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## The Seminole Tribe and the Origins of Indian Gaming

*Matthew L.M. Fletcher\**

The Seminole Tribe of Florida (“Tribe”) has played, perhaps, the most important role in the origins and development of Indian gaming in the United States of any single tribe. The Tribe opened the first tribally owned, high stakes bingo hall in 1979.<sup>1</sup> The Tribe, in 1981, was involved in one of the earliest lower court decisions, which formed the basis of the legal theory excluding most states from the regulation of high stakes bingo,<sup>2</sup> a theory that Congress largely codified in the Indian Gaming Regulatory Act (IGRA) years later.<sup>3</sup> The Tribe was a party to the Supreme Court decision in 1996 that radically altered the bargaining power between tribes and states over the negotiation and regulation of casino-style gaming under IGRA.<sup>4</sup> And more recently, the Tribe has been a leading participant in negotiations and litigation over the regulatory landscape of Indian gaming after the 1996 decision.<sup>5</sup> The Tribe is one of the most successful Indian gaming tribes in the nation.

This paper traces that history, but also offers thoughts on how the culture and traditional governance structures of the Seminole Tribe played a part in its leadership role in the arena of Indian gaming. Part I surveys traditional Seminole governance structures, leading into Part II, which surveys the recent history of the Tribe, including the origins of their gaming industry. Parts III and IV discuss the Tribe’s involvement in major Indian gaming litigation and negotiation.

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\* Professor of Law and Director of the Indigenous Law and Policy Center, Michigan State University College of Law. Thanks to Alex Pearl. I write about the Seminole Tribe of Florida with no prior experience or expertise on that Indian nation, and I do so with the greatest respect and humility.

<sup>1</sup> See JESSICA R. CATTELINO, HIGH STAKES: FLORIDA SEMINOLE GAMING AND SOVEREIGNTY 1 (2008). The Keweenaw Bay Indian Community enacted the first modern tribal gaming ordinance in 1974, but no casino appeared there until 1983. See Bradley T. Dakota, *The Father of Indian Casino Gaming*, 20:1 INDIAN GAMING, Jan. 2010, at 44, available at [http://www.indiangaming.com/istore/Jan10\\_Dakota.pdf](http://www.indiangaming.com/istore/Jan10_Dakota.pdf).

<sup>2</sup> See *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982).

<sup>3</sup> See Pub. L. No. 100-497, 102 Stat. 2467 (1988) (codified as amended at 25 U.S.C. § 2701 *et seq.*).

<sup>4</sup> See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

<sup>5</sup> See *State of Florida v. Seminole Tribe of Florida*, 181 F.3d 1237 (11th Cir. 1999); *Florida House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008), *cert. denied sub nom.*, *Seminole Tribe of Florida v. Florida House of Representatives*, 555 U.S. 1212 (2009).

## I. TRADITIONAL SEMINOLE GOVERNANCE.

The modern incarnation of the Seminole Tribe of Florida was built on conflict, and the tribal governance structures, which continue to inform tribal decision-making, adapted to meet that conflict. Nineteenth century conflict between the Seminoles and outsiders was unusually violent and forced the Seminole Tribe to develop a culture of governance that all but thrived on conflict. As with so many other tribes, the Seminole governance culture became one of survival.

According to commentators, warfare was an important means of positive disruption and regeneration for the Maskókî (or Muscogee, or Creek, in its Americanized form) nations, which include the modern Seminole Tribe:

Warfare calibrated and recalibrated intertribal relations. It provided the single most valuable, and viable, path to preferment for males (and, in certain instances, for females), and mixed and remixed marriageability options for females, among other critical processes. The core and plurality of items wrapped into the Medicine bundle . . . always were war-related items.<sup>6</sup>

The Seminoles, who today largely descend from Miccosukee (or Mikasuki) language speakers, and their relatives, allies, and partners who largely spoke Maskókî, participated in numerous wars with American forces in the nineteenth century: this ultimate series of the United States Wars of Indian Removal east of the Mississippi River would be fought against descendants of many of the same Maskókî tribes, as the Creek Wars of 1813-14 (in Alabama); the Creek War of 1836 (in Georgia); and the First (1817-18); Second (1835-42), and Third (1856-58) Seminole Wars (in Florida).<sup>7</sup> These were thoroughly devastating military conflicts that shape Seminole governance to this day. The federal government removed most Seminoles to the Oklahoma Indian Territory after the conclusion of these wars.<sup>8</sup>

Of the Miccosukee and Maskókî Indians who settled permanently in what is now the State of Florida, there are three main entities. There is the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, both federally recognized tribes, and there is a group of independent traditional Seminoles who decline membership in either Tribe.<sup>9</sup> Much of what will be said here about the Seminole Tribe is true for the Miccosukee

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<sup>6</sup> PATRICIA RILES WICKMAN, WARRIORS WITHOUT WAR: SEMINOLE LEADERSHIP IN THE LATE TWENTIETH CENTURY 2-3 (2012).

<sup>7</sup> See generally JAMES W. COVINGTON, THE SEMINOLES OF FLORIDA 28-144 (1993).

<sup>8</sup> See HARRY A. KERSEY, JR., AN ASSUMPTION OF SOVEREIGNTY: SOCIAL AND POLITICAL TRANSFORMATION AMONG THE FLORIDA SEMINOLES 1953-1979 at 13 (1996).

<sup>9</sup> See WICKMAN, *supra* note 6, at 4.

Tribe, though these tribes have followed parallel but different paths.

Prior to reorganization in 1957, Seminole governance was decentralized. In the latter half of the nineteenth century, the Seminoles lived in loosely organized, family camps that one commentator argues “were not even bands in the strict sense of the term because they lacked a recognized chief or leader.”<sup>10</sup> Seminole bands might have elected a leader, but perhaps did not need to, as an Interior Department official noted in 1899, “[t]he tribe has no head chief at present. In accordance with the oldest customs the office was elective.”<sup>11</sup>

The strongest organizations were “busk groups . . . headed by a medicine man and council of elders.”<sup>12</sup> An 1894 news report, quoting a Washington D.C. muckety-muck, described that year’s Green Corn ceremonies:

The Seminoles keep up their annual feast, which is called the green corn dance. It takes place during the first quarter of the moon in June. All the living members of the tribe gather at the neighborhood of Chief Tallahassee’s abode at this period. Then all their laws are made and they pow-wow for days and days until all have been heard who have anything to suggest for the good of the tribe or for their entertainment. This is also the popular time for weddings, and often a dozen marriages are celebrated while the green corn dance continues.<sup>13</sup>

Even wars with the Americans stopped during Green Corn ceremonies.<sup>14</sup>

Each year during Green Corn ceremonies, the elders met to discuss the previous year’s criminal incidents, an event sometimes called “court day.”<sup>15</sup> Seminole criminal penalties could be brutal, with ears and noses clipped, banishments, and even executions.<sup>16</sup> In 1938, after efforts to rehabilitate an alcoholic Seminole who had committed two murders failed, evidenced when he assaulted a pregnant woman, a Seminole elder named John

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<sup>10</sup> KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 13.

