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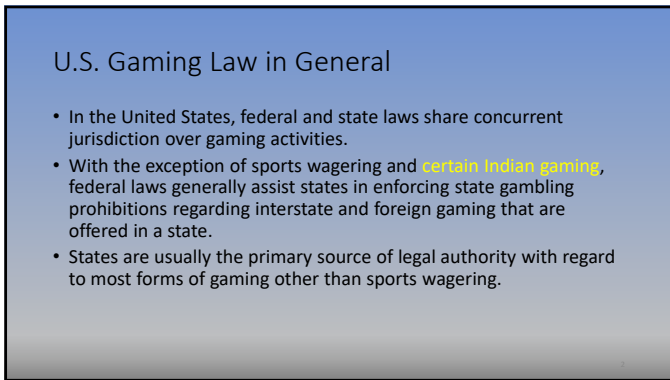
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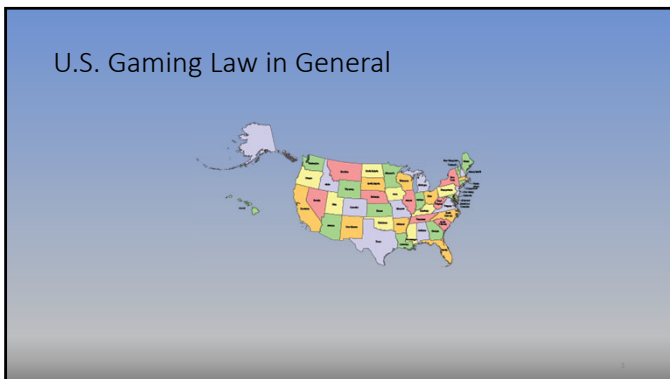
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## U.S. Gaming Law in General



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## Perspective

- Overriding Perspective
- Looks like commercial gaming, but looks are deceiving
- Nation Building
- More akin to state lotteries than commercial gaming in that Indian Gaming is a function of the "state/nation" and is used as a tool to fund government and governmental institutions.

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## Indian Gaming

- History

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### Indian Gaming

- History
- 1790 - The Indian Intercourse Act.
  - Established that the federal government was the only body that could authorize the sale of Indian land to other people or states.
  - The federal government had the sole power to manage trade and diplomatic relations with Indians.

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### Indian Gaming

- History
- Johnson v. McIntosh 21 U.S. 543 (1823).




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### Indian Gaming

- History - Johnson v. McIntosh 21 U.S. 543 (1823).
- 1772-1775 Thomas Johnson purchases land in what is now Southern Illinois from various tribes




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### Indian Gaming

- History - Johnson v. McIntosh 21 U.S. 543 (1823).
- Thomas Johnson dies in 1819 leaving the land to his son Thomas Johnson & grandson Thomas Graham




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### Indian Gaming

- History - Johnson v. McIntosh 21 U.S. 543 (1823).
- 1818 U.S. sold land encompassing the Johnson land to William McIntosh




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### Indian Gaming

- History - Johnson v. McIntosh 21 U.S. 543 (1823).
- Johnson seeks an ejectment order against McIntosh in federal court in Illinois (which became a state in 1819)
- McIntosh wins Johnson appeals to USSC




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### Indian Gaming

- History
- Johnson v. McIntosh 21 U.S. 543 (1823), essentially removed any recognition of Native American property rights based on the proclamation of a "the universal recognition" of two legal principles: (1) that European discovery of lands in America "gave exclusive title to those who made it", and (2) that such discovery necessarily diminished the power of the Native American nations to "dispose of the soil at their own will, to whomever they pleased."
- This ended the first era of Indian relations and relegated Indians to being occupiers of land rather than owners of land.

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### Indian Gaming

- History
- The next era was the treaty and war era.
- The Bureau of Indian Affairs was formed within the War Department in this era in 1894.
- In a short time, there were over 200 treaties with Indians, most to purchase land.
- Expansion westward changed relations with Indians and whether treaties would be upheld.

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### Indian Gaming

- History
- In 1867 the General Allotment Act was enacted.
  - The General Allotment Act tried to assimilate Indians.
  - It removed tribal governance over Indian lands and put the control into individual land owners.
  - Avowed intent was to make Indians land owners like white Europeans to have them adopt European agricultural practices and to bring Indians into mainstream U.S. society.
  - The implementation was designed to extinguish Indian sovereignty.

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Indian Gaming



<https://youtu.be/QYLk9XvQ0fg>

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Indian Gaming



<https://youtu.be/GTFRNtjTMKs>

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Indian Gaming

- History
- The Roosevelt administration supported the Indian Reorganization Act of 1934 (the Indian New Deal)
- Restored Indians to management of their assets (land and mineral rights)
- Restored recognition of tribal sovereignty to identified tribes
- Allowed land to be taken into trust to restore tribal land

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### Indian Gaming



[https://youtu.be/t\\_KFoV7Nwhy](https://youtu.be/t_KFoV7Nwhy)

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### Indian Gaming

- History
- During the Truman and Eisenhower years trusteeship of Indian lands was terminated and many Indians were relocated to larger cities.
- This built on the notion of assimilation as a means to improve the lives of Indians.
- There was a belief that once Indians left their impoverished reservations, they would have opportunities for education, employment in cities and have a better quality of life.

