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LEGALIZATION IN TRIBAL CONTEXTS AND THE DISCUSSIONS THAT FOLLOW

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DENESSA LITTLEAXE

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GREEN ASPIRATIONS: COMPLEX ISSUES SURROUNDING MARIJUANA
LEGALIZATION IN TRIBAL CONTEXTS AND THE DISCUSSIONS THAT FOLLOW

A THESIS APPROVED FOR THE
DEPARTMENT OF NATIVE AMERICAN STUDIES

BY

THE COMMITTEE CONSISTING OF

Dr. Raymond Orr, Chair

Dr. Amanda Cobb-Greetham

Dr. Heather Shotton

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INTRODUCTION

In the state of Oklahoma, there are 39 federally recognized tribes and over 100 casinos. Widen this scope to that of the entire United States and you now sit at over 570 tribes with 245 of them operating 511 different gaming operations.¹ Indian gaming occurs in approximately 29 states.² At one point in time, it was illegal for Native peoples to carry out their religious ceremonies or to speak their languages. Now over half of the tribes in the United States engage in gaming as a revenue stream, something that was also once illegal. In the present, tribes may operate several casinos or engage in several different revenue streams including agriculture, oil, tourism, and retail. Economic development is a crucial component of tribal operations as it provides tribes with the ability to provide services and financial support to their members. Each tribe and tribal community is unique and what works for one tribe may not work for another. However, it is crucial that tribes are able to exert their sovereignty and to be able to provide for their people. One possible economic venture that is gaining the attention of tribes is the marijuana industry. This relatively new industry is not met without controversy and complexity, including legal and jurisdictional issues, but these are all issues that some tribes are looking to overcome in order to join in on a new, “booming” industry.

As of today, over half of the states in the country have a form of legalized cannabis although it is still classified as a Schedule 1 substance under the Controlled Substances Act.³ In some states it is still possible to receive jail time for the mere possession of this substance and it is certainly punishable under federal law. However this may be, a majority of the states in the country have been able to legalize cannabis in one form or another or have taken steps towards

¹ “List of Casinos State-by-State” 500 Nations. 2018.

² “The Commission: FAQs” National Indian Gaming Commission. 2020.

³ Rion Ramirez, and Christine Masse, “The Effect of State Marijuana Legalization on American Indian Tribes: One Tribe’s Unexpected Journey” *The Federal Lawyer* 65, no. 3 (2018): 27

decriminalization. The marijuana business has proven to be a lucrative industry for states that have legalized medical and/or recreational cannabis. For now, many tribes are finding themselves entrenched in a confusing, contradictory discord between federal, state and local laws and are wondering where tribal law and jurisdiction fit into all of this.

Issues regarding tribal ability to legalize marijuana are entangled in a complex area of tribal and federal law. The unique status of tribes in the United States has given way to an often gray area of laws and politics. These issues are embedded in the complex relationship between the federal government and the tribal governments. Though tribal governments are a governing body of a sovereign nation, there is an established hierarchy between tribal governments and federal governments, where the tribal governments are sovereign but still must adhere to federal laws. Tribal sovereignty has always been and will always be a part of any tribal entity but tribes, like states, also receive major federal funding which could be put at risk. Marijuana legalization is an especially risky move in states where marijuana is not legal at all, or is not legal on a large scale (such as an easily accessible medical marijuana program). This thesis is an effort at exploring the particular complexities and issues surrounding tribal marijuana legalization efforts and examining what is being said about these situations on a large scale.

Chapter 2 explores tribal sovereignty and the history of United States Federal Indian policy. Federal Indian policy has gone through many different changes and developments since the creation of the US. These changes occurred based on the needs of the government at the time and sometimes depending on who was in the presidential office. The policies can be linked to different major occurrences in the country like westward expansion, and World War II. All federal policies have affected tribes and tribal communities in different ways, oftentimes negatively. Major Indian policy shifts may seem like a thing of the past but many can remember

or have experienced the Indian Relocation Act or the Termination era and have lived to see the current self determination era take place. Though tribal self determination is the current policy of today, some tribes are still having to fight to retain their federally recognized status or to even receive federal recognition to begin with. Chapter 3 covers the legalization of marijuana within the United States. The United States government has classified marijuana as a Schedule 1 narcotic which means that it is illegal to possess and it is not considered to contain any medicinal properties. In recent years, several states have voted to legalize marijuana in different forms including the use of CBD for certain medical needs, the medicinal use of marijuana through medical marijuana patient programs, or through adult recreational use programs. Public opinion on cannabis has shifted and it is now being seen as a form of medicine, and as such the need for decriminalization is an idea that is being implemented into legislation as well. Chapter 4 is a look at a few of the tribal efforts of cannabis legalization and the outcomes of these attempts. This chapter also offers a look at the two memorandums issued by the U.S. Department of Justice clarifying the stance on federal marijuana prosecution, both in legalized states and in Indian Country. Chapter 5 offers a breakdown of the analysis of a wide variety of selected articles that discuss tribal legalization of cannabis. This chapter focuses on the methods used to obtain over 45 articles for the purpose of exploring and understanding discussions on tribal efforts towards marijuana legalization and operations. This chapter includes a discussion of the articles and important quotes and ideas from authors that are contributing to the nationwide discussion of tribes and cannabis. Chapter 6 is the conclusion, offering commentary on the importance of these discussions surrounding tribal nations and marijuana. The conclusion also offers a take on the potential economic impact that cannabis legalization could have on tribes in the present day and why these opportunities are being so widely sought after.

CHAPTER ONE

Literature Review

While the idea of tribes legalizing cannabis is still a relatively new issue, and one that is not yet widespread, there are multiple scholarly articles that discuss the process and the complexities that it encompasses. One burning question regarding the legalization of marijuana in Indian Country - is it legal? Melinda Smith explores this question in the journal article, “Native Americans and the Legalization of Marijuana: Can the Tribes Turn Another Addiction into Affluence?” Smith provides three different examples of other industries that may serve as models for the potential tribal marijuana industry. This includes the tobacco sales industry, the gaming industry, and the industrial hemp industry. It is no surprise that with the marijuana industry booming in Colorado and likewise in other states, that tribes would want to pursue avenues in this industry as well. Smith makes note that there is significantly more poverty and unemployment rates on reservations than the national average. Smith writes, “In analyzing the economic feasibility of tribal participation in the marijuana market, it is beneficial to examine the successes, failures and mechanics of similar tribal ventures of Indian gaming, Indian tobacco and hemp production.”⁴ These industries and the circumstances surrounding them may offer a glance at what tribes will face as they explore the possibilities of the marijuana industry, whether this is through growing operations and sales of cultivated products, retail stores, processing, or testing.