<sup>11</sup> *Last of Their Tribe: Seminoles Indians Cling to Their Ancient Traditions; Uncle Sam’s Queerest Wards*, WASH. POST., May 21, 1899, at 24.

<sup>12</sup> KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 13.

<sup>13</sup> *See* WASH. POST., Dec. 4, 1894, at 12.

<sup>14</sup> *See The Indian Aggressions—Prospects of War—Supplies of the Enemy*, N.Y. HERALD, Aug. 24, 1849, at 4.

<sup>15</sup> *See* KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 150; *see also Court Ruling Lifts Spirits of Seminoles*, CHI. TRIB., Sept. 14, 1967, at L6 (“The climax of the five-day [Green Corn] festival is Court day. In the presence of the Seminoles’ sacred medicine bundle, a council of elders formulates policy and decides the punishment of any Indians who have broken the tribal laws during the year.”).

<sup>16</sup> *See* COVINGTON, *supra* note 7, at 150-51; *see also Court Ruling Lifts Spirits of Seminoles*, CHI. TRIB., Sept. 14, 1967, at L6 (“The usual penalty is social banishment, but in modern times at least one unrepentant murderer was sentenced to death by the elders.”).

Osceola executed the culprit, a man named Johnny Billy, with a shotgun.<sup>17</sup> Seminole elders, referred to by academics as medicine men, shaman, and guardians of sacred bundles, treated the sick, and advised the community on governance issues.<sup>18</sup>

In a 1913 report to Congress, Lucien A. Spencer, Special Commissioner to the Florida Seminoles, confirmed that the Seminole's tribal governance was patriarchal and that most tribal governance business took place at the Green Corn Dance:

The Seminole government is patriarchal in form, the oldest man in the family being the patriarch. The heads of the different families then form a council, which is the supreme court of the tribe. The principal business of the tribe is transacted at the Shot-Cataw or green corn dance. The entire tribe is assembled at this time. The meeting lasts four days, from the "little moon" in July, and is a politico-religious festival which includes ceremonies of purification, endurance, and skill. The "black drink" is still given, and acts as an emetic and a purge. The boys are still initiated into the "mysteries" by the older men, who place live coals upon them.<sup>19</sup>

A few years later, the Seminole Indian Agency reported to Congress that, outside of the Green Corn ceremonial governance activities, local governance was very strict and successful at maintaining the rule of law, much to the implied satisfaction of the local non-Indian governments:

The Seminoles are an orderly people. They are divided into bands each under a headman who enforces strict discipline and requires perfect obedience to the unwritten code. When a statutory law is broken it is due to ignorance, and when the laws are made known to an Indian, no second case of violation has ever been recorded against them. The local courts recognize this fact, and usually the judges seek to impress upon an Indian who is undergoing trial the nature of the law that he has broken, knowing that he will carry the news of this law to his people and thus prevent it from being broken again.

The tribal laws of the Indians are just and inflexible, and if one is violated the erring one accepts the penalty, even though it be death itself, without a protest.

Indian-custom marriage still prevails, but such marriages are more binding among them than legal marriages are among white

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<sup>17</sup> See COVINGTON, *supra* note 7, at 151.

<sup>18</sup> See *id.* at 151-53.

<sup>19</sup> LUCIEN A. SPENCER, SEMINOLE INDIANS IN FLORIDA, S. REP. DOC. NO. 63-42, at 5 (1st Sess. 1913).

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people.<sup>20</sup>

The report further establishes that Seminoles respect private property, and do not gamble:

Probably no people on earth have a higher standard of morality than the Florida Seminoles, and it is not a single standard.

The Indians have a high respect for property rights, and theft and lying are serious crimes in their unwritten code.

Gambling is unknown among them.<sup>21</sup>

The report also notes, possibly to the surprise of its readers, that Seminole women were highly respected community members:

The domestic life of the Florida Seminoles offers a great contrast to that of most other Indians. The women are treated with much consideration and their wishes control family policy. The women perform the greater part of the work about the camps, but not as menials; for indeed, they are quite independent, and are the financiers of the home.<sup>22</sup>

Twentieth-century American feminists could have used Seminole traditions to effectively shame American misogynists, noting that Seminole women have always voted in tribal elections when they turn eighteen, in accordance with tribal tradition: “[s]ince time immemorial [women] have had a voice in their government, and have voted when they reached the age of 18.”<sup>23</sup> Moreover, Seminole children took the names of their mothers, and Seminole husbands deferred to their mothers-in-law: “[i]f Willie Gopher marries Jennie Jumper, their children take the name of Jumper, not Gopher. Not only does the brave take his wife’s family name, but he lives in the camp of his wife’s family and is openly subject to the wishes of his mother-in-law.”<sup>24</sup>

After the Bureau of Indian Affairs established three reservations in Florida in the 1930s and 1940s,<sup>25</sup> to which some but not all Seminoles moved, the traditional governance structure became fractured.<sup>26</sup> The

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<sup>20</sup> LUCIEN A. SPENCER, SPECIAL REPORT OF THE FLORIDA SEMINOLE AGENCY, S. REP. DOC. NO. 67-102, at 3 (2d Sess. 1921).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> See Helen Van Hoy Smith, *Seminoles Have Happy Hunting Ground in Dixie*, CHI. DAILY TRIB., June 23, 1940, at G6.

<sup>24</sup> See *id.*

<sup>25</sup> See R.T. King, *Clan Affiliation and Leadership among the Twentieth Century Florida Indians*, 55:2 FLA. HIST. Q. 138, 138 (1976).

<sup>26</sup> See KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 14.

government reintroduced a cattle herd to Seminoles in the 1930s as well.<sup>27</sup> As early as 1932, Roy Nash's *Survey of the Seminole Indians of Florida* reported that fewer and fewer Seminoles attended the annual Green Corn ceremonies.<sup>28</sup> The New Deal era brought a permanent federal presence to the Seminole communities in the form of a federal Indian agency, and also initiated a stronger foothold of Christianity into the Seminole communities.<sup>29</sup> Since the 1950s, "the civil influence of the medicine keepers, and hence the Panther clan, has declined. There are several reasons for this, but most significant seems to be the activity of the Baptist missionaries."<sup>30</sup>

In 1957, the Secretary of Interior held elections over a proposed constitution and federal charter of incorporation, and the Seminole Tribe electorate overwhelmingly approved them both.<sup>31</sup> Traditional governance structures of Seminoles suffered, as they had so often in other Indian communities nationally after the establishment of constitutional and corporate governance structures:

This organization was directed and shaped both by the Bureau of Indian Affairs and by representatives of the Baptist church. Medicine keepers had no place in the governmental structures which developed; they and their councils of elders gave way to elected chairmen, presidents, and reservation representatives. Under this theoretically democratic system, a single clan has provided most of the presidents and chairmen. Comprised of only about one-fifth of the Seminole population, this clan is smaller than the one which provides the medicine keepers.<sup>32</sup>

After the enactment of the Indian Claims Commission Act, the Seminoles filed claims in 1950 seeking compensation for four federal land takings of approximately 40 million acres, and claiming more than \$47 million in damages.<sup>33</sup> They fought off Department of Justice efforts to dismiss the claims, and an effort by the Seminole Nation of Oklahoma to take over the claim.<sup>34</sup> The Miccosukee Tribe unsuccessfully sought to be

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<sup>27</sup> See COVINGTON, *supra* note 7, at 212-13.

