

The Mashantucket Pequot's Many Reversals of Fortune Persevere

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Abstract: After more than 25 years of continued criticism questioning their Indian-ness the Mashantucket Pequot Tribal Nation of Southeastern Connecticut have defined for themselves what and an Indian and navigated local, state and federal government to open and operate one of the largest casinos in the world.

Background –

The Mashantucket Pequot people are an American Indian historically tied to the coastal regions that are located in Southeastern Connecticut. The Pequot people stake a 10,000-year-old claim to Southeastern Connecticut (Mashantucket Pequot Tribe, 2013) but the documented written history starts in the 1600's with colonial contact. Very soon after contact the tribe and the colonists were in full battle in what was later known as the Pequot War.

The Pequot history prior to colonial contact reports that the tribe maintained a strong strategic geographic position. The village was placed on the highest hill of the area and was superior insofar as the American colonist needed help to defeat the Pequot Nation in battle. The colonists partnered with pair of historical enemies of the Pequot, the Mohegan and the Narraganset tribes. Following the Pequot's defeat the survivors of the Pequot tribe were split between the two colonial war-partner tribes and the portion of the tribal member that placed under Mohegan rule eventually returned to the area where the reservation now exists near Ledyard, Connecticut. The time between the loss of the war and the modern era for the Pequot is marked by a loss of tribal members to economic and social changes. The tribe census diminished year after year until the 1960's when Elizabeth George and her sister were the sole residents of the Ledyard Reservation. Following the death of her sister Elizabeth George remained the only person the reservation until her death in 1973. Changes in the United States policy and governance toward the American Indians on reservations altered direction largely as a response to the racial and class activism including action by American Indian Movement (AIM) and a newly found

American idea of racial justice. The impetus for the re-formation of the tribe by 1975 was largely economic, with the United States Government with more money than tribes and/or tribal projects to fund, the family of Elizabeth George decided to re-organize as a tribe (Fromson B. D., 2004). This decision provided the momentum that allowed for reclamation of land, federal recognition, and ultimately a high stakes bingo parlor later reinforced by Las Vegas style gaming casino and a resort. The tribe ascended from a single person in the early nineteen-seventies to making a billion dollars a year twenty-five years later.

The Mashantucket Pequot Tribe has been treated with suspicion by both other Indian Tribes and by the general American population. Arguments of not being “Indian enough” are still being thrown around like ammunition in the Pequot War and works only to undermine the modern, more self-defined meaning of what being an Indian today actually means.

The federally reserved land now called reservations occupied by the Native American Tribes of this country are often less than prime real estate. The land set apart for the Native American tribes to use is quite simply the land that settlers did not want. The second rate land often offered little agricultural potential. An overabundance of rocks might create a rocky mess of a terrain, or overly wet creating a marsh, or so dry and sandy that it lacked nutrients for crops. The geographic location of the lands was less than ideal, away from water sources, away from any city or town.

American Indian Tribes tried many varied economic development plans such as timber production, farming, and fishing in the years since moving onto the

reservations, but many of those endeavors never paid out much if any money. An explanation to the inability to make an economic base to properly operate a tribe is li of the questionable location and land quality but also due a legal/political system unfavorable to the American Indian. The most successful tribal economic ventures were nothing close to profitable enough to fund a tribal government.

This inability to maintain enough money to operate a government was seen as a large obstacle that the Tribes could not very easily overcome. The Indian Reorganization Act of 1934 tried to address some aspects of sovereignty and self run tribal governments, but it was not until the introduction of Indian Gaming Regulatory Act (IGRA) when tribes could exercise self-government that approached the United States template.