As for the gaming industry, several tribes began to engage in gaming efforts in the 1980s and many were met with pushback from state governments who attempted to regulate or entirely prohibit such gaming. Tribes were handed a major win in the Supreme Court case *California v. Cabazon Band of Mission Indians* in which it was decided that California did not have the

⁴ Melinda Smith, “Native Americans and the Legalization of Marijuana: Can the Tribes Turn Another Addiction into Affluence?” *American Indian Law Review* 39, No. 2 (2014-2015): 519

authority to regulate gaming on Indian lands.⁵ Congress eventually enacted the Indian Gaming Regulatory Act (IGRA) due to concerns from tribes over the protection of gaming operations - “The IGRA applies only to “Indian Lands,” which is defined as lands within reservation boundaries, land held in trust, and allotment lands.” The IGRA establishes the National Indian Gaming Council, within the Department of the Interior, to oversee Indian gaming and to perform a wide variety of duties. ⁶

The Indian Tobacco Industry was established largely based on the principle that tribes could offer better rates on tobacco purchases than elsewhere due to the exemption from state taxes. However, like the gaming industry, this tribal revenue stream has been met with challenges as “federal legislation and Supreme Court jurisprudence has chipped away at the scope of the tribal exemption from state tax.”⁷ Also, stricter state regulations on tobacco products has had a negative effect on tribal profits from tobacco sales. The federal government has imposed legislation that requires all Indian tobacco companies to comply with reporting requirements, regulations, and requirements for state stamping. Tribal tobacco businesses are also affected by the Master Settlement Agreement (MSA) in which tribes are forced to pay into a settlement, based on damages from tobacco use, each year to the settling states, as well as a certain percentage of each sale to the respective state. States have also further negatively affected tribal tobacco industries by forcing tobacco businesses to buy into certain directories in order to be able to sell tobacco. In a roundabout way, federal and state governments have been able to offset the tribal state exemption tax by forcing tribes with tobacco ventures to pay in other ways.

⁵ Smith, 520.

⁶ Smith, 521.

⁷ Smith, 529.

This has resulted in tobacco sales being an impossible venture for tribes who cannot afford to pay.⁸

In 2000, a Lakota tribal member, Alex White Plume, living on the Pine Ridge reservation believed it to be a treaty right of the Lakotas to be able to grow hemp on reservation land. Though the Oglala Sioux tribe had officially removed hemp from their definition of marijuana, the cultivation of hemp was regulated by the Controlled Substance Act, which required a registration in order to grow and produce hemp. White Plume's crop was tested and destroyed by the Drug Enforcement Agency (DEA) when it was revealed that he did not file any such registration. In 2001, Percy White Plume went through a similar situation in which hemp crops were planted and then subsequently destroyed by the DEA, due to the absence of an approved registration. In 2002, Alex White Plume attempted again to grow hemp crops but then challenged the federal government to an actual judgement that prohibited him from growing the industrial hemp. The district court found that the White Plumes were in violation of the Controlled Substance Act and permanently prohibited them from planting another industrial hemp crop.⁹

It is important to consider these already established industries and their role in tribal sovereignty and tribal economic development. These industries posed their own issues and difficulties that tribes had to navigate in order to take part. The process and outcomes of these industries can offer some sort of guide for tribes as they further pursue cannabis legalization and or involvement in the cannabis industry.

In the article, "The Effect of State Marijuana Legalization on American Indian Tribes: One Tribe's Unexpected Journey" author Rion Ramirez and Christine Masse explore the issues regarding states with marijuana legalizations and the effects these legalizations may have on

⁸ Smith. 529-530.

⁹ Smith, 534-536.

tribes. For one, legal states could face a potential issue in an instance where marijuana products go from the state regulated system to an Indian reservation, especially if such products are prohibited and illegal on the reservation. Another major issue surrounds California in particular; in the new regulated system in California, if tribes want in on the industry they are required to give up their sovereign immunity.¹⁰ This is a controversial subject because sovereign immunity is a necessary facet in tribal dealings and some believe that tribes may be risking their sovereignty by agreeing to diminish it for economic gain.

After the legalization of recreational marijuana in Washington, many tribes were suddenly surrounded by legal marijuana consumption and possession whereas the same was still considered to be illegal on their own lands. This has brought up the issue surrounding tribal ability to enforce marijuana laws on their reservations and lands, especially when it comes to non-Indians.¹¹ Potentially, if an American Indian were to bring and consume a marijuana product on tribal lands, they could be prosecuted. The same could not be said for a non-Indian who engaged in the same act on the same land. This is due to complex criminal jurisdiction issues regarding non-Indians on tribal lands. “In 2013, the Department of Justice (DOJ) issued a memorandum (known as the “Cole Memo”) to all US attorneys providing guidance regarding the marijuana enforcement.”¹² This memo did not entirely encourage US attorneys to restrain from prosecuting marijuana in legal states but it did give guidelines to encourage individual discretion in said instances. The memo did not provide any consolation to confusion on where tribes fit into the marijuana legalization puzzle. Instead, it created more confusion surrounding the particular part of the memo that highlighted the prohibition of marijuana use or cultivation on public lands

¹⁰ Ramirez, and Masse, “The Effect of State Marijuana Legalization on American Indian Tribes: One Tribe’s Unexpected Journey” 27.

¹¹ Ramirez and Masse, 27.

¹² Ramirez and Masse, 27

and federal properties. It was unclear what this memo meant for tribes. However, in 2014 the DOJ released another memorandum dubbed “the Wilkinson Memo” to specifically address marijuana in Indian Country. The guidelines were similar to that of the Cole Memo and this resulted in many believing that the federal government apparently legalized marijuana in Indian Country. This was not true and the DOJ began to do damage control and enforce the standing laws subsequently. The DOJ ordered the destruction of marijuana crops in South Dakota on a reservation in one instance of marijuana prohibition and the destruction of crops in a California tribally owned cultivation center in another.¹³

Unfortunately for those looking to the Cole and Wilkinson memos for guidance on tribal marijuana issues, the Attorney General Jeff Sessions rescinded all prior guidelines regarding medical and recreational marijuana. Ramirez and Masse explain the current importance of tribal entities taking every precaution as they step into uncharted territory. It is especially important for tribes to work closely with their US attorneys and to consider their respective state marijuana laws. “Each tribe will have a host of factors - political, legal, philosophical, social, and otherwise - to consider before moving forward, and each, with its own sovereignty, will have to chart its best course forward as the issue evolves nationwide.”¹⁴