<sup>28</sup> See ROY NASH, *SURVEY OF SEMINOLE INDIANS OF FLORIDA* 26 (1932) (*reprinted in* S. DOC. 71-314 (3d Sess.)).

<sup>29</sup> See *id.* at 19-32.

<sup>30</sup> King, *supra* note 25, at 143.

<sup>31</sup> See COVINGTON, *supra* note 7, at 242.

<sup>32</sup> King, *supra* note 25, at 138.

<sup>33</sup> Harry A. Kersey Jr., *The Florida Seminole Land Claims Case, 1950-1990*, 72:1 FLA. HIST. Q. 35, 38 (1993).

<sup>34</sup> See *id.* at 38-39; see also COVINGTON, *supra* note 7, at 235 ("Matters become somewhat confused when the Seminoles from Oklahoma filed a petition in 1951 with the Indian Claims Commission asserting that the Florida Seminoles were actually 'outlaws' and that all awards should be

excluded from the claims, arguing that to allow the adjudication of the claims would foreclose their rights to reclaim the land.<sup>35</sup> Later, in 1962, the Miccosukees attempted to intervene and participate in the award, but the motion to intervene failed.<sup>36</sup> In 1970, two decades after the Seminoles filed the claim, the Commission recommended that Congress award more than \$12 million to the Tribe.<sup>37</sup> After settlement, the Florida Seminoles, the Oklahoma Seminoles, and the Miccosukees agreed to a revised judgment of \$16 million.<sup>38</sup> Due to intertribal conflicts, the distribution of the judgment took another fourteen years.<sup>39</sup>

The early years of official federal recognition further undermined traditional governance. During this period, the Seminoles faced down Congress and defeated efforts to enact legislation that would terminate the relationship between the Federal Government and the Seminole Tribe.<sup>40</sup> The 1950s—the heart of the termination era of federal Indian policy—were not good years for an Indian tribe to be reorganizing from a traditional to a constitutional and corporate form of government. Generally speaking, the Seminoles governed themselves through consensus and the strictures imposed by the elders. But the 1957 Constitution and corporate charter required Seminoles to elect leaders, who might or might not have valuable skills as leaders, or be respected by the community enough to be followed.<sup>41</sup> One expert argues that “[t]he Seminoles’ willingness to accept their leadership may also indicate that Christianity provided a vehicle for legitimizing a behavioral pattern—telling others what to do—that was objectionable in traditional Seminole culture.”<sup>42</sup> Interestingly, it appears the tribal electorate voted in individuals from the traditional leadership clans of the traditional White town moiety for nearly all of the first few decades of elections, imposing a layer of traditional governance on the constitutional and corporate structures adopted in 1957.<sup>43</sup>

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paid to the Oklahoma Seminoles.”).

<sup>35</sup> See Kersey, *supra* note 33, at 40.

<sup>36</sup> See *id.* at 42-43.

<sup>37</sup> See *Seminole Indians of the State of Florida v. United States*, 24 Ind. Cl. Comm. 1, 20 (1970); Kersey, *supra* note 33, at 43.

<sup>38</sup> See *Seminole Indians of the State of Florida v. United States*, 38 Ind. Cl. Comm. 62, 91 (1976); see also Kersey, *supra* note 33, at 43-44.

<sup>39</sup> See Kersey, *supra* note 33, at 45.

<sup>40</sup> See KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 23-50.

<sup>41</sup> See *id.* at 81-82.

<sup>42</sup> *Id.* at 82.

<sup>43</sup> See King, *supra* note 25, at 149-51.



## II. SEMINOLE GOVERNANCE CULTURE AND THE ORIGINS OF INDIAN HIGH STAKES BINGO.

Twentieth century style conflict between the Seminole Tribe and opposing governments also drove the rise of Indian gaming in Florida. While intergovernmental conflict no longer emphasized violence and warfare as in the nineteenth century, modern conflicts that relied on law enforcement rhetoric and litigation served the same purpose as military conflict. This section attempts to show that local government opposition through conflict to Seminole gaming was far less effective at limiting the spread of gaming. In fact, antagonistic conflict all but ensured that Seminole gaming would be at the forefront of Seminole nationhood for decades to come.

Seminole tribal governance, as with so many other tribes, received a huge boost when the federal government conclusively turned away from termination toward self-determination. In the 1960s, the government authorized some tribes to establish housing authorities, “apparently the first examples of . . . the Executive branch treating Indian tribes like real governments . . .”<sup>44</sup> Prior to 1970, the Federal Government heavily governed Indian country, even the internal workings of tribal governments in most important respects.<sup>45</sup> Congress appropriated Indian affairs money to the Department of Interior, which then administered federal programs top to bottom in Indian country. The Bureau of Indian Affairs administered tribal justice systems, health, public safety, and even basic and fundamental tribal governance activities like tribal elections and tribal membership decisions. Further, as Chairman Billie noted, much of tribal governance activity depended on federal grants.

In the 1970s, Congress finally turned to a policy of tribal self-determination, embodied in the 1975 Indian Self-Determination and

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<sup>44</sup> PHILIP S. DELORIA, THE ERA OF INDIAN SELF-DETERMINATION: AN OVERVIEW, IN INDIAN SELF-RULE: FIRST-HAND ACCOUNTS OF INDIAN-WHITE RELATIONS FROM ROOSEVELT TO REAGAN 191, 194 (Kenneth R. Philp ed., 1986).

<sup>45</sup> See generally C. Blue Clark, *How Bad It Really Was Before World War II: Sovereignty*, 23 OKLA. CITY U. L. REV. 175, 186 (1998) (“After 1900, Interior Department personnel in the BIA intervened in American Indian governmental activities across the United States, ignored tribal elected members’ wishes, and manipulated Indian people, resources, and tribal institutions.”); Richard Schifter, *Trends in Federal Indian Administration*, 15 S.D. L. REV. 1, 1 (1970) (“In an earlier period in the history of Federal-Indian relations the decisions and policies of the Commissioner of Indian Affairs were the most important factors determining the course of Indian life. At the reservation level, Indians looked to the agency superintendent, the local representative of the Commissioner, whose role vis-à-vis the reservation Indian could best be analogized to the lord of the manor in the feudal era, who acted as the supreme governmental authority and also attempted to regulate the personal life of the people under his jurisdiction. Indians had come to accept the authority of the Bureau of Indian Affairs to regulate their lives and had in many instances developed a feeling of dependence on the Bureau.”).