Economic development is the cornerstone of the IGRA. This *economic shot in the arm* was to benefit the tribe exclusively. All profits from any Indian Gaming under the IGRA are to be used to improve tribal government funding, and allow improvements to services offered to Indian members of the Tribe. The IGRA itemizes the acceptable uses for the money derived from the gaming and three of the five are specific items apply specifically to the Indian Tribe, meaning the money is to be used for the tribe's best interest. Items IV and V leave an interesting door open that benefits local organizations and state/local governments near by the reservation. These acceptable uses are donations to charitable organizations and to help fund "local government" agencies.

Tribes occupy a special legal status in the United States because of the ongoing nature of their relationship to the United States of America. The

relationship with the United States actually predated the genesis of this country. Treaties were signed on a Nation-to-Nation basis by the federal government and that legal association has slowly eroded since the signing.

The IGRA is a law passed by US Congress in 1988 that put forth regulations to carefully structure the creation of gaming on Indian Reservations. The Law was more specifically enacted to put reins on what was seen uncontrolled gambling.

The revenue from Indian gaming cannot be used for any other purpose other than operation and management costs. The management cost is limited to at most forty percent in cases where the management company is required to make extensive capital outlay. The IGRA also requires any tribe interested in Class III gaming to sign a compact with the State that the Tribe resides within.

In this study we attempt to examine the Indian Gaming Regulatory Act in It's application and effects on the Mashantucket Pequot Tribal Nation through a multipronged research techniques, including primary research, a review of available literature and previous research, and a content analysis of the Tribal, Casino websites and associated social media presence analysis of tribal nation/casino relationship. How much does the local community benefit from having Indian Gaming nearby?

Findings -

The primary intent of the IGRA (US Congress, 1988) was to allow Class II, bingo, gaming on tribal reservations, but to preclude Class III, casino style, gaming if the State objected, the secondary intent of the IGRA is to provide a means to

generate tribal government revenue, ideally through Class II gaming revenue. In Paragraph 2, Section (B) the Act outlines acceptable uses for revenue that include funding tribal government operation, agencies, programs that promote general tribal welfare, economic development, and charity. The IGRA also puts forth the requirements for a distribution of payments to tribal members for Class II revenues, one would assume that the same regulations apply to Class III revenue disbursements, The requirements to produce a payment to the tribal members that exceeds fifty percent of the gaming revenue is a Revenue Allocation Plan (RAP) submitted and approved by the DOI (US Government, 2011). The RAP must include a percentage breakdown of the net revenue received from the gaming and the tribe must provide a snapshot of the 'health' of the tribe economically including membership numbers, tribally owned business and their revenues, the level of essential government services, and if the level of those services are curtailed because of a lack of money. The Mashantucket Pequot compact was amended in 1992 allowing the tribe to operate slot machines at the Foxwoods Casino and the state to receive twenty-five percent of the slot revenue. (Fromson B. D., 2004).

There were at least two conflicting cases that have appeared in the Federal Appeals Court circuits recently. The first was Rincon vs Schwarzenegger, where the appeals court ruled that the State of California was trying to illegally tax the Rincon by insisting they pay revenue from their desired slot machines to the State General fund, the case was denied by the Supreme Court in 2011 (ICTMN Staff, 2013). The case from this year was regarding the Mashantucket Pequot having slot machines that the neighboring town of Ledyard claims to have taxing authority over the

machines. The Appeals court found that the Town of Ledyard did have authority to tax the slot machines (Gregg, 2013). The BIA position on revenue sharing is that it is allowable if the state produces a “meaningful concession,” Meaning that if the tribe is giving up revenue to the state, the tribe must be receiving something valuable and tangible in return from the state. An exclusivity agreement would be acceptable, but anything not matching the level of a meaningful concession is essentially taxation.

