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# Indian Gaming: The Cons

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- Tribal Politicians Ringing the NYSE Closing Bell



- Tribal Gaming Lobbyists Cozying Up To Trump



- Tribal Gaming Politicians Blanketing Marky Mark





- Tribal Politicians Causing Violent Casino Insurrection



- Tribal Politicians Violating Indigenous Birthrights

# Indigenous Kinship Society

- “Before contact with Europeans . . . [t]he constituent social units of most native communities were clans or extended kinship groups.”
- Cohen’s Handbook of Federal Indian Law, 2005

# Indigenous Kinship Society

Pre-contact a great many Indigenous kinship societies originally self-identified as “**The People.**”

- Anishinabe (Ojibwe/Chippewa)—“the Original People”
- Biloxi—“the First People”
- Dine’e (Navajo)—“the People”
- Haudenosaunee (Iroquois)—“People Building a Longhouse”
- Hidatsa—“People of the Willows”
- Kiowa—“Principal People”
- Wampanoag—“the Eastern People”



# Indigenous Kinship Society

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- Indigenous kinship was a matter of reciprocal obligation and duty between the group and individual
  - Belonging
    - “Everyone who was born a Dakota belonged in it; nobody need be left outside.”
      - ELLA DELORIA, SPEAKING OF INDIANS (1944)
    - Indigenous kinship societies sustained themselves through social labor, the underpinning of which was the ethical ideal that the individual should fish, hunt, gather, or farm to benefit the group
- It was through Indigenous kinship that we recognized/ included each other. Gaming has eroded this norm.

# Indigenous Kinship Society

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- “[T]hose who kept the rules consistently and gladly, this honoring all their fellows, were good Dakotas—meaning good citizens of society, meaning persons of integrity and reliability. **And that was practically all the government there was.**”
- ELLA DELORIA, SPEAKING OF INDIANS

# Indigenous Kinship Society

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- The Diné's kinship system constituted “a set of categories altogether different from that of white Western culture. **The category ‘government,’ something fixed and powerful to white people, [was] foreign to Navajo thinking.**”
- STEPHEN E. CORNELL, THE RETURN OF THE NATIVE: AMERICAN INDIAN POLITICAL RESURGENCE (1988)

# Indigenous Kinship Society

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- **Cherokee clanship was “the family writ large.”**
  - JOHN PHILLIP REID, *A LAW OF BLOOD: THE PRIMITIVE LAW OF THE CHEROKEE NATION* 38-41 (1970)
- **British Officers, mid-1700s:**
  - “their government, if I may call it government . . . has neither laws nor power to support it.”
  - “Cherokee ‘government is not supported by laws and punishments as among us.’”
- **“[T]here is no law nor subjection amongst them.”**
  - RENNARD STRICKLAND, *FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT* (1975).

# Tribal Nationhood

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- “The words ‘treaty’ and ‘nation’ are **words of our own language**, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. **We have applied them to Indians . . .**”
- John Marshall, *Worcester v. Georgia*, 1832



# Indigeneity

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- 1600s: Treaties, “Indians, “tribes”
- 1778: Tribal “nationhood”
  - Treaty with the Delawares
- 1790: First “Indian pay roll”
- 1817: Quantum: “quarter-blood Wyandot Indians”
  - Treaty with the Wyandot
- 1887: Dawes Act/Rolls: Indian enrollment
- 1919: Interior Secretary authorized to develop rolls for almost every tribe
  - Act of June 30, 1919, 41 Stat. 9, 25 U.S.C. 163
- 1934: “Indian” defined as ½ Indian blood, in residence
- 1978: *Santa Clara Pueblo v. Martinez* (1978)

# Tribal Per Capita

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- 1790: First “Indian pay roll”
- 1835: “Per capita”/“personal” money apportionment
  - Treaty with the Cherokee
- 1847: Treaty monies paid to “heads of families and other individuals”
  - Act of March 3, 1847, 9 Stat. 203
- 1907: Tribal members entitled to a “pro rata share of any tribal or trust funds on deposit” with Treasury.
  - 25 U.S.C. 119
- 1978: *Santa Clara Pueblo v. Martinez* (1978)
- 1983: Per Capita Act & amendment to 1973 Indian Tribal Judgment Funds Use and Distribution Act

# Meriam Report (1928)

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- The U.S. had instead created a socioeconomic situation where tribal members felt that “the government owe[d] them a living, having taken their lands, and that they [were] under no obligation to support themselves.”
- Per capita payments “made to the individual from tribal funds” were a particular reason why “the Indian... postponed the day when it would be necessary for him to go to work to support himself.”

