The Effect of the Indian Gaming Regulatory Act On California Native American’s Independence*

Native American society within the expanse of land which is now

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1. Since the completion of this Comment several developments have transpired pertaining to Native American gaming within the State of California:

1) A general confusion pertaining to what entity has the authority to sign compacts at the legislative level of state government. See generally Dan Bernstein, Wilson Signs Bill Allowing Indian Video Slot Games, But Prop. 5 on the November Ballot Could Give Tribes the Right to Operate More of the Machines, ORANGE COUNTY REG., Aug. 29, 1998, at A5 (discussing the ratification of the Pala compacts, and the implications of Proposition 5); Mary Lynne Vellinga, Tribes’ Gambling Pacts Ratified by Lawmakers, SACRAMENTO BEE, Aug. 28, 1998, at A1 (discussing the legislative ratification of the Pala and ten other compacts signed between California tribes and the State of California); Tom Gorman, Judge Rules Wilson Can’t Regulate Casinos, Gambling, L.A. TIMES, June 26, 1998, at A3 (exemplifying the confusion within the State over who has the authority to ratify tribal-state compacts); Sam Delson, Gaming Compact Challenged, PRESS-ENTERPRISE, April 29, 1998, at A7 (reporting that state legislators and gaming tribes sued Governor Wilson in an attempt to overturn the Pala compact);

2) A general lack of consistency at the federal judicial level. See generally Christine Hanley, Judge Says Government Can’t Take Indian Gaming Machines: The Federal Ruling Maintains the Status Quo While the State Continues Debating the Tribal Issue, ORANGE COUNTY REG., July 23, 1998, at B6 (discussing the different approaches that the United States District Courts are taking); David Rosenzweig, Judge Threatens Ban on Slots at Indian Casinos, L.A. TIMES, July 21, 1998, at A3 (discussing United States District Court decision to bar slot machines on reservation if a tribal-state compact is not signed);

3) The addition of tribes which have signed compacts. See generally Viejas Band Approves Compact to Keep its Gambling Machines, LAS VEGAS REV.-J., July 28, 1998, at D2 (discussing the tribal feeling of duress to sign a compact or be shut down by the United States); Chet Barfield, Barona Agrees to Adopt Gaming Pact, SAN DIEGO UNION-TRIB., July 24, 1998, at A1 (discussing Barona’s decision to sign a gaming compact); Sam Delson, Five Tribes Sign Casino Compacts With Wilson, Tribes From Riverside and San Bernardino Counties are not Among Those Agreeing to State Terms, PRESS-ENTERPRISE, July 14, 1998, at A3 (discussing the differences in the compacts and the...
referred to as the United States of America consisted of many cultures, made up of hundreds of individual autonomous tribes, each a sovereign nation with individual cultural traits including art, religion, language and sociopolitical organization. Early Native Americans are believed to have moved to the North American continent through Alaska as long as "twelve thousand to fifteen thousand years ago, and possibly long before that." The different Native American cultural groups were autonomous tribes from first arrival until the time of the non-Native American invasion. The impact the non-Native American invasion had on the Native Americans changed the way of life for a diverse number of tribes in many different ways, some of which will never be fully understood.

Life for Native Americans was also changed in regards to gaming. During the period of time that Native Americans have inhabited North America, gaming was an integral part of their culture. Gaming was initially part of historical ceremonial life which eventually evolved into a bingo-type gaming that is now used as one type of economic development for certain tribes who cannot depend on the natural resources that were depleted by non-Native Americans. The history of Native American gaming has made the current gaming issue all the more important in understanding the necessity of gaming for contemporary Native Americans.

The purpose of this comment is to illustrate how the Indian Gaming Regulatory Act (IGRA) has compromised and is in contradiction to the relationship between the United States government and the Native American tribes of California, and what should be done to rectify that feeling of duress to sign that the tribes felt;
relationship. The comment will show that jurisdiction to control Native American gaming on reservations, which was transferred to the states by the federal government through the enactment of the IGRA, has compromised the purpose of the IGRA itself, which is to "promote tribal economic development, tribal self-sufficiency, and strong tribal government." State government jurisdiction is contrary to the relationship which has been developed between the Native American tribes and the United States government, as exemplified by case law characterizing the federal government as the guardian of Native American tribes, and the protective purpose behind that relationship.

Part I will examine the general history of gaming within the Native American culture, and what that history translates into for contemporary California Native American tribes. Part I will also include a small sample of a letter written to the Commissioner of Indian Affairs by the Superintendent of Indian Affairs of California discussing the removal of Native American tribes. That letter characterizes the mind-set of the federal government during the time of peak infringement on Native American sovereignty, and illustrates why gaming is one of the few economic options available to some of the tribes of California. The letter also demonstrates that neither the state nor federal governments have historically considered economic sufficiency when removing tribes from their land.

In Part II, the legal relationship between Native American tribes and the United States Government will be defined by analyzing the language of the Constitution of the United States, case law, and statutory law. Upon analysis of the legal precedent, Part III will then evaluate the IGRA to establish a better understanding of what the IGRA does, and what the IGRA allows the states to do in contravention of legal precedent. In addition, Part III will cite some examples of tribal-state compacts from states other than California, and then finally will take a

8. Only one Native American tribe in California has compacted with the state, but the IGRA has worked to benefit tribes of other states such as Minnesota, Wisconsin, Michigan and Connecticut. Native Americans on reservations in those states are building new houses, roads and community centers. Where government programs have failed, gaming has succeeded, taking Native Americans off welfare rolls and benefitting states through increased tax revenues. See Tribal Gaming: Myths and Facts (visited Sept. 10, 1998) <http://www2.dgsys.com/~niga/myths.html>.


10. See infra Part II (explaining the history of case law and statutory law between the federal government and Native American tribes).
close look at the Pala compact, a recently signed compact between the Pala band of Native Americans, and the state of California. Part IV will show the benefits achieved by the Native American communities for themselves, as well as the benefits extended to surrounding non-Native American communities. Such benefits will illustrate that gaming is not only beneficial for the Native American communities involved in gaming, but also desirable for the entire population of the state of California.

Part V will demonstrate the inconsistency between past legal decisions and the IGRA, discussed in Parts II and III, while Part VI will demonstrate how attempts to resolve those inconsistencies could be handled, and are being handled through State or Federal Constitutional Amendments, state ballot initiatives, the Secretary of the Interior’s office, and through the compacting procedure encompassed in the IGRA.

Upon analyzing the history of Native American culture, the relationship between the federal government and the Native American tribes, and the current state of affairs on Native American reservation and trust lands, Part VII will conclude that to enable the Native American people of California to thrive once again, and to comply with the original purpose of the relationship between the Native American people and the federal government, Native Americans can, and must, be given the opportunity to live as sovereign nations.

PART I

SHORT HISTORY OF NATIVE AMERICAN CULTURE AND GAMING WITHIN THE NATIVE AMERICAN COMMUNITY

Gaming in the Native American culture existed in North America long before the arrival of Europeans.11 Gaming, such as the game of chenco, a game of sliding sticks and stones, is one of the oldest forms of recreation, and was played in the Southeast United States, before colonization.12 Native American games were similar throughout North America, with “two basic kinds: games of chance and gambling, and games of skill and dexterity.”13 The games of chance and gambling

12. BRANDON, supra note 11, at 136.
13. WALDMAN, supra note 3, at 50.
included "dice, marked sticks, guessing games, and hand games."\textsuperscript{14} Games in Native American culture such as stick games were played by certain tribes throughout history.\textsuperscript{15} Indian gaming was originally part of tribal ceremonies or celebrations.\textsuperscript{16} Now, however, gaming has become a viable and acceptable source of employment and revenue to some tribes who must depend on gaming in light of the fact that European and American settlement "[destroyed] agrarian societies, kill[ed] the buffalo and forc[ed] American Indians onto remote, desolate reservations."\textsuperscript{17} In order to overcome these travesties, gaming has evolved into another mechanism used by Native Americans for survival, cultural preservation and replenishing impoverished economies.\textsuperscript{18}