In the article, “Tribe and Cannabis: Seeking Parity with States and Consultation and Agreement from the U.S. Government”, Brad A. Bartlett and Garret L. Davey discuss the issues of different treatment between the United States government and individual states versus the treatment between the United States government and tribal governments. Bartlett and Davey outline this discussion in the form of the good, the bad, and the ugly. The “good” - being that some tribes in Washington have successfully been able to open their own marijuana operations

¹³ Ramirez and Masse, 27

¹⁴ Ramirez and Masse, 29.

and that the National Congress of the American Indians passed a resolution supporting favorable policies regarding marijuana and hemp in Indian Country.¹⁵ The “bad”, referring to the “... a disparity in federal enforcement between tribes looking to legalize cannabis in some form and states that have already legalized cannabis under state law. This disparity in treatment has been especially problematic for tribes situated in states maintaining cannabis prohibitions.” One example of such disparity was the case of the Menominee Nation in Wisconsin. The Menominee Nation legalized industrial hemp and entered into an agreement with the College of Menominee Nation to conduct further research. This research included the planting of crops on Menominee tribal land. The Drug Enforcement Agency then went on to seize all 30,000 crops of the Menominee Nation’s hemp efforts. “The tribe challenged the seizure in the U.S. District Court for the Eastern District of Wisconsin seeking a declaratory judgement that the tribe could produce industrial hemp “as a state” under the exception provided by the Agricultural Act of 2014 (Farm Act) to the federal CSA for industrial hemp.” This notion was struck down by a federal judge and it was ruled that the tribe did not classify as a state and were not included in this exemption.¹⁶

What Bartlett and Davey consider to be the “ugly” side of tribal cannabis legalization efforts happened in California, a state that has had some form of legalized cannabis for two decades now. In 2015, the Pinoleville Pomo Nation entered California’s medical marijuana market with its Pinoleville Pomo Medical Cannabis Project. The project was solely for the production of medical marijuana project and included a huge greenhouse for marijuana production and distribution. The operation was raided by the Mendocino County Sheriff “under

¹⁵ Brad A. Bartlett and Garret L. Davey, “Tribe and Cannabis: Seeking Parity with States and Consultation and Agreement from the U.S. Government” *Federal Lawyer* 64 (2017), 55.

¹⁶ Bartlett and Davey, 55.

the cloak of Public Law 83-280 (PL 280), a controversial law transferring legal authority and jurisdiction from the federal government to state governments.” From this raid, over 400 plants belonging to the tribe were subsequently confiscated and destroyed.¹⁷

All three of these articles offer an in-depth look at tribal cannabis complexities and offer insights on different situations around Indian Country. There is a general consensus that tribes are stuck in a complex situation of differing laws at all levels of government, and that it may be a risk for tribes to take on cannabis legalization or to engage in the cannabis industry. Tribes must take into account all of the risks and rewards as they make their decision on whether or not to pursue cannabis legalization and or pursue entry into the related industry. However, there are clear benefits that tribes can stand to reap from this industry and these benefits alone may provide tribes with the motivation to continue on their own paths of legalization.

¹⁷ Bartlet and Davey, 56.

CHAPTER 2

Tribal Sovereignty

After the creation of the United States, a solution to conflicts with tribal nations was needed. Since the creation of the US government, Congress treated tribes as individual nations and therefore passed legislation to regulate trade and interactions with tribes. The creation of treaties between the US government and tribes shows a firm affirmation of the status tribes have as individual, independent nations. “All these acts ... consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.” This sovereignty is a direct result of the status of each tribal nation as a sovereign power of its own. “Felix Cohen suggested that the powers of a federally recognized Indian tribe are not delegated powers from "Congress, but rather "inherent powers of a limited sovereignty which has never been extinguished.” However, much confusion has been produced around the idea of a dominant sovereign and a lesser sovereign, the federal government and tribal governments respectively.¹⁸

Throughout the history of the United States there have been several changes to federal Indian policy. In the late 19th century and early 20th century, stances on Indian policy changed in an effort to assimilate Native peoples. In 1887, Congress passed the Dawes Act, an attempt to lessen the strength of tribal sovereignty and also an attempt at speeding up the process of assimilation.¹⁹ The Dawes Act broke up tribal communities and encouraged the idea of

¹⁸ Bryce P. Harper, “One Nation? Reexamining Tribal Sovereign Immunity in the Modern Era of Self-determination” *Tulsa Law Review*, 46 No. 3 (2010-2011), 449.

¹⁹ Harper, 449.

agriculture for the new land owners. This was only one of the many legislative acts that had lasting effects on tribes and communities.

In 1934, the Indian Reorganization Act (IRA) was passed, which gave tribes the ability to establish tribal governments based on Euro-centric forms of governance under federal law. This was the first effort of Congress to establish tribes as political entities within the US. The main goal of this legislation was to revitalize tribal economies. The following policies were implemented through the IRA: prohibition of any further allotments of tribal lands to non-Indians; the granting authority to the Secretary of the Interior to create new land and add land to existing reservations of tribes that no longer had tribal land; and the encouragement of tribes to adopt their own constitution and become chartered corporations under federal law.

The IRA was successful in strengthening tribal sovereignty and improving life on reservations, but this was not met without criticism. 15 years after the passing and implementation of the IRA, Indian policy turned toward assimilation once again with the introduction of termination. The termination era of Indian policy was aimed at releasing the federal government from its trust relationship with tribes, resulting in tribes losing their federal status and services. Several states passed laws turning jurisdiction of tribal lands back over to states throughout this termination era. Fortunately, this policy did not last forever.²⁰

After the termination era, once again Indian policy was changed with the introduction of the tribal self determination era. This policy was implemented by President Lyndon B. Johnson in an effort to recognize and assist tribes in asserting their tribal sovereignty.²¹ Though tribes are considered a sovereign nation, and tribal self determination should give tribes the ability to govern their members within their tribal lands as they see fit, tribal sovereign immunity is often

²⁰ Harp, 449.

²¹ Harp, 449.

ignored or diminished. It is important to note that tribal sovereignty is something that tribal nations have always had, whether it was adequately recognized by the United States government or not.

It is also important to remember that every single tribe is a unique entity that operates within itself. Tribes have different languages, customs, and histories and thus, no tribe is exactly alike. Tribal sovereignty is an inherent right of every tribe though tribes are required to be federally recognized in order for the federal government to recognize that sovereignty. Some tribes are recognized by only state governments. Tribal sovereignty is presented in a number of different ways. The process for tribal enrollment is the epitome of self-determination as tribes set forth the requirements for individuals to be legally recognized as a member of the tribe. Other ways tribes exhibit their sovereignty is through land ownership, economic ventures, social services, elections, governance, and legislation. All of these have a unique impact on tribal members and potentially other American Indians living within the jurisdiction of the tribe.