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Education Assistance Act.<sup>46</sup> Though the Act granted tribes the right and opportunity to take over federal administration of tribal programming, congressional appropriations did not improve, and have declined steadily ever since. Moreover, many tribal governments were unprepared in the early years of self-determination to administer federal programs and their auditing and reporting requirements, which require significant expertise, as evidenced by the experience of the Seminole Tribe. In the first two decades of tribal constitutional and corporate governance, some Seminoles believed that the federal supervision inherent and endemic to tribal governments was holding the tribe back. The Bureau of Indian Affairs paid its own employees to administer federal programs to Seminole constituents, and many Seminoles believed the federal government had interfered with internal tribal governance, including the election of 1967, where non-White town moiety clans had been elected to leadership positions.<sup>47</sup> Howard E. Tommie, tribal chairman during the 1970s, stated his support for replacing BIA employees with tribal members:

Of course, we had a Bureau of Indian Affairs. I do not want to say anything bad about them, but it is a bureaucracy. For some reason or another, they seem to do whatever their guidelines are, which are very minimal. They have never lived here like I do . . . . For a guy sitting over there with a GS 15, 20, 30, whatever it is, I could hire two people and a secretary with that money.<sup>48</sup>

He added that “federal purse strings” encouraged opportunistic Indians to take advantage of the system and added an unwelcome level of corruption to tribal governance.<sup>49</sup>

In 1976, the Seminoles first turned to opening smokeshops to generate government revenue and establish a growing tribal economy, selling cigarettes tax-free.<sup>50</sup> Adding in the federal self-determination contract revenues “from 1968 to 1977[,] the tribal income soared from \$600,000 to \$4.5 million per year . . . .”<sup>51</sup> Broward County Sheriff Edward Stack, supported by a local cigarette vendor that competed with the Seminole smokeshops, unsuccessfully sued the state to force it to implement its tax

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<sup>46</sup> See Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 88 Stat. 2203 (1975) (codified as amended at 25 U.S.C. § 450a); see also Indian Self-Determination Amendments of 1987, Pub. L. 100-472, 102 Stat. 2285 (1988) (establishing tribal self-governance demonstration project); Indian Self-Determination Act Amendments of 1994, Pub. L. 103-413, 108 Stat. 4250 (1994) (codified at 25 U.S.C. § 458aa) (making tribal self-governance project permanent).

<sup>47</sup> See King, *supra* note 25, at 150-51.

<sup>48</sup> KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 117.

<sup>49</sup> See *id.* at 117-18.

<sup>50</sup> See *id.* at 121.

<sup>51</sup> *Id.*

regime on the Seminoles.<sup>52</sup> The State Legislature enacted a statute authorizing the tribe to continue selling tax-free smokes, which has since been amended to encourage negotiation of tribal-state tax agreements.<sup>53</sup>

But selling smokes was not enough. Tax-free tobacco sales generated about \$1.5 million for the tribe in the early years.<sup>54</sup> Seminole gaming, according to former chairman James Billie, started with a realization that reliance upon the Federal Government was no guarantee of sustainable tribal independence, autonomy, and sovereignty. Federal recognition made the Seminole Tribe eligible for federal services and additional federal grant money, but as Billie stated, “[t]he United States wasn’t built on grants.”<sup>55</sup> Seminole nationhood would not be either. A year after the bingo hall opened, bingo revenue hit \$1 million per month and smokeshop revenue, bolstered by the bingo business, reached \$800,000 per month.<sup>56</sup>

The local government response to the Seminole Tribe’s bingo operations was predictable and typical for the time. Embodied by Broward County Sheriff Robert Butterworth, the governmental response to the Seminole bingo facility was to threaten to shut down the facility by force; that is, “make arrests.”<sup>57</sup> Sheriff Butterworth repeatedly threatened to close the facility, but, after a federal judge enjoined local action to regulate the tribe, he settled for the court’s allowance of deputies in the bingo facility.<sup>58</sup> That the tribe sued to enjoin Sheriff Butterworth moved the conflict from the law enforcement realm into the courtroom, but in either case, the discussion over tribal revenue generation would be between adversaries.

It is important to interject that tribal-state-municipal relations often are adversarial, but it is entirely unclear why this is so. Sheriff Butterworth and his focus on law enforcement authority over the Seminole Tribe forced the controversy into a far more adversarial mode than necessary. It did not have to be that way. For example, in the microcosm of Seminole tribal bingo in the late 1970s and early 1980s, the anecdotal evidence suggests that the local population strongly supported tribal bingo:

[T]he men and women who come from as far as Chicago and New York to play bingo on the Seminole reservation don’t like the idea that

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<sup>52</sup> See *id.*; *Vending Unlimited, Inc. v. State, Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco*, 364 So. 2d 548 (Fla. 1st Dist. Ct. App. 1978).

<sup>53</sup> See FLA. STAT. ANN. § 210.1801 (West 2010).

<sup>54</sup> KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 127.

<sup>55</sup> *Seminole Indians try bingo to raise money*, LAKELAND LEDGER (Fla.), Dec. 10, 1979, at 4B.

<sup>56</sup> Tom Tiede, *Seminoles Testing Florida Sovereignty*, HARLAN (KY.) DAILY ENTER, Jan. 14, 1981, at 8B.

<sup>57</sup> KERSEY, AN ASSUMPTION OF SOVEREIGNTY, *supra* note 8, at 128.

<sup>58</sup> See *Bingo! Seminole Indian—and Players—Hit Jackpot*, ST. PETERSBURG TIMES, Dec. 17, 1979, at 2B (“Roettger’s ruling will allow deputies to enter the bingo parlor, but they will not be allowed to use any evidence they gather.”).

Butterworth might close down the 1,200 seat hall.

“I think it stinks,” Dorothy Sena, a local retailer. “I think the Indians are entitled. They’ve been done out of so much, they deserve a break.”

“Why do they bother the poor Indians?” demanded a woman from Venice, who wouldn’t give her name. “At least they’re not out on welfare – they’re out trying to make a living. It’s their country, too. They helped found it.”<sup>59</sup>

Still Sheriff Butterworth argued that tribal bingo violated state and local law and alleged that Seminole business partners had links to organized crime.<sup>60</sup> Butterworth revealed no legal or factual support for these positions but still maintained the lead in responding and reacting to the Seminole bingo initiative.

What is most confusing, almost comically, about the rhetoric in opposition to Seminole bingo is the essentializing of Seminole culture. Opponents, both public and official, expressed disappointment in the Seminole bingo operations because, in their view, Indians should not be engaging in such an ignoble activity. In 1982, the Seminole Tribe opened a bingo hall in Tampa, Florida, alleged “to be used only for a museum and a burial ground for the remains of Seminoles who were held captive at a fort during the Seminole War of 1835.”<sup>61</sup> Newspaper reports highlight commentators denigrating the tribe for not being “noble” by engaging in stereotypical tribal activities like selling little “canoes,” but rather utilizing gaming to generate governmental revenue. This response is also typical nationally. Again and again, gaming opponents argue that Indians have cultural strength and tribal gaming undermines Indian culture. If a major goal of tribal governance is to preserve and protect Indian cultures, which it is, and tribal governance is impossible absent sufficient tribal government revenues, then tribal economic development is critical to tribal governance and Indian cultures.