Gaming sponsored by tribal governments on a large-scale started in early 1980.\textsuperscript{19} Tribes in Florida and California began raising money by operating bingo games at the same time the state lotteries began to abound, but the tribes offered larger prizes.\textsuperscript{20} The controversy over official gaming started with the 1979 decision in \textit{Seminole Tribe v. Butterworth}.\textsuperscript{21} The court of appeals in \textit{Butterworth} upheld a federal district court ruling that the Seminole Tribe of Florida could continue its bingo operations despite the State of Florida's opposition.\textsuperscript{22} The court of appeals decided that the tribe could conduct gaming without state interference because the federal government had never transferred jurisdiction to the State of Florida to impose its civil regulatory laws on Indian lands.\textsuperscript{23} The crucial case, though, was \textit{California v. Cabazon Band of Mission Indians}.\textsuperscript{24} In \textit{Cabazon}, the Supreme Court recognized the right of Indian tribes to conduct gaming without state interference. One year after the \textit{Cabazon} decision, the IGRA was enacted.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{14} \textit{Id.}
\item \textsuperscript{15} See \textit{ANDREWS}, supra note 5, at 59-61.
\item \textsuperscript{16} See \textit{id.}
\item \textsuperscript{17} \textit{The History of Tribal Gaming}, supra note 6, at 1.
\item \textsuperscript{18} See \textit{id.}
\item \textsuperscript{19} See \textit{The History of Tribal Gaming}, supra note 6, at 1.
\item \textsuperscript{20} See \textit{id.} (illustrates that this was the beginning of state opposition to tribal gaming that allegedly competed with the state lotteries).
\item \textsuperscript{21} \textit{Butterworth}, 658 F.2d 310 (5th Cir. 1981).
\item \textsuperscript{22} \textit{Id.} at 312.
\item \textsuperscript{23} \textit{Id.} at 312-15.
\item \textsuperscript{24} \textit{Cabazon}, 480 U.S. 202 (1987) (holding that Congress did not grant states express consent to apply state gambling laws to Native Americans on reservations).
\item \textsuperscript{25} See discussion \textit{infra} Part III, contending that by enacting the IGRA, the federal government has failed to protect the sovereignty and economic development of the
\end{itemize}
Reflecting on the history of gaming in Native American communities provides an appreciation of the predicament of California Native Americans from the very beginning of their relationship with the federal government through the treaty process. The analysis is important to exemplify their necessary reliance on gaming at the reservations for sustenance of their traditional ways of life and economic development as they move into the twenty-first century. Historic documentation will show that the treaty process effectively forced the Native Americans of California to live where no one else wanted to live, and where sustaining a livelihood would, at that time, be nearly impossible. The removal process consequently guaranteed the demise of many Native Americans that were removed to the infertile areas, with no way to sustain life through tribal traditions. With no other way to become economically sufficient after removal, the tribes have struggled to survive economically, and culturally. Through gaming, which is rooted in tradition, tribes are again finally able to depend on traditional ways of life to sustain their own lives now and in the future.

Historic documentation of the treaty process and the federal government's capability of furthering the goal of tribal self-sufficiency and self-governance is one way to exemplify the United States government's treatment of Native Americans. A telling report written to the Commissioner of Indian Affairs Hon. L. Lea was submitted on May 11, 1852, from E. F. Beale, Esq., Superintendent of Indian Affairs for the State of California. In the report Mr. Beale expressed his views as to the merits of the treaties recently negotiated with the Native Americans of California. Mr. Beale's disdain for the Native Americans was obvious by his comments pertaining to them. At one point he refers to them as suspicious by nature, "although easily governed

27. See WALDMAN, supra note 3, at 201 (discussing the social conditions of Native Americans on and off the reservations, including unemployment, poverty, and alcoholism).
28. See infra Part IV (discussing the tribal benefits of gaming).
29. See HEIZER, supra note 26, at 19. A series of eighteen treaties were negotiated with 'tribes' of California Native Americans by three treaty Commissioners appointed by President Millard Fillmore and authorized by the United States Senate on September 29, 1850. However, on July 8, 1852, the Senate refused to ratify them in executive session and ordered them filed under an injunction of secrecy which was not removed until January 18, 1905. Id. at 1.
30. Id. at 20.
31. Id. at 20-25.
when [the Native Americans'] confidence has been obtained." 32 At another point, he refers to them as "savages" who should not be exposed to our citizens. 33

Mr. Beale continues to write of two important considerations: first, "whether the Indians are to have any lands set apart for them," and second, "whether those already selected for them may be justly considered as suitable and appropriate." 34 The first question of whether the Native Americans should have any lands at all, implies that if the government could take away land without a major Native American uprising, the federal government would not have reserved any of the Native American lands for the Native Americans; instead, the United States would have removed them by force or killed them off as had been customary during the same period in other parts of California. 35 Mr. Beale thought removal of the Native Americans over the Sierra Nevada Mountains impossible, and therefore was forced to reserve some land for them. 36 He found it equally impossible to move the Native Americans north, for the population of Native Americans was already "overflowing" in the north, 37 and moving them to the south would interfere with European emigration. 38 Considering the difficulty in removing the Native Americans from Southern California, Mr. Beale then gave a telling commentary on the land reserved for them.

With reference to the character or quality of the land reserved by the treaties for the Indians, I can only speak from personal observation with regard to those selected in the southern portion of the State. They are such as only a half-starved and defenseless [sic] people would have consented to receive, and, as a general thing, embrace only such lands as are unfit for mining or agricultural purposes. 39

He went on to say that "[t]he reservations made in the southern portion of the State are undoubtedly composed of the most barren and

32. Id. at 20.
33. HEIZER, supra note 26, at 22.
34. Id. at 20.
35. See JOSEPHY, supra note 4, at 145. (He explains that between 1849 and 1859, estimates showed that some 70,000 California Native Americans were killed by non-Indians, or wiped out by disease. Miners and settlers ruthlessly massacred the Native Americans, and destroyed food stores during the Gold Rush).
36. See HEIZER, supra note 26, at 21.
37. Id. at 22.
38. Id.
39. Id.
sterile lands to be found in California ... in no case of reservations under these treaties, will the lands reserved compare favorably with the agricultural and valuable portions of the State. 40 Mr. Beale's letter illustrates very effectively that the federal government was neither concerned for the self-sufficiency of the tribes, nor worried about whether those tribes could or would ever become financially independent—a pattern which has apparently resurfaced through the grant of power to state governments through the IGRA.

Because many of the lands to which Native Americans were removed were generally considered uninhabitable and incapable of any type of economic sustenance, the federal government had to choose whether to help the tribes survive, or simply leave them to die. It would seem, therefore, that given this history, the federal and state governments would want to enable the tribes to do whatever was legal under federal law to allow them to sustain themselves. The IGRA is one attempt to accomplish this goal. Its purposes, as set forth in the statute, are to promote tribal economic development, self-sufficiency, and strong tribal governments. 41

Bearing in mind this history, statutes and case law are also enlightening to show where the relationship between the tribes, the state, and the federal government stood in the past, before the enactment of the IGRA.

PART II

THE HISTORY OF THE RELATIONSHIP BETWEEN THE NATIVE AMERICANS AND THE UNITED STATES GOVERNMENT

The historic relationship between the Native Americans and the United States government is important to demonstrate why state governments should and do have limited power to regulate whether individual Native American tribes may choose to involve themselves in gaming. 42

40. HEIZER, supra note 26, at 23.
42. The author is aware that the treatment of Native Americans throughout history by the United States government has been prominently negative, but the author is choosing to focus on the positive relationship between the tribes and the United States in order to represent that a positive relationship is not only possible, but is also in the best interest of all parties. See generally VINE DELORIA, JR., & CLIFFORD M. LITTLE, AMERICAN INDIANS, AMERICAN JUSTICE 15-21 (1983) (discussing the policy of termination by the United States government toward the Native Americans from 1945-1961); see also FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 152-80 (1982 ed.) (discussing the policy of termination by the United States government). See generally A. DEBO, A HISTORY OF THE INDIANS OF THE UNITED STATES 349 (1970) (describing termination as “the most concerted drive against Indian property and Indian
Generally, state law does not apply to Indian affairs within the territory of an Indian tribe, unless Congress consents. This historical analysis will also illustrate the jurisdictional powers that the United States government has over Indian country.

A. The Constitutional Bases for Protecting Native Americans

The Constitution of the United States makes one direct and two indirect references to Native American tribes. The direct reference to the tribes is in the Commerce Clause, which gives Congress the power to regulate commerce with the “Indian Tribes.” The first indirect reference to tribes exists in the power of the President, with the consent of the Senate, to make treaties. Although no express language concerning the Native American tribes was used, past treaties between the United States government and Native American tribes exemplified the applicability of the Treaty Clause. A principle foundation for survival since the removals following the acts of 1830 and the liquidation of tribes and reservations following 1887”). See also WALDMAN, supra note 3, at 194 (discussing the termination policy of the federal government where tribes such as the Menominee of Wisconsin were terminated as a guise of freedom from government intervention, but an underlying motive for various white interests and their allies in Congress centered around the acquisition of timber on Indian lands).