With sovereignty comes sovereign immunity. The idea of sovereign immunity is an idea carried over from English common law, in which the sovereign has immunity. “This concept still survives today, though abrogated to some degree by the federal government and most state and local governments, in the form of tribal sovereign immunity.”²² This tribal sovereign immunity is recognized today as a privilege given to federally recognized tribes as a direct result of their sovereign status of individual nations. The idea of tribal sovereign immunity is as old as the United States and correlates with the intent of the government to form a dichotomy of the dominant and lesser sovereign relationship between the federal government and individual tribal

²² Harp, 450.

governments. Again, tribal sovereignty is an inherent right of tribes though “Congress is the sole entity trusted with the limitations of such tribal authority.”²³

²³ Harp, 450.

CHAPTER 3

History of Marijuana Legalization

The United State has a long history with cannabis, with the uses and legality going through many different changes. Due to these changes, the opinion and support of cannabis use or legalization has changed as well. Cannabis comes in different forms for different uses. One of these forms is known as hemp, which has several different uses. Hemp was one of the earliest cash crops cultivated by American colonists used for creating a variety of materials including paper, cloth, and rope. Eventually, hemp lost its popularity and the use of cannabis began to be scrutinized and eventually regulated.²⁴ In the United States, there have been several different federal legislative acts pertaining to the use of marijuana, including its possession, cultivation, and distribution. These include the Marijuana Tax Act (1937), the Boggs Act (1952), the Narcotics Control Act (1956), the Controlled Substance Act (1970), and Anti-Drug Abuse Act (1986)²⁵.

In the early 1900s, several states took steps to criminalize cannabis, beginning with California in 1913. The federal government did not begin to regulate marijuana until the 1930s. The Marijuana Tax Act of 1937 imposed a one dollar tax on any instance of purchasing, selling, growing or prescribing marijuana.²⁶ In 1952 and 1956, a mandatory minimum sentencing of 2 years for selling marijuana was added onto the legislation. Marijuana was classified as a

²⁴ Timothy Kneeland *Today's Social Issues : Democrats and Republicans* 2016

²⁵ Bin Yu, Xinguang Chen, Xiangfan Chen, and Hong Yan “Marijuana legalization and historical trends in marijuana use among US residents aged 12–25”

²⁶ Kneeland, 200.

Schedule 1 narcotic through the Controlled Substance Act.²⁷ This classification is reserved for drugs that are accompanied by a high risk of dependency and that offer no type of medicinal value.²⁸ This legislation classified marijuana in the same classification as drugs such as LSD and cocaine.²⁹ In the article, “Modern History of Medical Cannabis: From Widespread Use to Prohibitionism and Back” authors Simona Pasanti and Maurizio Bifulco write, “medical use has been deeply influenced and hampered by economic, social, and ethical issues that are now being reconsidered owing to recently collected scientific evidence about the efficacy and safety of cannabinoid-based drugs.”³⁰ There are a wide range of medical benefits of marijuana including treating nausea in cancer patients, and the treatment of anorexia, Tourette’s syndrome, and multiple sclerosis.³¹

The legalization process of marijuana is different from state to state throughout the country. While the United States Federal government still categorizes the substance as a Schedule 1 narcotic, state elections have resulted in differing levels of legalization throughout the country. Some states are choosing to legalize it for medicinal use only, in which case this use is commonly referred to as medical marijuana. Medical marijuana programs are often structured in that patients must receive a physician recommendation and then apply for a medical marijuana license from the state. In other states, recreational use is legalized, allowing citizens to purchase the substance either freely through recreational dispensaries, or likewise through the use of a

²⁷ Kneeland, 200.

²⁸ Bin Yu et. al,

²⁹ Kneeland, 200.

³⁰ Simona Pasanti and Maurizio Bifulco, “Modern History of Medical Cannabis: From Widespread Use to Prohibitionism and Back” *Trends in Pharmacological Sciences* 38, No. 3 (2017) 195-198

³¹ Kneeland, 201.

recreational license. Other states are choosing stricter legalization through allowing the growth and production of hemp, CBD substance, or other strict medicinal uses.

The first efforts to legalize marijuana began in the 1960s and resulted in 11 states lessening their punishments for marijuana possession.³² A grassroots movement for the legalization of medical marijuana began in California and eventually led to the state becoming the first state to legalize medical marijuana in 1996. In 2012, Washington became the first state to legalize recreational marijuana, and Colorado became the second in 2014.³³ In 2018, Vermont became the first state to legalize recreational marijuana use through the state legislature.³⁴ Currently, the number of states that have legalized the medical use of marijuana is at 33, with 11 of these states also legalizing marijuana for recreational use.³⁵ Due to the federal classification of marijuana, there are limitations to these state legalizations including states borders, flying, and the possession of marijuana in state parks or reservation/tribal lands. As more and more states change their present laws on marijuana possession, cultivation, and distribution the situation becomes more complex.

³² Bin Yu et. al, 2.

³³ Kneeland, 201

³⁴ Ramirez and Masse, 27.

³⁵ Bartlett and Davey, 55.

CHAPTER 4

Tribal Efforts at Legalization

The legalization of marijuana for tribes has proven to be a different situation than that of the individual states. There are several different factors influencing this. Though tribes are able to act independently of states, there has been some disagreement on whether tribes are allowed to grow, produce, or sell marijuana on or off of their reservations or tribal lands. These tribal marijuana situations are more promising in states that already have marijuana legalized, and even more so in recreational states. Tribes that hope to venture into the marijuana industry have a better chance of receiving little to no pushback from state governments in areas where recreational marijuana is already legal because there is less conflict when it comes to non-Indians using or possessing marijuana. Theoretically, in a state where marijuana is either prohibited or legalized in a restricted manner, if a tribe were to allow for the sale, purchase, consumption, or possession of marijuana on tribal lands, outsiders could potentially be able to partake in these activities though they would not be allowed to do so on non-tribal lands. However, even in some states where marijuana is legalized in some form, tribes are still being met with pushback from both state and federal governments.