Put differently, Indian gaming is a twentieth century response to difficult governance circumstances, analogous to nineteenth century violent

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<sup>59</sup> See e.g., Anne S. Crowley, *Bingo Becomes Indians’ Best Revenge; Sheriff Trying to Head Tribe Off At Pass*, DAYTONA BEACH MORNING J., July 11, 1981, at 9C.

<sup>60</sup> See Janet Guyon, *Those Pesky Indians Are Causing Trouble Again—with Bingo; A Florida Sheriff Attempts To Close Seminole Parlor; A ‘Nightmare’ for Lawmen*, WALL ST. J., Sept. 9, 1980, at 1 (“[Butterworth’s] office, which investigated Seminole Bingo for several months, hints darkly that Seminole Management may be linked with organized crime.”).

<sup>61</sup> Robert Barnes, *Seminoles Open Bingo Parlor to Overslow Crowd*, ST. PETERSBURG TIMES, June 2, 1982, at 1B.

opposition to American military adventuring. Tribal governmental response to outrageously unfavorable circumstances may be affected and informed by tribal culture, but tribal governmental response itself is not tribal culture. Recall that tribal governance is about survival first and foremost, even if that means engaging in activities many people find distasteful and that many governments regulate as vice. Tribal governance is also about the restoration of tribal lands and culture, which are inextricably intertwined.

The Seminole Tribe's initiative to engage in high stakes bingo as a response to poverty, land dispossession, federal control of governance, and chronically underfunded governmental resources is wholly consistent with tribal governmental responses to adversity. Survival is a complicated endeavor, driven by desperation.

Seminole tribal leadership's rhetorical responses to the law enforcement and litigation strategy, bolstered by rhetorical attacks in the newspapers, were powerful: "I was screwed out of my land (in the past),' said Chairman James Billie. 'Believe me, I still remember those things. *The battle goes on every day.*'"<sup>62</sup>

### III. THE STATE'S VICTORY IN *Seminole Tribe of Florida v. Florida*.

The Seminole Tribe stayed in the forefront of Indian gaming nationally throughout the 1980s and 1990s, even though the Tribe suffered a painful loss at the Supreme Court in 1996.

Sheriff Butterworth's crusade to control Seminole bingo finally came to an end in 1982, when the Supreme Court declined to hear Butterworth's appeal.<sup>63</sup> The Tribe prevailed in the Fifth Circuit on the theory that, even though Florida could assert its criminal laws inside of Seminole reservation lands through Public Law 280, bingo was not within the purview of any criminal statute under principles of Federal Indian law.<sup>64</sup> A few years later, the Supreme Court adopted substantially the same theory in California's challenge to Indian bingo.<sup>65</sup>

In that case, the Seminole Tribe filed an amicus brief detailing its experiences with bingo and, implicitly, with Sheriff Butterworth.<sup>66</sup> The key portion of the brief highlighted the positive governance aspects of bingo

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<sup>62</sup> Crowley, *supra* note 59, at 9C (emphasis added).

<sup>63</sup> See *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982).

<sup>64</sup> See *id.* at 311.

<sup>65</sup> See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

<sup>66</sup> See Brief for Seminole Tribe of Florida & the Fond Du Lac Band of Lake Superior Chippewa of Minnesota as Amici Curiae Supporting Appellees, *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (No. 85-1708), 1986 WL 728103.

revenue:

A primary source of income is bingo. Seminole bingo commenced in 1979. Since then those profits have enabled the Tribe to enhance the health, housing, education, law enforcement, and communications needs of tribal members in ways that are both basic and extraordinary. In 1982 a multi-purpose community center was built on the Hollywood Reservation to house a day care center, a senior citizens center, and a health care center. Tribal member homes on the Big Cypress, Brighton, and Hollywood Reservations were rehabilitated in 1980 and 1982 to bring them up to code requirements. In 1984 and 1985[,] Community Centers were constructed in Big Cypress and Brighton to house senior citizens, day care, and education programs. These facilities were all partially funded by the Tribe's revenues. Last year a medical social worker was hired, paid solely by the Tribe. The Tribe provides funds for nutrition programs, health delivery systems, commodity food programs, community care for the elderly, and adult education programs.

Between 1945 and 1977 an average of 4.3 tribal members per year graduated from high school. From 1978 to 1986, there were an average of thirteen high school graduates per year. From 1945 to 1977 nine tribal members received college or junior college degrees. From 1978 to 1986 twenty-eight members graduated from college or junior college, including one person who received a master[']s degree, and another who received a law degree. The Tribe now provides scholarships for worthy students, and of the twenty-seven identifiable special education programs available to tribal members, twenty are either wholly or partially funded by the Tribe.

Since 1982[,] the Tribe has funded a Seminole Cultural Education program which operates on all the residential reservations. The program, which utilizes bilingual University of Miami specialists and other experts, seeks to retain the cultural values, knowledge, and language of the Seminoles and heighten the awareness of the Seminole children to the uniqueness of their heritage.

A tribal newspaper, the Seminole Tribune, began publication in 1983 and is distributed to all tribal members as well as government offices, other Tribes, and various others interested in news of the Seminoles.

Finally, in 1981[,] the Seminole Police Department was created with law enforcement jurisdiction over the separate reservation areas. In the 1985-86 fiscal year[,] the Department employed 26 full time personnel, with the Tribe bearing approximately 85 percent of the total cost of the Department's budget. The remaining portion is funded by

the Bureau of Indian Affairs. The Department has been successful in apprehending non-Indian narcotics violators and[,] in the past two years[,] has confiscated two planes and several vehicles engaged in narcotics violations in Indian country.

Bingo revenues have been an important part of the Seminole Tribe's ability to enhance and protect the lives of its members.<sup>67</sup>

The strategic value added by the Seminole brief to the litigation strategy for tribal interests was a refutation of the claims of California—and states like Florida—that Indian gaming would be infiltrated by organized crime.<sup>68</sup> The Seminole Tribe alleged no such evidence existed, and, if the Court remanded to order an evidentiary hearing on the question, “[w]e are confident that if such a hearing were to occur, California’s argument to this Court would be found to be devoid of factual merit.”<sup>69</sup> Moreover, according to the Tribe, it made no logical sense for tribes to loosely regulate their own revenue stream; “Indian bingo is limited, readily identifiable, easily monitored, and extensively regulated by the Tribes. That is so since the Tribes’ financial well-being depends upon the games being honestly run and the generated income being closely monitored.”<sup>70</sup>

The Court agreed with the arguments by the Seminole Tribe and others that a state’s interest in quelling organized crime was insufficient to allow state regulation of Indian bingo:

The State insists that the high stakes offered at tribal games are attractive to organized crime, whereas the controlled games authorized under California law are not. This is surely a legitimate concern, but we are unconvinced that it is sufficient to escape the pre-emptive force of federal and tribal interests apparent in this case. California does not allege any present criminal involvement in the Cabazon and Morongo enterprises, and the Ninth Circuit discerned none. An official of the Department of Justice has expressed some concern about tribal bingo operations, but far from any action being taken evidencing this concern.<sup>71</sup>

After tribal interests prevailed, Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA).<sup>72</sup>

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<sup>67</sup> *Id.* at \*5-7.