43. COHEN, supra note 42, at 259.
44. The term “Indian Country” is defined as:
all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependant Indian communities within the borders of the United States . . . and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. § 1151(a) (1994).
46. U.S. CONST. art. I, § 8, cl. 3 (“The Congress shall have [p]ower . . . [t]o regulate [c]ommerce with foreign Nations, and among the several states, and with the Indian Tribes. . . .”). The Commerce Clause is the only express clause in the Constitution which the federal government has used to justify its power over tribes.
47. See id. art. II, § 2, cl. 2 (“[The President] shall have Power, by and with the Advice and Consent of the Senate to make Treaties . . . ”).
48. Id. (The author expects that the reader will take “judicial notice” of the fact that in the past the United State has entered into treaties with Native American tribes).
federal power over Indian affairs has been the Treaty Clause which grants exclusive authority to the federal government to enter into treaties.49

The second indirect reference to tribes exists in the power that Congress has to dispose of and make rules and regulations pertaining to property belonging to the United States.50 The United States government holds Indian lands in trust; the United States government, therefore, has the power to make rules and regulations pertaining to those lands which Congress expressly reserved the right to control.51 This clause has been considered an additional source of authority over Indian lands.52

Not only does Constitutional language tend to show that the United States government was aware that the Native American tribes needed special protection, but the references to property controlled by Congress also illustrates that the federal government needed to specifically protect the Native American tribal land.53 This language and provisions demonstrate an assumption by the Framers that only the federal government could provide the needed protection to the tribes. This federalism is further exemplified in the case law and statutes in the following section. As one commentator wrote,

Court opinions most often refer to the Indian Commerce Clause, [and] the Treaty Clause . . . in discussing the source of federal power over Indian affairs . . . . For most purposes it is sufficient to conclude that there is a single ‘power over Indian affairs,’ an amalgam of the several specific constitutional provisions.54

B. Protecting Native Americans Through Case Law

In order to explicate how the courts have viewed the relationship between the United States government and the Native American tribes, a condensed examination of case law is helpful.55 In Cherokee v. Georgia,56 the Court made clear that Native Americans were to be considered “domestic dependent nations” under the protection of the

49. COHEN, supra note 42, at 207.
50. U.S. Const. art. IV, § 3, cl. 2 (“The Congress shall have [p]ower to dispose of and make all needful [r]ules and [r]egulations respecting the [t]erritory or other [p]roperty belonging to the United States . . . .”) [hereinafter Property Clause].
51. Id.
52. COHEN, supra note 42, at 209.
53. See supra note 50.
54. COHEN, supra note 42, at 208.
55. See supra text accompanying note 42.
56. Cherokee, 30 U.S. 1 (1831).
federal government. The case arose when the state of Georgia enacted laws to divide Cherokee territory among several counties in Georgia. The newly enacted laws also invalidated Cherokee laws and made any attempt of the Cherokee people to form their own government a criminal offense. Chief Justice Marshall determined that the tribes were "ward[s]," and that the federal government was their "guardian." The Cherokee v. Georgia case launched the protective relationship that the federal government would assume over tribes. One year later, the Marshall Court put forth the proposition that states had no power in Native American country. Georgia authorities arrested missionaries for violating a state law which required non-Native Americans to obtain a license from the state Governor if non-Native Americans wanted to live in Cherokee territory. Chief Justice Marshall reflected on the history of the relationship between the federal government and the Native Americans and concluded that the Cherokees were not governed by Georgia law, and therefore the Georgia authorities had no power to arrest the missionaries.

Another set of decisions protected Native American rights by setting limits on the federal government’s power. In Lane v. Pueblo of Santa Rosa, the Court found that the Secretary of Interior could not dispose of lands claimed by a member of the Pueblo Tribe in the same manner that he could dispose of other public lands. The case lends itself to the argument that the federal government had a duty to protect Native American lands.

Similarly, in Cramer v. United States, the Court upheld the federal government’s duty to protect Native American lands from encroachment by striking down a statute that purported to convey certain legal subdivisions of land to the Central Pacific Railway Company which failed to protect the Native Americans right of occupancy. The Court

57. Id. at 17.
58. Id. at 7.
59. See id. at 7-8.
60. Id. at 17.
61. See Worcester v. Georgia, 31 U.S. 515, 561 (1832). See also supra note 44 (defining Native American country).
63. Id. at 561.
64. Id. at 596.
65. Lane, 249 U.S. 110 (1919).
held that the statute "would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation," coming to this conclusion with reliance on "settled governmental policy." In Williams v. Lee, the Court held that state law may intrude on Native American tribes only where essential tribal relations were not involved. Essential tribal relations could be any act that "would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of Indians to govern themselves." The Court stated that "absent governing Acts of Congress, the question had always been whether the state action infringed on the right of reservation Native Americans to make their own laws, and be governed by them." This line of cases determined the protective role which the federal government was required to take when states attempted to interfere with tribal relations.

The Court continued to treat the federal government as a fiduciary to the Native American tribes. When funds which were supposed to be paid to individual tribal members were instead paid to the tribal government by the terms of a treaty, and misappropriated by the tribal government, the Court held that the United States government has a fiduciary relationship with a tribe, not simply a contract, through their treaty. Additionally, the Court, protecting the tribes in McClanahan v. Arizona State Tax Commission, specified that state law could intrude only if there was no interference with tribal self-government, and only if non-Native Americans were involved. The McClanahan holding negated an Arizona state law which applied an individual income tax to Navajos with respect to income derived from reservation sources. The Court felt that state interests at stake must be sufficient to justify assertion of state authority. These cases seemingly seek to protect

67. Id.
68. Id.
70. Id. at 223.
71. Id. at 220.
74. Id. at 164.
financial interests of the tribes and to assure continued economic stability.75

The fiduciary relationship rationale was further developed when the federal government failed to properly manage certain funds held in trust for a tribe, thereby breaching the fiduciary duty to the tribe.76 A district court quoted the Supreme Court's decision in Seminole Nation77 when it defined the trust responsibility between the United States government and Native Americans as having charged the United States government with "moral obligations of the highest responsibility and trust."78 In 1976, the Court held that, contrary to Public Law 280,79 states did not have general legislative jurisdiction over Native American lands, but rather only adjudicatory jurisdiction over contracts between Native Americans on Native American lands.80 Therefore, because of this limitation in the state of Minnesota, Public Law 280 would forbid an assessment of state and local property tax against personal property owned by a Native American in Native American country.81

More recently, the Court went as far as to hold that the federal government has a fiduciary duty to Native Americans, and that the

75. There have been subsequent decisions which could be seen as going against this decision. See Strate v. A-I Contractors, 117 S. Ct. 1404 (1997) (discussing that when an accident occurs on a public highway maintained by the State pursuant to a federally granted right-of-way over Indian reservation land, a civil action against allegedly negligent nonmembers falls within state or federal regulatory and adjudicatory governance; absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers driving on the State's highway, tribal courts may not exercise jurisdiction in such cases).


77. See supra note 72 (defining the trust obligation).

78. Id. at 1243 (quoting Seminole Nation v. United States, 316 U.S. at 297 (1942)).


80. Bryan v. Itasca County, 426 U.S. 373 (1976); COHEN, supra note 42, at 177 ("[T]he Supreme Court held that although [Public Law] 280 provided for substitution of state for federal judicial forums over some subjects, it did not confer state 'general civil regulatory powers' over Indian lands.").

81. Id.
government should be liable for damages upon breach of that duty.\footnote{United States v. Mitchell, 463 U.S. 206, 226 (1983).}

One can infer that the Court, in these cases, viewed the fiduciary relationship between the federal government and the tribes seriously enough to allow damages. The Court went on to hold that the Tucker Act\footnote{28 U.S.C. § 1491 (1948).} and the Indian Tucker Act\footnote{The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. Id. § 1491(a)(1).} waived the sovereign immunity of the United States for such claims.

In \textit{National Farmers Union Insurance Cos. v. Crow Tribe}, the Court referred to tribes as sovereign nations which are free to act unless some federal intrusion has affirmatively modified that sovereignty.\footnote{National Farmers, 471 U.S. 845 (1985).} The Court indicated that when there is a question of tribal jurisdiction, federal law determines whether any limitation exists preventing the tribe from acting, rather than whether federal law exists permitting the tribe to act.\footnote{Id. at 852-53.} Therefore, the tribes were free to act unless prohibited by the federal government. Furthermore, if the federal government is to intrude, \textit{McClanahan} made clear that any additionally assigned state power could not interfere with tribal self-government.\footnote{McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 181 (1973).}

The final example of the powerlessness of a state pertaining to Native American lands is illustrated in \textit{California v. Cabazon Band of Mission Indians} which held that states were preempted from regulating tribal gambling operations on reservations.\footnote{See supra note 79.} California assumed criminal jurisdiction over Indian reservations under Public Law 280\footnote{28 U.S.C. § 1505 (1949) (providing tribal claimants the same access to the Court of Claims provided to individual claimants by 28 U.S.C. § 1491).} before the law was amended to require the tribes’ consent. California therefore threatened to apply criminal sanctions against the Cabazon and Morongo Bands of Mission Indians when they opened a bingo hall and card hall at which casino-type card games were played.\footnote{Cabazon, 480 U.S. 202 (1987). The case was brought in a Public Law 280 state and therefore application of the case may be limited to states utilizing Public Law 280.} The tribes sought a declaratory judgment stating that California had no power to apply its statutes on the reservation, and the district court granted the tribes’

\footnote{Cabazon, 480 U.S. at 205.}
motion for summary judgment. The Court of Appeals for the Ninth Circuit affirmed the decision as did the Supreme Court.\textsuperscript{91}

The Supreme Court in \textit{Cabazon} allowed tribes to conduct casino-style gaming as well as bingo.\textsuperscript{92} The Court rejected California's argument that its bingo statute was a criminal law. Instead, the Court found "that California regulates rather than prohibits gambling in general and bingo in particular, since California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery."\textsuperscript{93} Therefore, the majority decided that since California regulated rather than prohibited gambling, the state was prevented from asserting its jurisdiction over the tribes' gaming activities.\textsuperscript{94} One year after the \textit{Cabazon} decision, the Indian Gaming Regulatory Act was passed.

\textbf{PART III}

\textbf{THE INDIAN GAMING REGULATORY ACT (IGRA)}\textsuperscript{95}

The phrase within the United States Constitution that states that "'[t]he Congress shall have the [p]ower ... [t]o regulate [c]ommerce with foreign Nations, and among the several states, and with the Indian Tribes,'"\textsuperscript{96} codifies the United States government's sole responsibility for trade with the Native American tribes.