In 2012, voters in the state of Washington voted to legalize recreational marijuana. This opened the doors for Washington tribes to become entangled in the legalized consumption and possession of marijuana of non-Indians on their lands. There was nothing local law enforcement could do. One such affected tribe is the Suquamish tribe. In 2015, “the tribes, the state (including

the Washington State Liquor and Cannabis Board, Washington Department of Revenue, and Governor's Office), and various stakeholders and legislators worked to pass House Bill 2000.”³⁶ This bill had massive support from the House and was clear on its intention to establish a working relationship between tribes and the Washington state government to regulate marijuana. The bill allowed for the state to enter into compacts with its tribes. “On September 15, 2015, the Suquamish tribe became the first marijuana-compact tribe in the nation.” Tribes in Washington are currently operating a number of marijuana facilities including retail stores, testing labs, and growing operations.³⁷ The Squaxin tribe in Washington has opened their own marijuana retail store, though they do not cultivate their own crops.

The passing of the legislation for the state of Washington to enter into compacts with tribes is a positive for Washington tribes. Unlike states without such legislations, Washington tribes are able to have some sort of agreement with their state and do not have to worry about the state hampering their efforts to join in on the industry. This has been a problem in previous examples of gaming and tobacco as states sought to limit tribal ability to gain a profit from these industries or sought to prohibit entirely. However, while some of Washington's tribes are taking advantage of this new industry and new ability for compacts with the states, other tribes are choosing not to legalize marijuana, such as the Yakama tribe in Washington. The Yakama Nation chose to ban marijuana completely from their reservation.³⁸

In South Dakota, multiple attempts at entry into the marijuana states have been struck down by the federal government. The aforementioned instances on the Pine Ridge Reservation of

³⁶ Ramirez and Masse, 28.

³⁷ Ramirez and Masse, 28.

³⁸ Gosia Wazniacka, “Oregon Warm Springs Tribe Approves Recreational Marijuana Facility, Sales Outside of Reservation” *The Associated Press*, 2015.

the Oglala Sioux Tribe regarding industrial hemp were efforts put forth by sole individuals, however, there is another instance of a tribal entity trying to establish the legalization of cannabis. “In June 2015, the Flandreau Santee Sioux Tribe of South Dakota passed the Marijuana Control Ordinance, which laid out a regulatory scheme to engage in recreational marijuana commerce on the reservation, including marijuana use at an entertainment venue located adjacent to the tribe’s 25-year-old casino and hotel.”³⁹ However, the tribe heeded the warnings of government officials, who threatened similar action taken against the Menominee Nation for their industrial hemp attempt, and destroyed their own crops before the federal government could take any action.⁴⁰

The federal interference in South Dakota, and Wisconsin are not the only examples of the United States government attempting to further prohibit tribes from legalizing or engaging in the cannabis industry. Senator Lankford, a Republican senator from Oklahoma, introduced the Keeping out Illegal Drugs Act (KIDS) to the US senate in 2015. The KIDS Act would strip away federal funding from tribes that engaged in violated federal laws regarding cannabis. “It would prohibit Native American tribes and tribal organizations from "cultivating, manufacturing or distributing marijuana on Indian lands," knowingly allowing it to be done or failing to destroy a crop and alert the ‘appropriate federal official’ if an individual or entity is found growing or selling marijuana.”⁴¹ This is an interesting take on marijuana in Indian Country as it came after the release of both the Cole and Wilkinson memos.

³⁹ Bartlett and Davey, 56.

⁴⁰ Wilhelm Murg, Native American Tribes Weigh in on Legalizing Medical and Recreational Marijuana. *Oklahoma Daily: University of Oklahoma Norman Campus*, 2016.

⁴¹ Murg, 2016.

In a further complication of tribal cannabis legalization, in California, a recreational state, tribes that are wanting in on the industry are faced with the unknown. Though they deem it lawful for them to legalize and produce cannabis on their reservation, it is not yet clear whether these products will ever be able to be taken off of the reservation yet alone sold off of the reservation.⁴² This is the case in California where with the new regulated system, the state is requiring tribes to waive their sovereign immunity if they want in on the industry.⁴³ “Many tribal leaders aren’t willing to waive their nation’s hard-won rights to self governance — and, some would argue, their identity — by agreeing to be treated like businesses instead of governments.”⁴⁴ This is no doubt a harrowing decision for tribes to consider carefully as they pursue their goals of obtaining a place in the cannabis industry. Brooklyn Staggs further explains the situation of tribes in California in her article, “Could Cannabis be the New Gambling for Native Americans?” Staggs writes,

California law requires local jurisdictions to approve cannabis businesses before the state will issue its approval, and cities and counties near tribal lands insist — correctly — that they have no authority over tribal land. To date, none of the three agencies that license cannabis businesses in California have issued permits for projects in Indian Country, though they said they’re reviewing applications.

These issues in California are just one example of the differing situations across all 50 states. Tribes in another state may have a better or worse chance at their legalization efforts depending on state laws and process of approval for marijuana projects.

Cole and Wilkinson Memorandums

⁴² Staggs, 2019.

⁴³ Ramirez and Masse, 27.

⁴⁴ Staggs, 2019.

The Cole Memorandum caused some to believe that the federal government was essentially legalizing marijuana in states that had already taken measures to legalize. It is important to note that the memo was intended to provide guidelines on discretion of US attorneys in marijuana prosecutions. The Cole Memo was not intended to be a legalization of marijuana and certainly was not meant to apply to tribes and tribal lands. It did however, cause confusion for some who did interpret it to give way for tribes to engage in cannabis activities. The Cole Memo laid out 8 specific priorities for “investigative and prosecutorial resources in all states.” The eight priorities are as follows,

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises , gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to others states;
- Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of others illegal drugs or illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property

For those interested in the effects of this memo when it came to the tribal marijuana industry, the priority regarding the growing of marijuana on public lands and the marijuana possession or use on federal property were worrisome.⁴⁵

On October 28, 2014, the U.S. Department of Justice released a memorandum to U.S. attorneys under the subject “Policy Statement Regarding Marijuana Issues in Indian Country.” This memorandum was dubbed the “Wilkinson Memo” as it was published under the director, Monty Wilkinson. This memo was sent out under the Obama Administration, an administration that was deemed to be friendly to tribes and tribal issues. The memo states, “With a number of states legalizing marijuana for use and production, some tribes have requested guidance on the enforcement of the Controlled Substances Act (CSA) on tribal lands by The United States Attorneys’ offices.” The Wilkinson memo made it clear where the federal government stands on marijuana on tribal lands. The memo reads, “Nothing in the Cole Memorandum alters the authority or jurisdiction of the United States to enforce federal law in Indian Country. Each United States Attorney must assess all of the threats present in his or her district, including those in Indian Country, and focus enforcement efforts based on that district-specific assessment.” The memo goes on to say that US attorneys must use a case-by-case method when dealing with individual tribal governments. The memo does acknowledge that Indian Country is made up of many different reservations and lands, and that these borders can sometimes go across state lines or federal districts.⁴⁶ While these memos may have given hope to some looking to pursue efforts

⁴⁵ US Department of Justice, Office of Deputy Attorney General, *Guidance Regarding Marijuana Enforcement*, by James M. Cole, Washington D.C., August 29, 2013..