The modern Mashantucket Pequot are in a uniquely American position where they might be the only tribe in the United States that has no traditional culture to speak of, or they might be the only one to fess up to the fact. The Foxwoods Casino opened in 1994 with a Native feel, exposed log pillars and support beams, cocktail waitresses dressed in miniskirts, headbands produced a squaw look. (Eisler, 2002) The very first assault on the Pequot culture occurred following The Pequot War when the Colonists attempted to erase the Pequot Tribe from the political existence of Connecticut in the 17th century when during the signing of the Treaty of Hartford in 1638, the treaty explicitly stated that they were no longer to be called Pequots, but the to be called and belong to the tribes that assisted the Colonial forces that defeated them. (Karr, 1998) One account of modern Pequot culture occurred when a Pequot delegation traveled through Hawaii. The visiting tribal members were being honored by Native Hawaiians when invited to sing a Pequot song. This proved to be an something more complicated that expected when the Pequots could only sing “This Little Light of Mine” because it was the only song that all the tribe members present knew (Fromson B. D., 2003). A blog posting at MaterialWorldBlog.com even attributes the Pequot’s 200 million dollar museum

as a vehicle of a pathway to legitimization. (Alario, 2009). These continued assaults questioning the Pequot identity, leave the Pequots with their legal accomplishments, economic uber- accomplishments, and Foxwoods casino resort with it's pan-Indian styled interior, and the largest Indian Museum in the Country.

The Mashantucket Pequot Tribe opened Pequot Health Care in 1991 to serve the health needs of the members of the tribe. Pequot Health Care has grown into a business that serves the needs of employees of Foxwoods and has the ability to manage and administer healthcare needs of other self funded Indian health programs with a specialty in the federal regulations that govern Indian Nations and healthcare.

Another diversifying aspect of the tribe included a recent groundbreaking of an Tanger Outlet mall where one of the many Foxwoods parking lots once stood (Kenneth, 2013), this is in addition to the previous foray into retail for the tribe when they opened a gas station, convenience store/Burger King complex in 2012. Sustainability regarding the Mashantucket started when the Mashantucket Museum received an award from Green Rroofs.org under the category of Intensive Institutional in 2006, and more recently opened their own co-generation power plant that provides half the electricity that Foxwoods uses. (Potter, 2010)

The content analysis of the Tribe and Casino website have an component. The Mashantucket have a tribal website that is fairly sparse and offers little more than the an overview of tribal departments, a brief history, council members. The cultural component is handled fairly exclusively by the Pequot Museum arm of the three entities that make up the Mashantucket online presence. The Casino

demonstrates very little in terms of connection to the tribe. The Social media presence (Facebook and Twitter) are promotional and picture of winners with giant checks. The Museums social media promotes the Mashantucket Pequot museum and research center, sending out events at the museum, and a newsletter that aggregates daily news from the Pequot museum and other news sources. The Tribal arm of the online presence has no social media outlets. Contacting the tribe and casino with questions regarding sustainability diversification of their revenue streams were not answered.

The town of Ledyard has benefited distinctly from the opening of Foxwoods Casino since 1992. The Mashantucket Pequot Tribe has purchased many houses in Ledyard to house tribal members (Fromson B. D., 2004) and pays Ledyard property taxes on those homes outside the reservation. The State receives twenty-five percent of the slot revenue from an agreement reached in 1993 and has received about 3 billion dollars from the Mashantucket Pequot since that signing. The recent court case regarding a slot machine tax on leased machines could also provide an avenue to the local a surrounding community benefit.

A report by the Connecticut Center for Economic Analysis found that the surrounding communities received millions of dollars in property taxes from the tribe, that the housing values in the vicinity were insulated against a housing value decline because of the location of the casino. (Connecticut Center for Economic Analysis, 2000)

Conclusion

The Mashantucket Pequot Tribal Nation demonstrates how a once powerful tribe can be whittled down to a deserted reservation and subsequently built into the largest casino in the world. Along the way the tribe has made many positive contributions to the general American Indian experience; they illustrate how a tribe can navigate state and federal politics to achieve an end as they did within the framework of Southeastern Connecticut where most people were not aware that reservations existed in Connecticut.