Article II, section two, clause two states that, "'[t]he President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties ... '"\textsuperscript{97} a power that has been exercised throughout history.\textsuperscript{98} In addition, the language in Article IV, section three, clause two— "The Congress shall have Power to dispose of and make all needful Rules and
Regulations respecting the [t]erritory or other [p]roperty belonging to the United States...99—furthers the intent of the United States government to control all "the territory," impliedly grants Congress power to regulate Native Americans on Native American lands.100

In addition to the United States Constitutional references to Native American tribes, the voluminous case law101 unequivocally relies on Congress, not the states, to regulate Native Americans on Native American lands. That same case law has made equally clear that states do not have the power to regulate Native Americans on Native American land, when there is no mention of states having any power over Native Americans in the Constitution.102 To the contrary, in McClanahan, in order for a state to justify an assertion of state authority, there had to be a lack of interference with tribal self-government, and non-Native Americans must be involved.103 Why then would Congress give the states powers that are inconsistent with past law, such as those encompassed in the IGRA?104

The IGRA divides gaming into three classes.105 Class I includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."106 Class I gaming is regulated by the tribe.107 Class II games include bingo played for prizes or money, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, if the games are played in the same location of the bingo games.108 Class II also includes card games that are authorized by state law or not prohibited by state law, which must be played in conformity with those laws as to hours of operation and pot sizes.109 Class II is problematic because IGRA mandates that Class II games be authorized by state law; therefore, state laws which allow card rooms in California, allow tribes to have card rooms on reservations.110 Finally,

99. See supra note 45, art. IV, § 3, cl. 2.
100. COHEN, supra note 42, at 209.
101. See supra Part II.
102. See generally Public Law 280, supra note 79 (Public Law 280 only gives the state power to prohibit criminal acts, if the state prohibits those acts criminally, not the power to regulate civil acts). See also California v. Cabazon Band of Mission Indians, 480 U.S. 202, 210 (1987) (discussing California’s allowance of lotteries, parimutuel gambling and bingo)
105. Id.
106. See id. § 2703(6).
107. See id. § 2710(a)(i).
110. See id. § 2710(b)(1).
Class III games, the most controversial class, encompass all forms of gambling not listed in Classes I or II,\textsuperscript{111} such as lotteries, parimutuel wagering,\textsuperscript{112} casino games, slot machines, electronic facsimiles of games of chance and banking card games. Class III games not only have to meet the same requirements as Class II gaming, but, completely contrary to the historical relationship between the state government and the tribes, the states and the tribes are required to form a compact essentially giving a state regulatory control of whether a tribe can enter into the most profitable class of gaming.\textsuperscript{113} In California, for example, Governor Wilson and Attorney General Dan Lungren have decided to disallow electronic gaming on reservation casinos, while allowing electronic lottery games in the state.\textsuperscript{114}

The motivations of Congress in giving the states such great power are contained in the “findings” section of the IGRA,\textsuperscript{115} where Congress expressed concern with the revenue-producing aspects of tribal gaming, the federal government’s ability to review contracts related to the gaming, as well as the federal government’s lack of clear standards or regulations involving gaming.\textsuperscript{116} In the past, tribes regulated gaming activities by their own police powers, taking violators to court when necessary.\textsuperscript{117} Congress also set forth the principal goal of federal Native American policy to “promote tribal economic development, tribal self-sufficiency, and strong tribal government.”\textsuperscript{118} In an attempt to clarify the relationship between the federal government and the Native Americans, the section provides that, “Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity also must not specifically prohibited by Federal law.”\textsuperscript{119} However, the section continues and is inconsistent with past case law, past federal

\textsuperscript{111} See id. § 2703(8).
\textsuperscript{112} Parimutuel is “a system of betting on races in which those backing the winners divide, in proportion to their wagers, the total amount bet, minus a percentage for the track operators, taxes etc. 2. [A] machine for recording such bets and computing payoffs: totalizator”, WEBSTERS NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 1033 (2d College ed. 1982).
\textsuperscript{114} Alan Bersin, Resolving the Indian Gaming Problem, SAN DIEGO UNION-TRIB., June 26, 1996, at B7.
\textsuperscript{116} See id. § 2701(1-3).
\textsuperscript{117} See supra note 19.
\textsuperscript{119} See id., § 2701(5).
policy, as well as clause IV of the same section, by stating that the gaming activity also must not violate state law or public policy. By passing the IGRA in its current form, the federal government has ignored the historical problems between states and tribes. Additionally, the federal government has assumed that the promotion of tribal sovereignty could be accomplished by giving states the right to regulate reservation activity, which is the heart of tribal self-sufficiency, and strong tribal government.

The next pertinent section is the “Declaration of Policy” section, which explains the purpose of the IGRA. The first clause is self-explanatory: “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” The second clause notions protecting the tribe from organized crime and other outside influences which could divert funds from the tribe, or hinder the fair and honest operation of the gaming industry on tribal lands. The fear of organized crime was cited by concerned states despite Sen. McCain testifying that “[b]oth the Department of Justice and the FBI have repeatedly testified before the Committee on Indian Affairs and have indicated that there is not any substantial criminal activity of any kind associated with Indian gaming.” This testimony should put any fears of criminal activity to rest. In the third and final clause, Congress asserts authority to establish laws, and establishes the National Indian Gaming Commission for the protection of gaming as a means of generating tribal revenue. Nowhere in the purpose section does Congress address state authority, having only provided the federal government power over Indian lands. Since the IGRA allows states to compact with tribes, some benefits to certain tribes may be obtained if the compacting agreements are made through good faith, arms-length negotiations.

120. Id.
121. Worcester v. Georgia, 31 U.S. 515, 515 (1832) (generally discussing how the state of Georgia treated the Cherokee people).
123. See id. § 2702(1).
124. See id. § 2702(2).
A. State Governor and Legislative Treatment of the IGRA in Other States

Governors from across the country have demonstrated successful leadership pertaining to the Native American gaming issue. Governor Lowell Weicker of Connecticut granted two Native American tribes a casino monopoly, after getting support from local governments. "The Pequot Tribe [through the compacting process] promised the state 25 percent of casino income or a minimum of $100 million annually for so long as it was granted a statewide monopoly." Governor Finney of Kansas vetoed a bill that would have outlawed all casino gambling. Governor Finney felt that the bill blatantly discriminated against Native American people. Governor Finney finally negotiated a compact with the Kickapoo Nation authorizing a large-scale casino, although the Attorney General of Kansas argued that the Governor lacked authority to establish a compact, because a compact was law requiring legislative approval. The Kansas Supreme court agreed, and held that legislative approval was required in the compacting process.

In Arizona, Governor Symington and Secretary of the Interior Bruce Babbitt, compromised with two tribes in Arizona to allow certain amounts of Las Vegas-style slot-machines, putting a cap of four hundred machines for smaller tribes, and thirteen hundred for larger tribes. This compact was agreeable to both the Governor, and the tribes, but the state legislature refused to repeal a ban on casinos as agreed upon in the compact, which hindered the entire process.

Questions about who has the power under the IGRA to compact, the legislature or the Governor, whether states should have the power, and

128. Id. at 20.
129. Id.
130. Id.
131. Id.
133. Id.
134. Id. at 22.
135. Id.
whether it makes sense not to compact, continue to cloud the IGRA. The above examples characterize state confusion as to who can even sign the compact, and if compacting with one tribe is sufficient as pertaining to other tribes that may be a different size, or in a different location, which is all the more reason to leave the decisions in the hands of the tribes themselves.

B. The Pala Compact

A current example of the confusion that state compacts bring about, and the animosity that develops between the state and tribes, and between different tribes, is exemplified in the only compact that Governor Pete Wilson of California has been willing to negotiate, the "Pala compact." Governor Wilson decided that he would finally compact with a small non-gaming tribe in Southern California. After negotiating for seventeen months, a token compact was signed on March 8, 1998, allocating a pool of electronic gaming devices to each of California's tribes.

The compact allocates 19,900 gaming devices to each of the 104 California tribes. The allocation will allot each tribe one hundred and ninety-nine games, with the ability of remote non-gaming tribes to sell their allotments for $5,000 a game per year to gaming tribes.