⁴⁶US Department of Justice, Executive Office of United States Attorneys, *Policy Statement Regarding Marijuana Issues in Indian Country*, by Monty Wilkinson, Office of the Director. Washington D.C., October 28, 2014.

in legalization in Indian Country, both of these memos were included in the rescindment by Attorney General Jeff Sessions in 2018 under the Trump Administration.

CHAPTER 5

Article Retrieval and Analysis Process

In order to explore what was being discussed about tribal cannabis efforts, a search was conducted through NexuSLinus to gather different newspaper articles regarding marijuana and tribes or tribal communities. Several different searches with different terms were conducted. Such searches contained a variety of terms all including either “cannabis” or “marijuana” as well the terms “American Indian,” “Native American,” “tribes,” or “tribal.” Searches would be entered as such, “American Indians and cannabis,” or “tribes and marijuana.” Over 45 articles were found and put into a database based on author, source and year. These articles discussed possible economic ventures being taken by tribes, the passing of tribal legislation towards cannabis legalization, outcomes of tribal legalization efforts, gatherings of tribes and tribal leaders aimed at discussing legalization, and much more.

Articles were then read and analyzed and sorted into one of the three major topic areas - law and policy, economic development, or health. Several articles may have touched on more than one of these topics but articles were sorted based on the most heavily discussed topic. Specifying too many words when doing searches in databases resulted in fewer results. Including not enough words resulted in many articles that did not directly pertain to the topic including commentaries on marijuana on legalization but no mention of tribes, or articles discussing tribal sovereignty in general with no mention of the efforts to legalize. Each article was read and analyzed.

After reading and evaluating each article, it was apparent that this wide selection of sources was focused on one or more of three common topics. It was then important to determine and examine why these topics were so prevalent in the discussion of tribal cannabis ventures and

legalization. These three major topics were law & policy, economic development, and health. For one, the topics of tribal law and policies affecting tribes go hand and hand. Several articles in this topic discussed tribal sovereignty as well. This is understandable and expected as current laws and policies are affecting tribal efforts to exert sovereignty. For over a century federal Indian policy has had a direct affect on the ability of tribes to exert their sovereignty. Tribal economic development is directly affected by tribal policies and is a facet of tribal sovereignty. Health is an important factor for tribal communities as many tribal members are faced with health issues, including both physical and mental health issues. Substance abuse is a widely known issue of tribal communities and may present a concern in discussions of tribal legalization of cannabis. Many articles contained discussions on each of these topics although they may have focused more on one or the other.

Findings

Numerous discussions on marijuana legalization and tribes are centered around the difficulties tribes are facing in their efforts to join the marijuana industry. Most articles were centered around policy and law, with the majority of these articles including some discussion on tribal sovereignty. Tribal sovereignty is a source of complexity when it comes to tribes being able to participate in the cannabis industry, so it is only natural that authors are discussing sovereignty and how it plays a role in the grand scheme of things. Both American Indian and non-Indian reporters discuss tribal sovereignty in their commentary on tribal legalization aspirations. In the article, “Native Tribes Want Pot Business, but Financial Gain May Cost Their Sovereignty” Julian Brave Noisecat presents a large discussion on the unique, often complicated situations that tribes are facing as they have a special and unique circumstance in regards to jurisdictions and policies. Noisecat goes on to further elaborate on some of these difficulties,

Tribes are in some cases still policed by state and local law enforcement. Although tribes are sovereign and can create and enforce their own laws governing tribal members on sovereign land, non-tribal members are subject to state laws even on that land, so if pot is illegal in the state, it may still be illegal for a non-tribal member to buy marijuana there. States also maintain jurisdiction over roads, often even on the reservation, which makes the movement of crops and production implements potentially illegal.⁴⁷

Noisecat echoes the concerns of many authors who fear that tribes are taking a risk in making moves toward legalization. A major risk is the possible jeopardization of federal dollars that go to tribes for tribal services. Losing federal funding could very well cripple some tribes and their communities. While these difficulties are a reflection of the complex nature of federal Indian law and policy, the down right bad luck that some tribes were having in their efforts was apparent to some as a contradiction to the seemingly easy path of states. This led to discussions as to what tribal sovereignty truly was and what it looked like when it came to tribal rights.

There is also some discussion as to the actual tribal legislation and voting efforts that are taking place in tribes seeking the legalization of marijuana. In the article, "Oregon Warm Springs Tribe Approves Recreational Marijuana Facility, Sales Outside Reservation" Gosia Wozniaka discusses the Warm Springs tribe and their efforts in voting on a proposal for an on-reservation growing site. Tribal officials stated over 80 percent of tribal voters voted in favor of the proposal to grow and cultivate marijuana for sales in off reservation stores. However, this proposal does not affect the ban on marijuana possession on the reservation. Wozniaka discusses the fact that

⁴⁷ Julian Brave NoiseCat, "Native Tribes Want Pot Business, but Financial Gain May Cost Their Sovereignty; The US War on Drugs May be Getting a New Life as a War on Indigenous Sovereignty as Tribes Seek to Profit Off Allowing Marijuana on Their Lands", *The Guardian*, 2015.

other tribes have also chosen not to take part in the marijuana industry, such as the previously mentioned Yakama Nation.⁴⁸

As for policy discussion, several articles talked about the actual legalization processes that tribes are taking. In the state of Washington, marijuana is legalized for recreational use. As previously discussed, the state eventually passed legislation allowing for the creation of compacts with individual tribes to encourage tribal inclusion in the marijuana industry in such a way that worked for both the state and the tribes. Many articles made mention of this special situation in Washington state and the similarities between the creation of compacts to that of the gaming industry. Many articles showed optimism for tribal situations in Washington due to the creations of cannabis compacts.

While the least discussed topic was health, there were multiple article authors that talked about the potential health or societal hazards in legalizing marijuana on tribal lands. This is understandable as many tribal communities have high rates of addiction and substance abuse. Some tribal communities offer programs to combat these issues and individuals in the communities may think that it is not safe to allow for the legal consumption or possession of marijuana. In the article, “Most Indian Tribes Wary of Legalized Marijuana”, David Fritze comments on this very issue. Fritze writes,

“Domestic violence, substance abuse and suicide rates on reservations are many times higher than the national average. Additional problems include poor housing and education systems. While some leaders believe legalizing marijuana would exacerbate their tribe’s tribulations, others view marijuana as an economic opportunity to reclaim financial independence and improve the quality of life for their people.”⁴⁹

⁴⁸ Gosia Wozniacka, 2015.