## Commission on Indian Reservation Economies (1983)

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- The U.S. described a tribal state of “social welfare dependency.”
- “There is no difference between a per capita payment from a tribal enterprise [or] judgment fund, a mineral royalty or bonus, and a welfare distribution, where no opportunity exists for individual Indians to self-actualize or to succeed through individual effort.”

## IGRA (1988)

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- Intended “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting...strong tribal governments.”
- IGRA instilled regulatory mechanisms to guard against organized crime and “other corrupting influences.”
- Permitted net gaming revenues to fund “per capita payments” to tribal members, provided:
  - “All enrolled members” must receive them absent “reasonable justification for....excluding [some] enrolled members.” NAT’L INDIAN GAMING COMM’N, No. 01-05, USE OF NET GAMING REVENUES BULLETIN (2005)



## NIGC Gaming Per-Capita Deregulation (2010s)

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- 2003: Chairman Phil Hogen: “where gaming revenues are spent in a manner that does not benefit the tribal government or tribal membership as a whole, the NIGC will investigate”
- 2010: Chairwoman Tracie Stevens no longer investigated “[i]mproper per capita payments”
- 2013: Chairman Jonodev Chaudhuri focused on “non-tribal-governmental interests”
- 2016: NIGC deflects on per capita; “has no jurisdiction to insert itself into a Tribe’s enrollment decisions”

## Tribal Human Rights Abuse (2022)

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- Gaming per capita monies have catalyzed violent unrest and tribal citizenship-related human rights violations on a great many reservations.
- Randall K. Q. Akee, Katherine A. Spilde, & Jonathan B. Taylor, *The Indian Gaming Regulatory Act and Its Effects on American Indian Economic Development*, 29 J. OF ECON. PERSP. 185, 199 (2015)
- Kathryn R.L. Rand & Steven A. Light, *Virtue or Vice? How IRGA Shapes the Politics of Native American Gaming, Sovereignty, and Identity* 4 Va. J. Soc. Pol'y & L. 381, 422 (1997).

## Tribal Disenrollment (2022)

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- Gaming per capita monies are a but-for cause of tribal disenrollment.
  - DAVIDE E. WILKINS & SHELLY HULSE WILKINS, *DISMEMBERED: NATIVE DISENROLLMENT AND THE BATTLE FOR HUMAN RIGHTS* (2017).
- “[A] tribe’s involvement in gaming leads to a large and statistically significant increase in the probability of the tribe experiencing a disenrollment episode.”
  - Malinovskaya, Anna, *Understanding the Native American Tribal ‘Disenrollment Epidemic’: An IV Approach* (May 1, 2021).

## Tribal Poverty & Unemployment (2022)

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- While member income and employment levels have risen since 1988, tribal unemployment remains more than double national averages and tribal family poverty rates are three times higher.
- Thaddieus W. Connor & Aimee L. Franklin, *20 Years of Indian Gaming: Reassessing and Still Winning*, 100 SOC. SCIENCE Q. 793, 805 (2019).

# Tribal Neocolonialism (2022)

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- 70% of tribes use racial/fictional blood quantum as a metric for enrollment
- 90 tribes—15% of the federally recognized—have disenrolled ~10,000 relatives
- Countless tribes are no longer enrolling their babies and grandbabies
- Countless more tribes are fixated on unearned per capita income, including gaming welfare



# Indian Gaming: The Con

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- Indigenous kinship and social labor have eroded. Venal exclusion has supplanted Indigenous belonging.

# Thank You

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