The agreement also allows the state to enforce state and local land-use planning standards, labor standards, and environmental standards on reservation lands. It will require tribes to reach agreement with county officials on mitigation of public health and safety effects, building standards and environmental impact caused by gambling outside the boundaries of a reservation. In addition, the compact would allow advisory votes by cities and counties that could effectively result in the re-negotiation of a compact. The compact also forces tribes to give employees state workers compensation protection, state

137. Id.
138. Id.
140. Id.
141. Sweeney, State Model, supra note 136.
142. Sweeney, Deadline, supra note 139.
143. Id.
unemployment insurance, and disability insurance, as well as giving employees the right to collective bargaining if they agree not to strike.144 All tribes, whether involved in the compacting process or not, must agree to enter into a compact identical to the Pala compact, or shut down all existing machines, and go to the bargaining table with the state, who would then waive its constitutional immunity from lawsuits over bad-faith bargaining.145

This particular agreement caused some alarm within the Native American community during the negotiation period.146 Tribal Chairman Anthony Pico of the Viejas tribe expressed his concern that his tribe was not involved with the negotiations and that the Pala tribe has no right to negotiate concessions for other tribes.147 He went on to state that what may be a good agreement for Pala may "bankrupt" the Viejas tribe.148 The compact between Wilson and Pala will cause problems between the tribes, forcing them to fight each other for the limited devices.149 This compact could effectively create internal tribal divisions, as well as divisions between the tribes, an outcome that ironically may be a boon to Wilson who is acutely aware of the $20 million fund which gaming tribes have accumulated to campaign for legalization of the electronic games in question.150 The concern expressed during the negotiations for the compact came to light just three days after the compact was signed.151 Thirty-two of the thirty-nine gaming tribes rejected the Pala compact.152 Daniel Tucker, chairman of the California Nevada Indian Gaming Association, referring to the states compact, stated, "[t]hey’ve put us in a situation where it’s

147. Id.
148. Id.
149. Id.
150. Sweeney, State Model, supra note 136.
152. Id.
almost like they want to divide and conquer us again. . . . We’re not going to be divided and conquered anymore." Tucker and Mary Ann Andreas, tribal chair of the Morongo Tribe, voiced concern that most tribes were being asked to accept a compact that they were largely excluded from, after promises were broken relating to being kept informed of continuing negotiations and being given the opportunity to ratify the compact. They also related their concerns about the incursion on tribal sovereignty that the 19,900 machine cap will cause. Six days after the signing of the compact, Chairman of the Viejas tribe, Anthony Pico, voiced his concern pertaining to the control that the compact gives to cities and counties. Chairman Pico is willing to work with the county, but only on a government to government basis.

Mike Connolly, environmental director and tribal council officer for the Campo Indian Band, stated that because the compact would subject tribes to the California Environmental Quality Act, the tribes land-use and planning decisions would be under the state’s jurisdiction. This is a disconcerting proposition when historically local governments have shown tribal governments little respect in the area of land management and planning. For example, when hearings were held designating Highway 94 as a scenic highway, two miles of which are on the Campo reservation, Campo representatives were not even invited. In another instance of tribal-local government relations, the tribe was never consulted when a waste-transfer station was placed right next to the Campo reservation.

Tribal entities are not the only ones concerned about the Pala compact. County Supervisor Dianne Jacob realizes that tribes have been treated unfairly in the past, and stated that it was unfortunate that tribes were left out of the Pala compact bargaining agreement.

153. Id.
154. Id.
155. Id.
158. Id.
159. Id.
160. Id.
161. Id.
162. Id.
What this compact appears to be is an agreement with a non-gaming tribe, agreeing to the use of a small number of machines, which are still in development and may not be available for months.\textsuperscript{163} The machines are being called an instant lottery device, and are being developed by a company in Reno, Nevada.\textsuperscript{164} The machines will have gamblers play against each other, instead of playing against the house, as do the existing video slots.\textsuperscript{165} This type of agreement is anything but a "good faith" negotiation or all tribes would have been comfortable coming to the negotiation table, and Wilson would not be attempting to force the compact on all tribes statewide. George Forman, an attorney for the Sycuan band of Native Americans, describes the individual sovereignty that tribes hold apart from one another, when he states, "[t]he state of California would not blindly accept something the state of Colorado negotiated."\textsuperscript{166} If any interference is to take place it should only be by the federal government. States should take a step back, and look at the positive benefits that tribal gaming could, and does, bring to them.

\textbf{PART IV}

\textbf{THE BENEFITS OF NATIVE AMERICAN GAMING OPERATIONS TO TRIBES AND TO SURROUNDING CALIFORNIA NON-NATIVE AMERICAN COMMUNITIES}

Native American gaming has had a positive effect on the lives of Native American people on reservations, and also benefitted the lives of non-Native Americans in surrounding communities.

\textbf{A. The Effect of Gaming on Native American Reservation Life}

Economic success can have a positive effect on every aspect of life. Economic development due to gaming improves community services, the quality of education and health services, and allows for the development

\begin{center}
\begin{itemize}
\item \textsuperscript{163} Sweeney, State Model, supra note 136.
\item \textsuperscript{164} Sweeney, Deadline, supra note 139.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} Sweeney & Barfield, supra note 146.
\end{itemize}
\end{center}
of infrastructure including investments into non-gaming industry.\textsuperscript{167} "The principle objective is to encourage new business ventures and jobs by expanding player alternatives to gambling."\textsuperscript{168} Tribes have delved into such businesses as golf courses and hotels to accomplish economic development.\textsuperscript{169} Some community leaders have realized that reservation gaming is good for the tribes. In a 1995 article, Republican Jan Goldsmith, assemblyman from the 75th District of California, stated that the tribes gaming has reduced their "traditionally high unemployment rates to zero, thus freeing many of their members from the public assistance rolls and the public from the tax burden to support them."\textsuperscript{170} At the time Mr. Goldsmith wrote his article, the tribes had already spent $4.5 million for roads, education, housing, health care, fire protection and related social services for their members.\textsuperscript{171} Mr. Goldsmith succinctly stated that, "[r]eservation gaming has empowered tribes to become full members of the larger community while retaining their sovereignty and unique heritage."\textsuperscript{172} Lawmakers from across the state of California realize that the Native American "gambling operations provide jobs and revenue for Indian tribes, which are consistently one of the poorest segments of society, and for the surrounding areas."\textsuperscript{173}

Additionally, the gaming industry has also facilitated a university degree program in gaming at D-Q University, California’s Native American community college.\textsuperscript{174} The program was the idea of Paula Lorenzo who noticed the small numbers of Native American managers on the floor of the Rumsey Rancheria Central Valley casino.\textsuperscript{175} The goal of the program is to teach Native Americans more about the gaming industry, and to better understand, develop, and manage tribal gaming.\textsuperscript{176} One student at D-Q felt that in addition to giving tribal members the opportunity to learn more about the industry, the further education of casino management could help avoid the bitter disputes that

\textsuperscript{168} Id. at 85.
\textsuperscript{169} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{174} Bill Ainsworth, \textit{Casino U. A Good Bet For Tribes}, SAN DIEGO UNION-TRIB., Nov. 23, 1997, at A3 (D-Q University provides Native American language classes, and a Native American-centered curriculum).
\textsuperscript{175} Id.
\textsuperscript{176} Id.
sometimes divide gaming tribes.\textsuperscript{177} Gaming has proven to be a catalyst for social change as well as for new ideas, which will facilitate the development of Native American tribes that choose to delve into the world of gaming. Nine tribes have recently joined together to form an alliance to push for the expansion of tribal governments and economic development, and to strengthen laws which require the return of sacred objects.\textsuperscript{178}

B. The Effect of Gaming on Non-Native American Communities

Gaming has also been a catalyst for improvements to surrounding non-Native American communities. Tribes across California employ approximately 10,000 people from surrounding communities, both Native Americans and non-Native-Americans.\textsuperscript{179} Native American gaming at the Barona, Sycuan and Viejas reservations in San Diego County has created more than 2,800 jobs.\textsuperscript{180} In San Bernardino County, the San Manuel tribe has generated more than 1,200 jobs, making them the largest private-sector employer in the county.\textsuperscript{181} Riverside County is home to the Cabazon tribe that created more than 580 jobs, making them one of the county's largest employers.\textsuperscript{182} The Santa Ynez casino generated 350 new jobs in Santa Barbara County,\textsuperscript{183} and in Yolo County, the Rumsey Tribe is the largest employer in Western Yolo County, employing 520 people.\textsuperscript{184} Finally, the Jackson tribe, Amador County's second-largest employer, created more than 295 jobs.\textsuperscript{185} Hand and hand with the new economic force are of course the millions of dollars in payroll, and the accompanying payroll tax and revenue.

\textsuperscript{177} Id. at A5.
\textsuperscript{178} Bill Ainsworth, Indian Tribes Form New Alliance, SAN DIEGO UNION-TRIB., Jan. 21, 1998, at A3 [hereinafter Alliance].
\textsuperscript{179} CALIFORNIA NEVADA INDIAN GAMING ASSOCIATION, SUMMER 1996 QUARTERLY PUBLICATION, Vol. 1 iss. 1, 2 (1996) (periodical publication which keeps track of all Native American gaming issues in California and Nevada, and keeps track of voting records of Congress) [hereinafter CNIGA].
\textsuperscript{180} Id. at 2.
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id. at 3.
\textsuperscript{184} CNIGA, supra note 179, at 2.
\textsuperscript{185} Id. at 12.
In addition, gaming generates high rates of employment. Native American individuals pay sales tax, federal income tax, FICA and social security taxes. Most Indians also pay state income and property tax. Only a small percentage of Indians who live and work on federally recognized reservations . . . are exempt from paying state income and property tax." The San Diego County casinos generate "more than $42 million in annual payrolls, with another $3 million in payroll taxes." The San Manuel tribe generates $16.4 million annually in payroll, which comes out to $2 million in payroll taxes. The Cabazon tribe has an annual payroll of $12 million. Riverside County also benefits from the Morongo tribe, which has a $6 million annual payroll. The Santa Ynez and the Jackson Tribes each bring in $4 million to their respective counties. In Yolo County, the Rumsey tribe generated $10 million in payroll and benefits. Along with employment and salary totals well over $100 million a year in the State of California, tribes also depend on outside services, and spend money on non-Native American business and distributors.