⁴⁹ Wozniacka, 2019.

So for many, the societal and potential health risks outweigh the possible gain that tribes may stand to receive from using marijuana as a source of revenue. One thing to consider when looking at societal issues of cannabis is the efforts at decriminalization. Many have criminal records relating to marijuana prosecution and the decriminalization of the possession of marijuana may offer some consolation in that there will be less arrests as pertains to marijuana.

While health and social issues very well may be a concern for some tribal governments or tribal communities, with marijuana becoming a more widely accepted substance, these issues may take a backseat to the possibilities of economic ventures. This is not to say, however, that tribal governments are putting economic ventures about the well being of their tribal members and communities, but that they are open to finding new ways to provide for their people and to fund the social services that will directly benefit members. Some tribal leaders or tribal voters that support legalization may fall into the camp that believe that marijuana usage offers minimal health risks or risk of dependency and thus they are not concerned with these issues. Due to many still believing that marijuana poses harmful health and societal issues, legalizations may continue to be a double edged sword for tribal governments.

The marijuana industry may prove to be a valid revenue stream for tribes looking to expand their revenue outside of gaming or other ventures. Marijuana is proving to be a booming industry in states like Colorado and Oklahoma, and the industry can only grow as more states legalize or extend legalizations. States are reaping the financial benefits from legalized marijuana, from one or both of the medical and recreational industries. Bartlett and Davey address this notion writing, “States embracing cannabis legalization continue to collect even greater revenue in the form of sales tax, business taxes, and even payroll taxes.”⁵⁰ This

⁵⁰ Bartlett and Davey, 56.

seemingly promising industry may allow for tribes to grow their economic portfolio and provide for their members.

One interesting find was the several of the articles that were examined came from the year 2015. In 2015, President Obama was still in office, and it was under his administration that several states took steps towards legalization. This was also the year that the Cole Memo was released. As previously discussed, the Cole Memo opened up the door to further discussions about marijuana legalization in a state context and also in a tribal context, though it did not outright legalize marijuana in Indian Country, nor was it meant to. Uncertainty and contemplation are major themes in articles from this year. Mary Hudetz writes, “The uncertainty - blamed partly on thin DOJ guidelines, the fact that marijuana remains an illegal drug under federal laws, and a complex tangle of state, federal and tribal law enforcement oversight on reservations- has led attorneys to urge tribal leaders to weigh the risks involved before moving forward with legalizing and growing pot.”⁵¹ In this year, articles were heavily focused on whether or not it would be possible for tribes to engage in these activities without risking losing their sovereignty. There were also many articles that discussed the economic benefits that tribes would gain from these ventures. However, as Bartlett and Davey state, “2015 was not only a mixed year for tribes experimenting with cannabis legalization, but often a volatile one. Unlike states, tribes on the whole were unable to break through and achieve a level of success similar to the states - especially in states maintaining some form of cannabis prohibition.”⁵²

When it comes to the economic development side of the discussion, it is often discussed along with tribal sovereignty. Several authors have chosen to draw comparisons between the

⁵¹ Mary Hudetz "Legal Experts Urge Caution as Tribes Enter Cannabis Business" *Associated Press* 2015.

⁵² Bartlett and Davey, 56.

gaming industry and the potentials of newly founded tribal cannabis operations. The gaming industry is often used as an example of tribal sovereignty. Discussions are focused on the economic benefits that gaming has offered certain tribes and how cannabis operations may offer this same type of revenue stream to both tribes that already have success in gaming as well as those who do not.

The situation of the Warm Springs Tribe out of Oregon was discussed in several different articles. In one instance, the focus was on the fact that the gaming industry provided little economic benefits to the Warm Spring Tribe compared to other tribes. Part of the reasoning behind this is that some tribes are situated away from largely populated areas where gaming could draw big crowds. Tribes that are located in rural areas away from population centers may find it difficult for gaming to be profitable. This is the situation for the Warm Springs Tribe as their reservation is not situated directly near a large city.⁵³ However, “The Warm Springs tribes are situated in the perfect location to grow cannabis. There are more than 300 days of sun a year, and the reservation is close enough to easily bring products to market.”⁵⁴ An interesting point that has been made is that the Confederated Tribes of Warm Springs (and rightfully other tribes as well) should be able to develop cannabis operations quickly as they would not have to “deal with the headaches of the city, state, and federal government.”⁵⁵

All of the articles contribute to the huge discussion on the tribal legalization of cannabis. Again, this situation offers an interesting look at a real world example of a complicated network encompassing federal law, state law, local law, and tribal law. Tribal sovereignty and tribal sovereignty immunity are at play in this situation and add to the complexity. The different

⁵³ Alana Semuels, "A New Growth Industry for Native Americans: Weed" *The Atlantic* 2016.

⁵⁴ Semuels, 2016.

⁵⁵ Semuels, 2016.

circumstances surrounding marijuana in each of the 50 states also adds a layer of intricacy to this discussion. There are many factors to observe and consider when examining the efforts of tribes such as economic opportunity, health risks or rewards, and assertion of tribal sovereignty. The total numbers for the three topics were as follows: 1 article primarily discussing health, 10 articles primarily discussing economic development, and 36 articles discussing law and policy in some capacity. A total of 25 articles (more than half of all articles) specifically mentioned “sovereignty” or “sovereign” and discussed tribal sovereignty in one way or another. Authors of these articles seemingly have a collective understanding of the importance of tribal sovereignty in this particular situation. Many authors have made it point to discuss the disparities between the treatment of states in regards to cannabis legalization and the treatment of tribes seeking the same.