<sup>68</sup> See RALPH A. ROSSUM, *THE SUPREME COURT AND TRIBAL GAMING: CALIFORNIA V. CABAZON BAND OF MISSION INDIANS* 115 (2011).

<sup>69</sup> Brief for Appellees, *supra* note 66, at \*14.

<sup>70</sup> *Id.* at \*13.

<sup>71</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221 (1987) (footnote omitted).

<sup>72</sup> Indian Gaming Regulatory Act, Pub. L. 100-497, 102 Stat. 2467 (1988) (codified at 25 U.S.C. §§ 2701-2721 (1988)).

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Indian gaming began to take off after the enactment of IGRA, but in some quarters gaming grew more slowly than in others. The big sticking point in many states was casino-style gaming—slot machines, poker, blackjack, and the like. IGRA classified those games as “Class III” gaming<sup>73</sup> and required tribes to negotiate a compact with state governors over the terms of Class III gaming.<sup>74</sup> However, Congress would not authorize Class III gaming in states where casino-style gaming was completely prohibited.<sup>75</sup>

IGRA required governors to negotiate with tribes in good faith,<sup>76</sup> presumably putting an end to the machinations of state officials like Sheriff Butterworth, who routinely threatened to raid Seminole gaming properties and arrest everyone present. If a state refused to negotiate in good faith, Congress opened up federal courthouses to tribes to sue states.<sup>77</sup> The good faith negotiation obligation was the linchpin of the federal gaming act—Congress believed tribes and states would not negotiate successfully unless forced to do so:

Under IGRA states could effectively veto any class III gaming on Indian land simply by refusing to negotiate a compact. Section 2710(d)(7) restored some leverage to the tribes by giving them the right to sue recalcitrant states and thereby forcing them to enter into a compact. . . . It is quite clear from the structure of the statute that the tribe’s right to sue the state is a key part of a carefully-crafted scheme balancing the interests of the tribes and the states. It therefore seems highly unlikely that Congress would have passed one part without the other, leaving the tribes essentially powerless.<sup>78</sup>

As the Ninth Circuit noted, Senator Inouye, the Chairman of the Senate Committee on Indian Affairs during the time Congress enacted IGRA, asserted that IGRA would not have been passed, but for the right of tribes to sue state governors for failure to negotiate in good faith:

Because I believe that if we had known at the time we were considering the bill—if we had known that this proposal of tribal state compacts that came from the States and was strongly supported by the States, would later be rendered virtually meaningless by the action of those states which have sought to avoid entering into compacts by asserting the Tenth and Eleventh Amendments to defeat federal court

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<sup>73</sup> See 25 U.S.C. § 2703(8) (2014).

<sup>74</sup> See 25 U.S.C. § 2710(d)(1)(C) (2014).

<sup>75</sup> See 25 U.S.C. § 2710(d)(1)(B) (2014).

<sup>76</sup> See 25 U.S.C. § 2710(d)(3)(A) (2014).

<sup>77</sup> See 25 U.S.C. § 2710(d)(7) (2014).

<sup>78</sup> *United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1299-1300 (9th Cir. 1998).



jurisdiction, we would not have gone down this path.<sup>79</sup>

In Florida, where slot machines and banking games like blackjack were flatly illegal, but poker, off-track betting, roulette, and jai alai were not, the state was uninterested in negotiating with the Seminoles on Class III games.<sup>80</sup> The Tribe successfully brought suit in 1991 alleging that the state failed to comply with IGRA's good faith negotiation requirement.<sup>81</sup> However, the Eleventh Circuit reversed, holding that Congress had no authority to abrogate state sovereign immunity under the Commerce Clause.<sup>82</sup> The Supreme Court, as is now well known, affirmed, holding in a sweeping ruling that Congress has no authority under the Commerce Clause to abrogate state sovereign immunity.<sup>83</sup> The Seminole Tribe could not force the state to enter into a Class III compact.

The *Seminole Tribe* decision upended the balance between tribes and states sought by Congress in enacting IGRA. Commentators argued forcefully that Congress should enact a "*Seminole fix*" of sorts:

*Seminole Tribe* invalidated the key compromise of IGRA—Congress's attempt to balance state and tribal bargaining power through a judicial enforcement mechanism that allowed tribes to sue states. Without that corrective device in place, state political power exceeds that of tribes, creating an imbalance in gaming negotiations. With inherent tribal sovereignty as the foundation for a level playing field, however, it is plain that the current negotiating status of tribes and states requires a new corrective mechanism in order to facilitate mutually respectful government-to-government relations. We believe that Congress should enact legislation to restore an appropriate balance of tribal and state authority over Indian gaming.<sup>84</sup>

The Seminoles would not wait for Congress, however. Neither would former Sheriff Butterworth, who would later be elected to be the Attorney

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<sup>79</sup> *Id.* at 1300 (quoting *Implementation of Indian Gaming Regulatory Act: Oversight Hearings Before the House Subcommittee on Native American Affairs of the Committee on Natural Resources*, 103rd Cong. 63 (1993)).

<sup>80</sup> See Lourdes Rodriguez-Flrido, *Rolling the Dice: Seminoles Explore Ways to Bring Casino Games to Reservation*, S. FLA. SUN-SENTINEL, June 28, 1991, available at 1991 WLNR 4012652.

<sup>81</sup> See *Seminole Tribe of Florida v. Florida*, 801 F. Supp. 655, 656 (S.D. Fla. 1992) (denying State of Florida's motion to dismiss).

<sup>82</sup> See *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1019 (11th Cir. 1994).

<sup>83</sup> See generally Vicki C. Jackson & Judith Resnik, *Sovereignties—Federal, State, and Tribal: The Story of Seminole Tribe of Florida v. Florida*, in *FEDERAL COURTS STORIES* 329 (Vicki C. Jackson & Judith Resnik eds., 2010); Martha A. Field, *The Seminole Case, Federalism, and the Indian Commerce Clause*, 29 ARIZ. ST. L.J. 3 (1997); Daniel J. Meltzer, *The Seminole Decision and State Sovereign Immunity*, 1996 SUP. CT. REV. 1.

<sup>84</sup> STEVEN ANDREW LIGHT & KATHRYN R.L. RAND, *INDIAN GAMING & TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE* 157 (2005).

