tribes to regulate gaming activities on their lands, continued the line of cases that uphold inherent tribal sovereignty. See *Cabazon*, 480 U.S. at 220 (concluding that authority over tribal gaming on tribal lands constitutes an exercise of a tribal nation’s “inherent sovereign governmental authority”). In the wake of *Cabazon*, Congress had a broad policy spectrum, as discussed above, to choose from in crafting a regulatory structure for Indian gaming.

Despite the clamor from some non-tribal voices in the wake of the *Cabazon* decision, Indian Country advocates and key Senate and House leaders, including the late Senators Daniel Inouye and John McCain, and Congressman Mo Udall, successfully preserved self-determination goals and principles when drafting IGRA. As a result, and despite its limitations on tribal authority, IGRA must still be seen as an outgrowth of pro-tribal, self-determination legislation, with a kinship to other watershed self-determination legislation such as the IRA and the Indian Self-Determination Act.

Thus, the NIGC’s mandate to ensure the integrity of the Indian gaming industry is not an end itself, but is instead a means to advancing the self-determination principles that IGRA was enacted to further. As the primary regulators of Indian gaming, tribal nations are the first-responders against any threats to the integrity of the Indian gaming industry. Both as a matter of good policy and as a matter of efficient use of agency resources, we have observed the inarguable benefits of maintaining strong relationships with our regulatory partners so that together we can flag threats to tribal assets or operations as early as possible. When tribal nations are supported in their regulatory efforts through training, technical assistance, and logistical support, they are able to effectively manage challenges in their communities. IGRA’s preservation of tribes as the primary regulators and


beneficiaries of their operations has allowed for tribes to innovate and regulate in a manner that has created the stable \$32.4 billion industry that constitutes Indian gaming today.

In recognizing the benefits of empowering tribes as the primary regulators of Indian gaming, we have focused our agency initiatives to further support tribes and the stability of the industry. For example, we have created a technology division to support our goal of keeping our agency and tribes ahead of the ever-changing technology curve. This division assists our agency and tribes with vulnerability tests, among other things, to ensure assets are protected from any technological attacks or failures. We have revamped our training programs to offer an even more extensive selection of on the ground training and support for tribes. These trainings often foster strong workforces within our agency and tribal entities through the actual teaching and learning processes. Additionally, our trainings teach our staff and tribes how to keep a keen eye towards any form of gamesmanship that threatens tribal assets or operations. Lastly, we have recently converted our Rapid City satellite office into a full-fledged regional office to fulfill our duties of supporting rural tribes in their self-determination goals. These initiatives guide our day to day operations so that we can further bolster tribal capacity and decision-making as we look to the future and help pave the way for the next 30 years of Indian gaming.

We are confident that our approach is not only grounded in IGRA, but is strategically targeted to preserve the integrity of Indian gaming for the purpose of advancing tribal self-determination.


IGRA is one of the most successful and relevant laws to date. Regardless of how much the last 30 years have proven the success of adherence to self-determination principles, the future is not yet written. It is up to the proponents of tribal sovereignty and self-determination to ensure that the lessons learned from the past 30 years of gaming under IGRA continue to ensure an expansive approach to self-determination governs Indian gaming for years to come. ♣

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