Tribes buy products from surrounding businesses, which in turn creates more jobs, placing more money into the state economy. Between the seven tribes mentioned above, more than $108 million is spent annually on goods and services bought from local businesses and vendors. Three of the tribes alone in San Diego County generate $64 million of the $108 million, excluding other tribes who have gaming operations which are not reflected here. The state of California has decided not to engage in casino gaming, or reap the benefits that may derive from it. However, this state decision should not hinder tribes from gaming and in turn adding large amounts of money into the California economy. Because non-Native Americans cannot open casinos for the state to tax, the state of California should encourage the

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186. Non-Indians working at Native American casinos are taxed by the federal and state governments as they would be at any job.
187. See supra note 6.
188. See supra note 6.
189. CNIGA, supra note 179, at 2.
190. Id.
191. Id.
192. Id. at 3.
193. Id. at 3, 12.
194. CNIGA, supra note 179, at 3.
195. Id. at 2-12.
196. For illustrative purposes, only a handful of the tribes of California will be studied. ("Of California’s 104 [recognized] tribes, about 40 operate casinos or plan to open them. These gaming operations, owned by Indians, have turned many impoverished reservations into prosperous enclaves." Ainsworth, Alliance, supra note 178).
receipt of the financial benefits from allowing tribes to engage in Class III gaming.

Another benefit derived from prosperous Native American gaming is the generosity displayed by such tribes through community service. The seven mentioned tribes alone have decided to donate to many different organizations which provide needed services to people in their respective counties. In San Diego County, the Sycuan tribe donates to the San Diego Arthritis Foundation; the Barona tribe donates to the San Diego Symphony; and the Viejas tribe donates to local community charitable organizations. Other tribes have donated to organizations across the state, and set up scholarship programs for the employees of the casinos.

The above figures are just a small sample of what seven of the forty tribes who have decided to become involved in casinos in the state of California can do for the state economy. The tribes have made money for themselves through gaming, as well as deciding to help other communities, to which they are not legally obligated. The above-outlined donations were made despite the fact that the state government

197. CNIGA, supra note 179, at 2.
198. Id. at 2-3, 12. In addition to donating extensively to the community, the Cabazon Tribe of Riverside County has built the first employer-sponsored day care facility in the Palm Springs area for employees of the casino. The Cabazon tribe has also been responsible for environmental projects, including three separate soil projects, which will help the local agricultural community. In addition, Riverside County has received $5 million from the Morongo tribe for supplementing support to local charities like the American Cancer Society, and underwriting of the local City of Banning’s Stagecoach Days. The Santa Barbara County tribe, the Santa Ynez, contributed financially as well as in other ways to help the non-Native American population. Their casino employs forty percent non-Native Americans recruited from state and local job training programs, attracting national recognition for fair employment policies from the Private Industry Council, and the Job Training Network. Tribes in California contribute to a very diverse range of charities and causes, exemplifying their commitment to their surrounding communities. Another example is the Rumsey tribe which provides assistance to public safety departments in Yolo County, such as the Volunteer Fire Department, as well as to cultural and art organizations. Interested in the safety of the community, the tribe has contributed more than $130,000 to the Yolo County Sheriff’s Department alone. The tribes are interested in the well-being of the next generations as well. The Jackson tribe has emphasized an interest in youth with over a $100,000 contribution to youth programs in the community, to organizations such as Boy Scouts and Little League Baseball, and an $8000 donation given to the local “Say No to Drugs” publication put out by local law enforcement. The Jackson tribe also holds the elderly in high regard and supports Senior Center projects. Id.
has historically made life difficult for the tribes of California. The time has now come for the state government, the federal government, or the people of the state of California and other states to initiate helpful solutions to rectify the history of the Native Americans of this country.

PART V

THE DISCREPANCY OF THE IGRA WHEN COMPARED TO PRECEDENT, THE CONSTITUTION AND STATUTORY LAW

Part I above, including the Indian Commissioner’s letter, illustrated that the removal process devastated the Native American populations in the 1800’s. The sections of the United States Constitution explicitly stated and implied that Congress and the federal government would be the governmental entity to deal with tribes. Furthermore, the general federal policy towards Native Americans has been to not interfere with tribal sovereignty. This began with Cherokee v. Georgia, where the Court made clear that, Native Americans were to be considered “domestic dependent nations” under the protection of the federal government. McClanahan v. Arizona State Tax Commission specified that state law could intrude only if there is no interference with tribal self-government, and only if non-Native Americans were involved. In Williams v. Lee, the Court held that state law may intrude on Native American tribes only where essential tribal relations were not involved. Public Law 280 essentially allowed states to interfere with tribal jurisdiction when a law was criminal/prohibitory, versus civil/regulatory. Most importantly, the California v. Cabazon decision held that the states could not regulate gaming on Native American reservations. Cabazon gave Native Americans the power to conduct gaming on reservations notwithstanding state opinion.

199. See infra Part IV.
200. See generally WALDMAN, supra note 3; JOSEPHY, supra note 4 (discussion of the history of Native Americans).
201. HEIZER supra note 26.
202. See supra note 45.
203. See supra Part II (discussing the relationship and responsibility that the federal government has with Native American tribes).
204. Cherokee, 30 U.S. 1 (1831).
207. See Public Law 280, supra note 79.
apparently making politicians nervous enough that one year later federal legislation was passed to put the control of what types of games would be allowed on reservation casinos into the hands of the state governments. 209

Based on federal judicial decisions summarized above and statutory law, the general intent was to protect Native Americans and their remaining land from state authority. The federal government wanted the tribes to become self-sufficient and sovereign, while the federal government looked over their shoulders as a guardian.

The above cases illustrate that interference by a state government that affected tribal self-government,210 or interfered with essential tribal relations211 had historically been frowned upon by the courts. Therefore, logic dictates that a state may not now attempt to regulate gambling on reservations.212 However, contrary to the general historical intent to protect the tribes of the United States from the individual states, Congress passed a piece of inconsistent legislation which seemingly ignored one-hundred and fifty-six years of case law, and handed over the economic welfare of Native American tribes to state governments by allowing the states to have control over whether Native Americans practiced gaming on Native American land.213 Much of the past law points to the conclusion that the role of the federal government is as guardian of Native Americans.214 Such cases also conclude that the federal government may pass laws to give states some regulatory power, but the case law states that such power be regulatory, and not interfere with tribal self-sufficiency.215 The IGRA is interfering with that self-sufficiency for the tribes of California.

The IGRA is inconsistent with past court decisions in allowing states to interfere with integral tribal relations, and allowing states to regulate

209. See 25 U.S.C. § 2710(d)(1)(B) and (C) (1994) (mandating that Class III gaming be allowed only if located within a state that permits such gaming, and if the tribe enters into an agreement with the state).
212. Cabazon, 480 U.S. at 221.
214. The author recognizes that there is also case law that has allowed the federal government to infringe on the rights of Native Americans. See generally United States v. Antelope, 430 U.S. 641 (1977).
gaming, which is a civil/regulatory matter, notwithstanding that the state allows gaming within its borders. Class III gaming requires that the states and the tribes form a compact essentially giving a state regulatory control of whether a tribe can enter into the most profitable class of gaming, which is completely contrary to the historical relationship between the state government and the tribes.\textsuperscript{216} Congress set forth the principal goal of the IGRA policy “promoting tribal economic development, tribal self-sufficiency, and strong tribal government.”\textsuperscript{217} The Governor of California is refusing to meet this policy by refusing to compact in good faith with the individual tribes.\textsuperscript{218} According to the Declaration of Policy in the IGRA, its goal is “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.”\textsuperscript{219} The autonomy given to the tribes is contradicted by giving the choice to engage in gaming to state governors who may have other interests.

The IGRA could benefit tribes, but transferring decisional power to the states was contradictory to federal law, and the IGRA now needs to be rectified.