General for the State of Florida.<sup>85</sup>

#### IV. SUCCESSFULLY NEGOTIATING THE REWORKED LANDSCAPE.

The Seminoles had been defeated but employed a series of strategies that largely succeeded in forcing Florida's hand beginning in the late 1990s. By 1999, high stakes bingo and other Class II gaming generated about \$96 million in revenues for the Tribe.<sup>86</sup> Adding casino-style gaming might "quadruple" Seminole gaming revenues.<sup>87</sup>

In the first strategy, the Seminole Tribe intended to take advantage of the new Department of Interior regulations designed to work around the Supreme Court's decision in *Seminole Tribe*.<sup>88</sup> The Supreme Court's holding that tribes may not sue states or their officials to enforce the good faith negotiations requirement eliminated the procedure by which tribes could still acquire a Class III gaming compact through a mediator.<sup>89</sup> Immediately after the Supreme Court's decision, former Congressional staffer Alexander Skibine remarked that Congress likely would have selected the Secretary of Interior as the route for tribes victimized by state refusals to negotiate in good faith: "[h]ad we known that Congress could not waive the state's sovereign immunity, there is no doubt in my mind that we would have selected the Secretary of the Interior as the recourse in cases where states failed to negotiate in good faith."<sup>90</sup>

Second, the Seminole Tribe had already taken advantage of advances in video game technology to begin using electronic enhancements to Class II bingo machines.<sup>91</sup> The United States believed that the games used by the Seminoles constituted illegal "electronic or electromechanical facsimiles of games of chance defined . . . as Class III gaming."<sup>92</sup> Seminole efforts to

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<sup>85</sup> See *Butterworth to Battle Indians' Casino Gambling*, VERO BEACH PRESS J., April 12, 1999, at A10, available at 1999 WLNR 6153716.

<sup>86</sup> See Jeff Testerman, *Indian Casinos Lawsuit Likely*, ST. PETERSBURG TIMES, April 11, 1999, at 1A, available at 1999 WLNR 2608483 ("About eighty percent of the tribe's estimated \$120-million annual budget is financed by gambling revenues. The money comes from high-stakes bingo, low-stakes poker and electronic slot machines at bingo halls on Seminole reservation land in Hollywood, Tampa, Immokalee and Brighton.").

<sup>87</sup> See *id.* ("Billie has said adding full casino gambling might quadruple the tribe's gambling profits.").

<sup>88</sup> See Class III Gaming Procedures, 64 Fed. Reg. 17, 535 (Apr. 12, 1999) (codified as 25 C.F.R. pt. 291 (2004)).

<sup>89</sup> See 25 U.S.C. § 2710(d)(7)(B)(iv)-(vii) (2014).

<sup>90</sup> *Hearing on Review of Court Decision on Indian Gambling Before the S. Indian Affairs Comm.*, 104th Cong. 40 (1996) (statement of Alex Tallchief Skibine, Professor of Law, Univ. of Utah).

<sup>91</sup> See Jeff Testerman, *Indian Casinos Lawsuit Likely*, ST. PETERSBURG TIMES, April 11, 1999, at 1A, available at 1999 WLNR 2608483.

<sup>92</sup> Amended Complaint for Declaratory Judgment & Permanent Injunctive Relief at 6, ¶ 16, *United States v. Seminole Tribe of Florida* (1997), (No. 97-1481-Civ-T-17(A)), 1997 WL 33827786.

end the federal lawsuit failed.<sup>93</sup> But when the State of Florida—led by Attorney General Butterworth—sued to enjoin the electronic machines, the federal court dismissed the suit under tribal immunity principles.<sup>94</sup> Ironically, had Florida entered into a gaming compact with the Seminoles, it is likely the court would have found that either Congress had abrogated, or the tribe had waived, immunity.<sup>95</sup>

While the Department of Interior's procedures for Class III compacting have not been successful<sup>96</sup>—Florida was one of the states that sued the Department of Interior over the Class III procedures<sup>97</sup>—the debate over electronic enhancements to Class II bingo machines has largely been won by tribal interests, including the Seminole Tribe.<sup>98</sup>

Even so, the Seminole Tribe never stopped seeking a Class III compact with the State of Florida. In November 2007, the Seminole Tribe finally negotiated a Class III gaming compact with a Florida governor, Charles Crist. However, the Florida Supreme Court ruled that Governor Crist had no authority to enter into the gaming compact.<sup>99</sup>

After more political wrangling, the Florida Legislature finally authorized Governor Crist to execute a gaming compact with the Seminole

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<sup>93</sup> See *United States v. Seminole Tribe of Indians*, 45 F. Supp. 2d 1330, 1331 (M.D. Fla. 1999).

<sup>94</sup> See *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1242 (11th Cir. 1999) (“Because the State and the Tribe have not entered into a compact in this case, we hold that Congress has not abrogated the Tribe’s immunity from the State’s suit.”).

<sup>95</sup> See *id.*

<sup>96</sup> See *e.g.*, *Texas v. United States*, 497 F.3d 491, 511 (5th Cir. 2007) (“The Secretarial Procedures violate the unambiguous language of IGRA and congressional intent by bypassing the neutral judicial process that centrally protects the state’s role in authorizing tribal Class III gaming[.]”), *cert. denied sub nom.*, *Kickapoo Traditional Tribe of Tex. v. Texas*, 555 U.S. 811 (2008).

<sup>97</sup> See *Role & Funding of the National Indian Gaming Commission: Oversight Hearing on the Indian Gaming Regulatory Act Before the S. Indian Affairs Comm.*, 108th Cong. 90 (2003) (prepared statement of Aurene M. Martin, Acting Assistant Secretary, Indian Affairs, Dept. of the Interior).

<sup>98</sup> See *e.g.*, *Seneca-Cayuga Tribe of Okla. v. Nat’l Indian Gaming Comm’n*, 327 F.3d 1019, 1044 (10th Cir. 2003) (“Accordingly, we follow the reasoning of the D.C. Circuit, and, applying the NIGC’s definition, hold that the Machine is a Class II technologic aid. [T]he appellees’ use of the Machine in Indian country is therefore insulated from liability based on the Johnson Act’s ban on gambling devices.”), *cert. denied*, *Ashcroft v. Seneca-Cayuga Tribe of Okla.*, 54 U.S. 1218 (2004); *United States v. Santee Sioux Tribe of Neb.*, 324 F.3d 607, 616 (8th Cir. 2003) (“Because we conclude that the Lucky Tab II machines are not prohibited Johnson Act gambling devices and are not prohibited ‘facsimiles’ within the meaning of 25 U.S.C. § 2703(7), the Tribe is not conducting class III gaming in contravention of the federal court’s prior order. We therefore affirm the judgment of the district court.”), *cert. denied*, 540 U.S. 1229 (2004); *Diamond Game Enters, Inc. v. Reno*, 230 F.3d 365, 370 (D.C. Cir. 2000) (“We see no principled difference between the Tab Force and the Lucky Tab II. Both devices electronically ‘read’ paper pull-tabs and display their contents on a screen, and neither can ‘change the outcome of the game.’ [N]either contains an internal computer that generates the game. Rather, both machines facilitate the playing of paper pull-tabs. They are thus Class II aids.”).

<sup>99</sup> See *Florida House of Representatives v. Crist*, 999 So. 2d 601, 603 (Fla. 2008), *cert. denied*, *Seminole Tribe of Florida v. Florida House of Representatives*, 555 U.S. 1212 (2009).

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Tribe; they concluded a deal in 2010.<sup>100</sup> Under the compact, the Seminole Tribe agreed to pay twelve percent of the profits from its casinos for the first \$2 billion, fifteen percent from profits above \$2 billion, and so on.<sup>101</sup> The compact was initially expected to generate “a windfall of more than \$435 million for lawmakers. . . .”<sup>102</sup> At a minimum, the compact guaranteed \$1 billion in payments to the state for the first five years.<sup>103</sup>

In 2013, the Florida Legislature commissioned a gaming impact study that concluded “the various gambling subsectors (racinos/pari-mutuels, lottery, and Native American casinos) . . . are highly productive industries and generate a considerable amount of direct economic output to Florida.”<sup>104</sup>

The only question is why it took so long for the State and the Tribe to reach this deal.