This epitomizes the new ways of resistance author Gerald Vizenor envisioned because the tribe is not subscribing to an outsider definition of an Indian. Even as this criticism comes from the general American population or even other Indian Tribes the Mashantucket Pequot have maintained their own definition of what an Indian is. The Vizenor coined word survivance is nothing if apropos to this particular tribe. Survival and Resistance are without a doubt in their blood, the tribe accomplished both. Going through a bottleneck event, an event that drastically reduces a population to relatively few, the survival of the tribe even when it was down to one or two women is nothing short of amazing. The Mashantucket Pequot Tribe appears to have lost their connection to the past that most all other tribes have in the form of a common history, language and traditional community. Many tribes lack a language, or lack a clearly documentable history, but the fact that all common experiences for a tribal community are removed illustrates that modern definitions cannot so narrowly defined.

Fighting these early IGRA casino battles in the most densely populated portion of the United States can and does serve as template for when other tribes decide to take their own political, legal, and social obstacles head-on. The Mashantucket Tribal Nation worked with local, state, and the federal government as a friend when needed, worked against each of these entities when the time was right, and pitted them against each other when it suited the needs of the tribe. The Tribal Nation even outsmarted and did legal tail runs. This Friend, Foe, and Outsmarting political technique is a technique that can be used by all tribes in working with local communities, states and the federal government.

Summarizing the Connecticut Center for Economic Analysis report on the tribe and region, the benefits from the Casino outweigh the negative impacts to the adjacent communities and the certainly the tribe. A constant concern for crime has been present with introduction of casinos but little statistical evidence has been presented that convert that concern as a fact. The Mashantucket Pequot have employed many tens of thousands of people, as well as being a huge draw for out of state visitors to southeast Connecticut have effects that are harder to measure than crime statistics and actual taxes paid to a state, these intangible effects to the local economy are often overlooked because of the complexity of calculating their actual 'benefit' to the local community. If the local communities saw the benefit as similar to the benefits of having a major sports team where a philosophy of *in lieu of taxes* predominates perhaps the advantages to having a casino nearby would become apparent. This might turn a traditionally contentious relationship between the community surrounding the reservation when the Indian Tribes decides that Indian

gaming should be pursued within its borders, into an economically advantageous relationship.

The economic impact of Indian gaming to the Mashantucket Pequot directly has been immeasurable, whereas the benefits to the local community have been just as immeasurable, but not immeasurable fantastic, but immeasurably complex. One cannot argue that jobs are very desirable to an area, as are taxes, and the donations to local charities are all positives that add up in favor of the positive benefit of having a world class casino as your neighbor.

The IGRA is very specific in what is an allowable use for the gaming revenue under the current law makes two recent competing cases very interesting. Federal Appeal Circuits on the west and east coast have conflicting rulings on sovereignty of Indian Tribes and the surrounding community. Conflicting Federal Appeals Circuits with competing rulings are a good indication that the Supreme Court might soon visit that legal issue. The Rincon case dealt with the prospect of having additional revenue given to a money starved state. The town of Ledyard case, who has been a large beneficiary of the massive growth of Foxwoods Casino for many years, also must have some budget issues, but the case might have been posturing for future attempts at taxation of the Mashantucket Pequots since the town of Ledyard paid about a million dollars in legal fees on taxes that would total \$20,000 dollars a year (Greg, 2013).

This self definition, defiant attitude shown to outsiders of the tribe are very interesting in that most tribes have some effects other than a museum to educate outsiders in their culture and story, but since the Mashantucket Pequot story seems

to have such a storybook ending, it is probably hard to frame in context of the larger picture of the American Indian Experience. The Pequot ability to garner public support, to win legal cases, and to maneuver the economic/political arenas so deftly suggests a winning strategy that can be helpful to other tribes looking to produce their own economic/political coops. The power the Mashantucket Pequot Tribal Nation continues to wield has been modernized and is economic and political in nature, but the Mashantucket Pequot just as in the 1600's continue to be just as forceful.

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