\section*{Solutions to the Problem of Attempting to Dictate Sovereign Nations}

The only way to make the IGRA issues disappear is to come up with some realistic solutions. The solutions here are not entirely original, but are entirely possible under the power of the federal government, state governments, and most importantly the citizens that make up the United States of America, including Native Americans.\textsuperscript{220}

The first viable solution for the Native American community in the state of California is amending the California State Constitution, and allowing Native Americans the freedom to engage in gambling as sovereign nations. By amending the State Constitution to “allow” gaming on the reservation, the gaming decision could effectively be taken out of the hands of one individual, the Governor, and placed in the

\begin{footnotesize}
\textsuperscript{217} Id. § 2702(1).
\textsuperscript{218} See supra Part III.
\textsuperscript{220} Native Americans born in the United States are United States citizens by birth. 8 U.S.C. § 1401(b) (1978).
\end{footnotesize}
hands of the individual tribes. In 1996, Senator Ken Maddy, R-Fresno, sought a constitutional amendment that would allow electronic gambling machines on the state’s Native American reservations.\footnote{221} To write the provision into the constitution, a two-thirds vote in the legislature and a vote of the people was needed, bypassing the requirement of the Governor’s signature.\footnote{222} Maddy’s measure would have legalized around 12,000 poker and slot-type electronic gaming devices that were already in use at the state’s tribal casinos.\footnote{223} The amendment would have authorized, “but not require[d] [Governor] Wilson to negotiate compacts with individual tribes to allow the electronic games.”\footnote{224} At the time Howard Dickstein, an attorney for several gaming tribes, was asked whether the tribes agreed with the measure, and he stated that the tribes generally supported the idea.\footnote{225}

Two other gaming bills were introduced before Maddy’s, and like Maddy’s bill, both have failed. One bill brought by Senator Richard Polanco, D-Los Angeles, received only four votes short of the two-thirds majority needed in the Senate, and the other bill was brought by Senator Jim Battin, R-La Quinta, fell six votes short of a two-thirds majority needed in the Assembly.\footnote{226}

Considering the almost successful attempts at amending the Constitution, Senator Polanco has decided to make another attempt.\footnote{227} Senator Polanco’s new amendment was introduced on September 13, 1997, and sought amendment of Section 19 of Article IV of the California Constitution.\footnote{228} This amendment authorizes the establishment and

\footnote{221. Dan Smith, Maddy: Let Voters to Decide on Indian Gaming, PRESS ENTERPRISE, June 21, 1996, at A10.}
\footnote{222. Id.}
\footnote{223. Id.}
\footnote{224. Id.}
\footnote{225. Id. at A11.}
\footnote{226. Smith, supra note 221, at A11.}
\footnote{227. Cal. S.C.A. 21 (1997) (amendment to the California Constitution is pending in the California Senate).}
\footnote{228. Id. Section 19 of Art. IV of the California Constitution now reads,}

\begin{enumerate}
\item The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.
\item The Legislature may provide for the regulations of horse races and horse race meetings and wagering on the results.
\item Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.
\end{enumerate}
operation of casinos on Native American lands located within the state that are under the jurisdiction of a federally recognized Native American tribe, by exempting certain gaming activities from specified constitutional restrictions pursuant to the terms of a gaming compact. It would exempt the tribe and the tribe’s activities or facilities from any law prohibiting gambling or gambling-related activities. The amendment would also add Article XXII, the Tribal Government Gaming Act of 1998. This measure would still allow the governor to compact with the tribes.

Taking some control out of the Governor’s hands is a positive attempt to benefit the tribes. However, the ideal situation would be a State Constitutional amendment, or a Federal Constitutional amendment, which takes all power to decide whether or not tribes will engage in gaming out of the government’s hands, and places that power in the hands of each individual tribe. A constitutional amendment either to the California Constitution, or the United States Constitution, could effectively provide that all decisions pertaining to the self-sufficiency and self-determination of Native American tribes within the borders of the United States of America shall be made by the individual tribes in accordance with their customs and laws, so long as those decisions do not directly conflict with the laws of the United States, as evidenced by the contemporary national standards. An amendment transferring the decision-making powers to the tribes would return the sovereignty that Native Americans had before the state and federal governments colonized them. A constitutional amendment would enable the tribes to engage in gambling, as Nevada has so decided.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

Cal. Const. art. IV, sec. (a)-(e).

229 Id.

230 This is how part of the introduced amendment would read if passed:

Art. XXII Tribal Government Gaming Act of 1998:

Sec. 1. This article, together with subdivision (f) of Section 19 of Article IV, shall be known and may be cited as the Tribal Government Gaming Act of 1998.

Sec. 2. The people of the State of California declare that the purpose of this Act is to support and preserve the right of federally recognized Indian tribal governments within California to continue to provide tribal economic development through the conduct of regulated gaming on Indian lands, which has been the primary source of jobs and relief from welfare on California Indian reservations for many years, and to resolve uncertainties regarding the legal status of such gaming.


231 Id.
The people of the state of California would best effectuate a second solution to the problem through initiative.\footnote{CAL. CONST. art. II, § 8 (a) (The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them).} The people of California can place an initiative on the ballot.\footnote{California law requires a petition signed by electors equal in number to eight percent of the votes for all candidates for Governor at the last gubernatorial election to place a Constitutional amendment initiative on the ballot. \textit{Id.} at (b).} The initiative for a constitutional amendment could take the same form as the amendment outlined above. The possibility of an initiative passed by the people in favor of a constitutional amendment, either put on the ballot by politicians, or by petition, is not far-fetched. Bipartisan support for allowing Native American gaming has been present for years in California.

In 1995, a Republican representative from the 75th District of California, Jan Goldsmith, said that voters support Native American gambling, and do not want to "wag[e] a new war against American Indians."\footnote{Goldsmith, \textit{supra} note 170.} Representative Goldsmith stated that "[a] recent survey uncovered overwhelming public support for tribal gaming, and there's good reason for it — reservation gaming is good for California."\footnote{\textit{Id.}} In light of the fact that eighty percent of federal spending to assist tribes was to be cut at one time, the sentiment has been that reservation gaming should be encouraged by the state.\footnote{\textit{Id.}} Refreshingly, Ms. Goldsmith was able to separate the issue of gaming in the State of California, and the right of tribes as sovereign nations to operate gaming on the reservations.\footnote{\textit{Id.}} She felt, as a representative of the people of the 75th District, that "we need to move through the debate to establish the legal, regulatory and fiscal framework that will give ... Native Americans the foundation to continue to operate their tribal-government gaming facilities unfettered from harassment."\footnote{\textit{Id.}} The debate has attracted not only state representatives, but California Congresspeople in Washington D.C. as well. Representatives George Miller, D-California, and the late Sonny Bono, R-California, spoke out against the Justice Department's decision in April of 1997, which stated that Native American casino's electronic gambling operations should be shut down,
because they believed that the decision would interfere in the small amount of negotiations that had taken place.\textsuperscript{239}

The support of local and statewide politicians is important, but what is more important is that the people of the United States and California overwhelmingly support the right of Native Americans to allow gaming on reservations.\textsuperscript{240} A nationwide Harris Poll asking 1,205 adults from across America, excluding Nevada and New Jersey, their feelings on casino gambling on Indian reservations, found that more than seventy percent believed Indian people should be allowed to operate casinos on the reservations.\textsuperscript{241} In 1995, J. Moore Methods Inc. Poll, of Sacramento, found that sixty to seventy-three percent of voters back reservation casinos, with seventy-five percent backing the continued operation of gaming on Native American reservations.\textsuperscript{242} The J. Moore Methods Poll exemplified a pattern which had been identified since 1993 when a poll conducted by Field Research Corporation showed that more than sixty percent of Californians favored expanding gaming on reservations.\textsuperscript{243} The above polls not only show what the voters want, but also what the voters do not want. Fifty-eight percent of voters oppose Governor Pete Wilson's position of not negotiating gaming compacts with California tribes.\textsuperscript{244}

In addition, most voters feel that Native American gaming should not be restricted by government regulations, which backs an initiative to take the gaming issue out of state government hands.\textsuperscript{245} The people of California across party lines agree with gaming, and what gaming does for Native Americans: "Seventy-nine percent of Republican male voters in California agree tribal government gaming is good . . .,"\textsuperscript{246} "eighty-five percent of Republican women agree that [Native Americans], not state government, should be accountable for keeping tribal gaming free of corruption,"\textsuperscript{247} and "seventy-three percent of Democratic women . . ."\textsuperscript{248}

\begin{thebibliography}{9}
\bibitem{241} See id.
\bibitem{242} See id.
\bibitem{243} See id.
\bibitem{244} See id.
\bibitem{245} See \textit{Viejas Band of Kumeyaay Indian}, supra note 240 (The J. Moore Methods Inc. survey illustrates that point when seventy percent of voters say that they thinking needs no additional government regulations, and more than fifty percent oppose legislative restrictions on Native American reservation casino gaming).
\bibitem{246} Id.
\bibitem{247} Id.
\end{thebibliography}
voters agree with the use of gaming revenue to improve life on the reservations." With the widespread support for Native American gaming on reservations, Attorney General Dan Lungren will probably think twice about running a Governor’s race with the same attitudes Pete Wilson has shown for the Native Americans. Both Governor Pete Wilson and State Attorney General Dan Lungren "steadfastly have refused to negotiate compacts to permit the use of video gambling machines by Native Americans." Their argument is that state law does not permit video gambling, and therefore the state does not have to compact with tribes.

The argument appears hypocritical in the eyes of groups supporting gaming in light of the wide amount of computerized lottery games, and other state-sponsored games of chance. If the states, under the IGRA, allow lotteries and parimutuel wagering, casino games, slot machines electronic facsimiles of games of chance and banking card games, that state must compac with tribes. Now that Governor Wilson has signed a compact with a tribe, he is admitting through his actions that he is not against gambling, just gambling that will generate substantial income for the Native Americans. If the Governor and the State Attorney cannot follow federal law in good faith, then the time has come for the people to enact a law which is easy to follow, gives the tribes the sovereignty they deserve, and puts all the decision making tools that the individual tribes need for self-determination back in the hands of the tribes. In fact, this is exactly what the tribes have decided to do. An initiative that would permit an unlimited number of slot machines, pay five to six percent of net winnings into trust funds earmarked for non-gaming reservations, and give the state thirty days to...