#### CONCLUSION

In 2010, the Seminole Tribe agreed to pay the National Indian Gaming Commission a \$500,000 fine for violations of the Tribe’s Revenue Allocation Plan.<sup>105</sup> The Tribe also agreed to establish an internal audit department to review payments to tribal members from the Tribe’s gaming revenues.<sup>106</sup> Earlier that year, the National Indian Gaming Commission issued a Notice of Violation to the Tribe for several payments made to individual tribal members.<sup>107</sup> One of the payments went to the Tribe’s

<sup>100</sup> See Dara Kam, *State Bets on Seminoles in Gambling Deal*, PALM BEACH POST, April 7, 2010, at 1A.

<sup>101</sup> See *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, pt. XI(B)(1)(b)(i)-(vi), FLA. DEP’T OF BUSINESS & PROF’L REGULATION (effective Apr. 7, 2010) (codified at Fla. Stat. § 285.701(3)), available at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf).

<sup>102</sup> Brandon Larrabee, *Senate Passes Seminole Gambling Deal: Bill Would Formally Allow Tribe to Run Seven Casinos*, FLA. TIMES UNION, April 15, 2010, available at 2010 WLNR 7852486.

<sup>103</sup> See Dara Kam, *Florida Cashing in on Seminole Gambling Money*, BUS. J. (Jacksonville), Oct. 23, 2013 (“The 2010 deal, known as a compact, guarantees the tribe will make minimum annual payments, totaling \$1 billion over five years, to the state.”).

<sup>104</sup> SPECTRUM GAMING GROUP, GAMBLING IMPACT STUDY 291 (2013), available at [http://www.leg.state.fl.us/GamingStudy/docs/FGIS\\_Spectrum\\_28Oct2013.pdf](http://www.leg.state.fl.us/GamingStudy/docs/FGIS_Spectrum_28Oct2013.pdf).

<sup>105</sup> See *Agreed To Civil Fine Assessment-Seminole Tribe of Florida*, NAT’L INDIAN GAMING COMM’N, CFA-10-01, at 4, ¶ 13 (Oct. 27, 2010) available at <http://www.nigc.gov/LinkClick.aspx?link=NIGC+Uploads%2freadingroom%2fenforcementactions%2fseminolefl%2fCFA-10-01.pdf&tabid=124&mid=774>.

<sup>106</sup> See *id.* at 2-3, ¶ 12.

<sup>107</sup> See *Notice of Violation—Seminole Tribe of Florida*, NAT’L INDIAN GAMING COMM’N, (June 3, 2010), available at <http://www.nigc.gov/LinkClick.aspx?link=NIGC+Uploads%2freadingroom%2fenforcementactions%2fseminolefl%2fNOV-10-01.pdf&tabid=124&mid=774>.

housing department to pay for the relocation of a tribal member, but this payment of \$19,800 was about \$17,000 more than the cap imposed on such payments by the Tribe's own policies.<sup>108</sup> Another check, this time for \$10,000, went for a Christmas party held six months earlier, without justifying receipts.<sup>109</sup> The Tribe's credit rating suffered as a result of the violations, but has since improved.<sup>110</sup>

Tribal governance in the Twenty-First Century is an odd thing to most Americans. One commentator alleges that “[p]olitically, gaming operations have proven fairly disastrous for both tribes as well as for the sovereignty of Native American tribes across the nation.”<sup>111</sup> What an incredibly naïve, if not fundamentally ethnocentric, statement! Tribal governance capacity has improved at tribes like Seminole quickly and dramatically because of Indian gaming. Internal tribal politics has changed as a result, in ways that are both good and bad. But to say gaming has been a political disaster is just silly.

Tribal government officials, in general, are far more accountable to their constituents than federal, state, and municipal officials are to their constituents. And tribal leaders are accountable to constituents more than merely via electoral politics or hearing out citizen complaints. Tribal accountability means that everyone has a chance to be heard, “[during Green Corn ceremonies,] all their laws are made and they pow-wow for days and days *until all have been heard who have anything to suggest for the good of the tribe.*”<sup>112</sup>

Political accountability, coupled with improved government resources and capacity, encourages tribal leaders to make decisions that to outsiders might be downright strange, if not troubling. Why else would tribal leaders issue large checks to tribal members for housing assistance outside of normal procedures? The Seminole Tribe paid the price to federal regulators for these moments of weakness or perhaps even ineptitude. But that's sovereignty.

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<sup>108</sup> See *id.* at 5-6, ¶ 6. There was a second similar payment for housing expenses the Commission found to be a violation as well. See *id.* at 7-8, ¶ 9.

<sup>109</sup> See *id.* at 6-7, ¶ 8.

<sup>110</sup> See *Fitch Ratings Upgrades Seminole Tribe Credit*, SEMINOLE TRIBUNE (Hollywood, Fla.), May 31, 2013, at 2A (“These credit improvements are supported by Fitch’s ‘increased comfort with the Tribe’s governance and fiscal management’ since Fitch downgraded the Tribe in 2010 following a Notice of Violation (NOV) from the National Indian Gaming Commission.”).

<sup>111</sup> PHILIP S. CARRASCO, EVALUATING THE EFFICACY OF NATIVE AMERICAN GAMING OPERATIONS: A FLORIDA CASE STUDY 9, *available at* [http://www.sarasota.usf.edu/academics/cas/capstone/2013-2014/interdisciplinary%20social%20sciences/carrasco\\_evaluating%20the%20legal%20success%20of%20native%20american%20gaming%20operations-a%20florida%20case%20study%20.pdf](http://www.sarasota.usf.edu/academics/cas/capstone/2013-2014/interdisciplinary%20social%20sciences/carrasco_evaluating%20the%20legal%20success%20of%20native%20american%20gaming%20operations-a%20florida%20case%20study%20.pdf).

<sup>112</sup> See [No title available], WASH. POST., Dec. 4, 1894, at 12 (emphasis added).

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In 1979, when the Seminole Tribe opened its bingo hall, state official response was wholly inadequate and misguided. It may be easy to say that in hindsight, but now that the tribe has agreed to contribute over \$1 billion to the state treasury starting in 2010—and still no evidence of organized crime—one wonders what the State of Florida was doing from 1979 to 2010. The state sovereign expended millions fighting tribal gaming instead of profiting from a sovereign-to-sovereign business relationship, doing so for twenty-two years after Congress provided a procedure to create that relationship and fourteen years after winning against the tribe in the Supreme Court. The political disaster in Florida is the state's failure to accept money offered by the Seminole Tribe.

For the Tribe, the reasons for establishing a legally questionable business operation were clear—to generate revenue to operate a tribal government. And like many Tribes (but far from all), the Tribe has been successful. That is all that gaming is.