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### Indian Gaming

- History
- During the Eisenhower years, there was concern that the tribes recognized under the FDR administration were ill-equipped to control criminal activity on Indian land

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Indian Gaming

- PL280

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Indian Gaming

- PL280 - 18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country
- (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

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## Indian Gaming

- PL280 - 18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country
- (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation

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## Indian Gaming

- History
- The modern era of "self determination" (with help) was ushered in during the Kennedy years.
- In the 1960s many statutes were enacted to help Indian tribes and recognize tribes as sovereign nations with the federal system.
- In the 1970 additional statutes were passed to allow tribes to control federal funds dedicated to education and child welfare.

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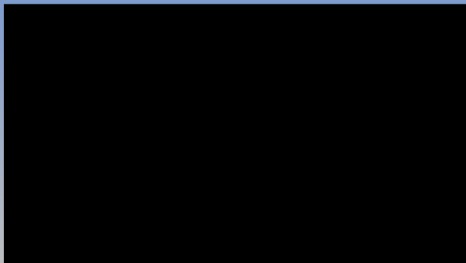
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## Indian Gaming



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## Indian Gaming

- History
- In the 1980s, the Reagan administration drastically reduced most federal assistance to tribes (for example economic development funds were cut by 82%). Additionally, bureaucratic structures were reduced and tribes were encouraged to engage in free enterprise.

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## Indian Gaming



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## Pre-IGRA Case Law

- Seminole Tribe v. Butterworth

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
  - Basic Facts

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
  - Basic Facts
    - Florida permits bingo games to be offered by certain qualified organizations
    - The same statute provides civil and criminal penalties for conducting bingo games by others
    - The Seminole Tribe contracted with a private company to build and operate a bingo hall on tribal land (in violation of the Florida statute)
    - The sheriff informed the tribe that he would make arrests for any violation of the statute

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
  - Basic Facts
    - The tribe filed a declaratory relief action against the sheriff.
    - The parties stipulated to the facts and filed cross motions for summary judgment.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Issue
  - Whether Public Law 280 permits enforcement of Florida's bingo statute on tribal lands.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Issue
  - Whether Public Law 280 permits enforcement of Florida's bingo statute on tribal lands.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Public Law 280
  - Granted certain states the right to exercise criminal jurisdiction and limited civil jurisdiction over the Indian tribes

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Public Law 280
  - Limits to civil disputes
    - PL 280 granted civil jurisdiction to the states only to the extent necessary to resolve private disputes between Indians and Indians and private citizens.
  - Regulatory power over tribes
    - Thus, the mandate from the Supreme Court is that states do not have general regulatory power over the Indian tribes.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Issue
  - Whether the Florida bingo statute is primarily criminal or regulatory?

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Discussion
  - Arguments that the Florida bingo statute is a criminal prohibition.
  - Arguments that the Florida bingo statute is a regulatory statute.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
- Discussion
  - Arguments that the Florida bingo statute is a criminal prohibition.
  - Arguments that the Florida bingo statute is a regulatory statute.

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Pre-IGRA Case Law

- Seminole Tribe v. Butterworth
  - 658 F. 2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020 (1982)
- Fifth Circuit held that the Seminole Tribe could conduct gaming free of state interference
- If a state only regulates an activity, rather than prohibits the activity under its criminal code, state regulation is not applicable to operations conducted on the reservation

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Pre-IGRA Case Law

- Other court opinions in other circuits reached different results
- Ultimately, there was a split among the circuits on the interpretation of what distinguished criminal and civil acts in relation to PL280

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Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Basic Facts

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Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Basic Facts

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Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Basic Facts
  - Cabazon Band offers bingo and card rooms
  - The games are open to the public, and are played predominantly by non-Indians coming onto the reservations.
  - The State of California seeks to apply a state statute that prohibits operating bingo games unless they are operated by a recognized charity.
  - Riverside County also sought to apply an ordinance regulating bingo and another ordinance prohibiting card games.

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Basic Facts
  - The Tribes sued the county in Federal District Court, seeking a declaratory judgment that the county had no authority to apply its ordinances inside the reservations and an injunction against their enforcement. The State intervened, the facts were stipulated, and the District Court granted the Tribes' motion for summary judgment, holding that neither the State nor the county had any authority to enforce its gambling laws within the reservations.

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Issues
  - This case also involves a state burden on tribal Indians in the context of their dealings with non-Indians, since the question is whether the State may prevent the Tribes from making available high stakes bingo games to non-Indians coming from outside the reservations. Decision in this case turns on whether state authority is preempted by the operation of federal law; and "[s]tate jurisdiction is preempted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Issues
  - California does not prohibit all forms of gambling. California itself operates a state lottery, and daily encourages its citizens to participate in this state-run gambling. California also permits parimutuel horse-race betting. Although certain enumerated gambling games are prohibited under Cal.Penal Code Ann. § 330 (West Supp.1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact.

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Issues
  - The sole interest asserted by the State to justify the imposition of its bingo laws on the Tribes is in preventing the infiltration of the tribal games by organized crime. To the extent that the State seeks to prevent any and all bingo games from being played on tribal lands while permitting regulated, off-reservation games, this asserted interest is irrelevant, and the state and county laws are preempted...

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- Issues
  - We conclude that the State's interest in preventing the infiltration of the tribal bingo enterprises by organized crime does not justify state regulation of the tribal bingo enterprises in light of the compelling federal and tribal interests supporting them. State regulation would impermissibly infringe on tribal government, and this conclusion applies equally to the county's attempted regulation of the Cabazon card club. We therefore affirm the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

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### Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
  - 480 U.S. 202 (1987)
- A landmark holding by the United States Supreme Court on tribal sovereignty
- The Court held that, provided the state permits some form of gaming, the state of California could not prohibit gaming on tribal lands
- It affirmed the authority of the tribal government to establish gaming operations on tribal lands

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