248. Id.
250. Id.
251. See id.
252. See id.
254. See Sweeney & Barfield, supra note 146 (discussing the fact that the machines Wilson wants to approve are not as fast or as profitable as the existing games).
255. See Sweeney, Alliance Rejection, supra note 151.
approve any compact from a tribe, was submitted in January.\textsuperscript{256} When asked about the initiative, Mary Ann Andreas, tribal chair of the Morongo commented that the tribes hope that "the public will see that not only has tribal sovereignty been trampled on here, but democracy, which everyone should be concerned with, has been trampled on."\textsuperscript{257}

If the solutions put forth so far seem too high-minded, then Congress needs to take control and amend the IGRA to adhere to what history has dictated, by taking all reference to state power over Native American sovereignty out of the statute, or by repealing the entire statute and starting over. Changes to the IGRA have been contemplated since its conception in 1988, showing a chance for compromise and changes in the IGRA which would benefit the Native Americans.\textsuperscript{258} In 1995, Senators John McCain, R-Arizona, and Daniel Inouye, D-Hawaii, wanted to create a stronger, independent federal agency to enforce federal standards for Native American gaming.\textsuperscript{259} The amendment would have also limited the states' ability to "put up roadblocks to Indian gambling."\textsuperscript{260} The amendment would have mandated that if a state refused to negotiate a compact within 180 days, then the Secretary of the Interior Department could be asked to end the impasse.\textsuperscript{261} President Gaiaškibos, President of the National Congress of American Indians, stated that "[w]e will continue to speak out against any legislation . . . that infringes on tribal sovereignty, but we will also applaud efforts to provide reasonable measures to ensure the long-term viability and integrity of Indian gaming."\textsuperscript{262} The time has come to speak up against the IGRA when governors, such as Pete Wilson, refuse to negotiate in good faith. Given the willingness to amend the IGRA, an amendment that would bar state involvement in the gaming process of the tribes seems to be the best solution. An amendment to the IGRA would align

\textsuperscript{256}. See id.
\textsuperscript{257}. \textit{Id.} See James P. Sweeney, Tribes Gather 800,000 Names For Gaming Vote, SAN DIEGO UNION-TRIB., Apr. 21, 1998, at A3.
\textsuperscript{259}. See Keith White, Lawmakers Push Indian Gaming Act Amendment: Tribes, States Haggle, GANNETT NEWS SERVICE, June 22, 1995, at 2.
\textsuperscript{261}. See id.
\textsuperscript{262}. White, supra note 259, at 2.
it with past federal case law, and allow the tribes to have the sovereignty to make the decisions effecting their self-sufficiency and self-government befitting the “findings” section of the IGRA.

Another solution that has entered the controversy is a set of guidelines drafted by the Secretary of the Interior which would let him approve Native American casinos over the objection of governors and the elected officials who do not want tribal gaming in their states. The new guidelines lay out a step-by-step process through which tribes might apply directly to the Interior Secretary for gaming compacts. Tribes could pursue that option only after states refuse to negotiate, then refuse to be sued for it. Secretary Babbitt’s reasoning for establishing the guidelines is to give the tribes a remedy under the IGRA, which was taken away from them in the U.S. Supreme Court case, Seminole Nation v. Florida. Tribes have complained that the decision left them no recourse when states refuse to bargain in good faith. However, disagreement has come to the forefront as to whether the new guidelines will necessarily assist the tribes in California. Howard Dickstein, an attorney for the Pala Band of Native Americans stated that, the “position of the Secretary] is very close to the position that was advocated by the states,” and furthermore, while the new guidelines “could get the tribes a compact, it does not appear that it’s going to get tribes a different scope of gaming, an expanded scope of gaming.”

Mark Nichols, the chief executive officer of the Cabazon Indians of Indio said that even though Governor Wilson has refused to negotiate a

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263. See supra Part II-B (discussing the history of case law).
266. See id.
267. Seminole Tribe of Florida v. Florida, 517 U.S. 44, (1996) (holding that: (1) Congress lacked authority under the Indian commerce clause to abrogate the states’ Eleventh Amendment immunity, and (2) the doctrine of Ex parte Young, 209 U.S. 123 (1908)—eleventh amendment of the United States Constitution does not bar federal actions against state officials for their official actions—did not apply in light of intricate remedial provisions of the IGRA).
268. See Barfield, supra note 265.
269. Id.
270. See Mark Henry, State’s Gaming Tribes Drafting Alternative Model For Casino Pact, PRESS-ENTERPRISE, Dec. 23, 1997, at A12 (Mark Nichols coming to a different conclusion than Howard Dickstein).
compact based on his belief that video slot machines are illegal in California, Nichols feels that the federal government would allow video gambling in California because of the present existence of the state lottery which is a form of electronic gaming.\textsuperscript{271} Whatever the outcome, the main objective is to create a level playing field for tribes when states refuse to negotiate.\textsuperscript{272} The new guidelines have of course stirred up some controversy from state representatives who feel that the state of Nevada may lose money.

Senator Richard Bryan, D-Nevada, has expressed concern for what he has termed "the floodgates for tribal casinos in California."\textsuperscript{273} Senator Bryan apparently feels that a compact with California tribes would threaten the Nevada gaming industry.\textsuperscript{274} In addition, the Governor of Nevada feels the same way, calling Babbitt's proposal "disastrous for Nevada," considering the "fact that California provides a majority of the Nevada market."\textsuperscript{275} The fears of the Nevada Governor are unfounded to date, since no reports of any negative impact on Nevada gaming from California tribal gaming have surfaced.\textsuperscript{276} In addition, California should not take into account whether California's moneymaking endeavors, such as gaming, which economically benefit its citizens, will adversely effect Nevada's ability to make money.

Secretary Babbitt's concern for the Native Americans comes none too soon, as California's refusal has also driven tribes to draft their own version of a casino pact.\textsuperscript{277} One such tribally-drafted pact would require sharing winnings with surrounding communities and police, in an effort to boost economic growth.\textsuperscript{278} The refusal of Governor Wilson to compact in good faith under the IGRA, and his proposal to put a statewide cap on the number of gaming devices, has driven the California tribes to propose their own compact.\textsuperscript{279} Something must be done to allow Native Americans to continue on the road to sovereignty,

\begin{itemize}
  \item \textsuperscript{271} See id.
  \item \textsuperscript{272} See Barfield, supra note 265, at A4.
  \item \textsuperscript{273} Tony Batt, Plan Gives Final OK to Babbitt, LAS VEGAS REV.-J., Dec. 6, 1997, at 1A.
  \item \textsuperscript{274} See id.
  \item \textsuperscript{275} Id.
  \item \textsuperscript{276} When the comment was written there had been no reports on whether any negative ramifications from Native American gaming in California had effected the Nevada gaming industry.
  \item \textsuperscript{277} See Henry, supra note 270, at A12.
  \item \textsuperscript{278} See id.
  \item \textsuperscript{279} See id.
\end{itemize}
and the Secretary and the tribes are taking the initiative, in light of the refusal of Governor Wilson to negotiate in good faith.\textsuperscript{280}

The above solutions are just a few that will reinstate tribal control over the economic issues that the tribes must address to continue on the road to complete sovereignty.\textsuperscript{281}

\textbf{PART VII}

\textbf{CONCLUSION}

To enable the Native American people of California to thrive once again, and to comply with the purpose of the relationship between the Native American people and the federal government, Native Americans must be given the opportunity to live as sovereign nations. The IGRA has not fared well for the tribes in California, or for the state of California. The IGRA has slowed down the economic development of California tribes who want to expand, and allowed the Governor of California to control the future of tribal economics. In addition, the IGRA is inconsistent with past case law and the Constitution of the United States. The benefits conferred on Native American communities, as well as non-Native American communities through Native American gaming, cannot be ignored. Considering that gaming is positive for the people of California and for Native American gaming communities, and considering that the IGRA is inconsistent with past law, the only feasible legal avenues are for the federal government to either remain a protective guardian for Native American tribes, or allow the tribes to have control of all tribal relations as sovereign nations. Similarly, states also have a choice and could allow the individual tribes within their

\textsuperscript{280} It is the author's opinion that the Pala compact which was with one small non-gaming tribe, which many other tribes disagree with, is not a compact of "good faith". \textit{See supra} note 146 (discussing tribal displeasure with the compacting negotiations).

\textsuperscript{281} The Ninth Circuit recently decided a case that could effectively deter Governors from negotiating in bad faith because of a moral dilemma with Class III gaming by tribes. In \textit{United States v. Spokane Tribe of Indians}, 139 F. 3d 1297 (9th Cir. 1998), the court held that Class III gaming provisions under the IGRA cannot form the basis for an injunction against a tribe. The court found that before the lower court can permit enforcement against a gaming tribe, it must engage in a factual investigation when there are allegations that the state has engaged in bad faith negotiations, or has refused to bargain at all.
states to decide for themselves whether to begin or how to continue gaming.

Native American people in California deserve a chance to be economically independent, and develop the communities within the reservation lands that the Native Americans reserved when the rest of their lands were taken. It is up to the lawmakers and the people of the state of California to provide them the autonomy they deserve.

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