Name of Article	Topic
Despite Meeting, Okla. Tribes Say Marijuana Not in Plans	Law and Policy
60 tribes gather in Tulalip to talk marijuana	Law and Policy
A 'deal with the devil'? Native American tribes push for marijuana legalization; Two Wisconsin tribes, the Menominee and the Ho-Chunk, look to follow South Dakota's Flandreau Santee Sioux, seeing a potential revenue stream - but it could force them to cede some of their sovereignty to federal and local governments	Law and Policy
A New Growth Industry for Native Americans: Weed	Economic Development
Alaska senators join push for states' rights in marijuana laws	Law and Policy
American Indian tribes free to grow and sell pot – as long as they follow federal laws	Law and Policy
American Indian tribes plan to make marijuana a cash crop; As more states legalise the recreational and medicinal use of marijuana, American Indians are looking to grow the crop on tribal land	Law and Policy
Could marijuana grow like casinos in Oklahoma?	Law and Policy
Court: Native American church not excused from cannabis laws; Court: Native American church not	Law and Policy

excused from cannabis laws	
Dakotas tribal leaders pitching pot as economic opportunity	Economic Development
DEA Considering MMJ BioPharma Cultivation Marijuana Grow License on Tribal Lands; MMJ Biopharma's endeavor is a mutually beneficial arrangement with the tribe as it serves the best interest of the tribe, many of whom will be employed. However, setting aside the employments benefits, under the U.S. Constitution Native American Indian tribes are recognized as semi sovereign nations, and a business venture with an Indian tribe offers multiple advantages.	Law and Policy
Denver Company with SD Connections to Help Flandreau Tribe Grow, Sell Pot	Law and Policy
For American Indian youth, risk is higher for alcohol, drug use, say researchers	Health
From casinos to cannabis: the Native Americans embracing the pot revolution; Gambling transformed reservations 40 years ago, but often only enriched a few. Could the legal marijuana business prove more broadly beneficial?	Economic Development
Frontier Indoor Garden Solutions and Chippewa Business Development announce Joint Venture	Economic Development
Is Tribal Cannabis on a Comeback Tour	Law and Policy
Key Committee In Congress Approves Marijuana Legalization Bill	Law and Policy
Legal experts urge caution as tribes enter cannabis business	Law and Policy
Legal Weed Is the Next Tribal Sovereignty Test	Law and Policy
Mashantuckets, Mohegans say they're not pursuing marijuana	Law and Policy
Mixed Smoke Signals For Tribal Marijuana From DOJ	Law and Policy
Most Indian Tribes Wary of Legalized Marijuana	Law and Policy
National Consulting Firm Specializing in Native American Cannabis Policy Establishes First Tribal Cannabis Compacts in Nevada; Cassandra Dittus, co-founder and president of Tribal Cannabis Consulting, lobbied and worked with the Nevada Governor's Office on pro-cannabis legislation.	Economic Development
Native American farmer suing state over marijuana licenses	Law and Policy
Native American Organics, LLC Announces The Launch	Economic Development

Of A Groundbreaking Cannabis Company; AMERICAN INDIAN VETERANS AND OTHERS ON RESERVATIONS WILL BENEFIT GREATLY	
Native American Tribes Eye Lucrative Marijuana Market	Economic Development
Native American Tribes Eye Marijuana Business—With Their Tax-Free Gaming Advantage	Law and Policy
Native American Tribes May Become Cannabis Banks	Law and Policy
Native American Tribes Take on Pot, Consider Gamble on Legalization	Law and Policy
Native American tribes weigh in on legalizing medical and recreational marijuana	Law and Policy
Native tribes want pot business, but financial gain may cost their sovereignty	Law and Policy
Oglala Sioux Tribe approves medical, recreational marijuana	Law and Policy
Oregon Warm Springs tribe approves marijuana sales project	Economic Development
Puyallup Tribe to Open Marijuana Testing Lab	Economic Development
Smoke Signals: Washington State And Suquamish Tribe Ink First Ever Marijuana Compact	Law and policy
South Dakota tribe set to vote on legalizing marijuana; South Dakota tribe set to vote on legalizing marijuana	Law and Policy
State-Tribal Marijuana Compacts: Will Tribal Marijuana Look Like Gaming	Law and Policy
The feds suggest they won't interfere, but Indian tribes are still wary of marijuana farming; Many tribes are exploring their options, but tribal leaders are concerned about the government's vague offer of cover from prosecution, possible loss of federal funding	Law and Policy
These Native American Tribes Legalized Weed, But That Didn't Stop Them From Getting Raided By The Feds	Law and Policy
Tribal Marijuana: Patience Is A Virtue*	Law and Policy
Tribe's marijuana consultant pays fine, court costs	Law and Policy
Tribes at odds with Calif. officials over the right to sell marijuana;	Law and Policy
Tribes cut out of California pot market might grow their own supply	Law and Policy

Why American Indian Tribes Are Getting Into the Marijuana Business	Law and Policy
With gaming gone bust, tribe turns to marijuana farming	Economic Development
Wyoming tribe to vote; medical marijuana backers press case	Law and Policy

Topic:	Number of Articles:
Law and Policy	36
Economic Development	10
Health/Societal Wellness	1
Articles that mentioned sovereign/ty	25

CHAPTER 6

Conclusion

Some authors either believe tribes are risking their sovereignty by openly defying the federal government, while others believe that legalizing marijuana on tribal lands is a way for tribes to assert said sovereignty and to expand their ability to provide for their members. Robert Williams, director of the Indigenous Peoples Law and Policy Program at the University of Arizona, is quoted, “If tribes don't do this right, their situation could get a lot worse. The stakes are high, and the consequences could be disastrous.”⁵⁶ Tribal governments have many factors to take into account before making a step towards legalization. Though the stakes may be high, there are several who are optimistic about the potential for tribes to get into the industry.

So yes, while the risk is high for tribes that are legalizing marijuana, whether the legalizations may be for purely economic reasons, for health reasons, or for whatever other reasons, tribes are willing to take on this risk. Tribes have previously done so with the gaming industry and for some communities, gaming has completely revolutionized the tribe’s ability to support their people and communities. Some may have seen gaming as a less than savory economic move, but tribes saw it as an opportunity to provide a stable revenue stream. Some tribes have seen phenomenal revenues from their gaming ventures but others have stalled or never been lucrative to begin with. The cultivation, sale, processing, or testing of cannabis may offer such tribes an opportunity to provide a more stable economy. This is extremely relevant in times such as now where a worldwide pandemic is hitting the United States especially hard, and the entertainment industry has taken a hard hit. Several tribes have chosen to close their casinos in an effort to protect their workers, members and customers even though these casinos may be a

⁵⁶ Robert Williams as quoted by David Fritze, Most Indian Tribes Wary of Legalized Marijuana, *Oklahoma Watch* 2015.

main source of revenue for the tribe. Many tribal members are included in the enormous amount of Americans that are now unemployed. Also, some tribes are having to scale back certain operations in an effort to stay afloat as gaming revenue is on a downward trend. This is no doubt troubling and many tribes have resorted to using federal assistance monies to provide economic relief to their members. At the same time, during this pandemic, the newly created medical marijuana industry in Oklahoma has been booming. The sales of marijuana products have proven to increase during the pandemic. No doubt Oklahoma tribes and tribal communities could have used the potential economic benefits of this industry during this time.

Overall discussions on tribal marijuana legalization is less on whether or not tribes should attempt to go down this road, but rather on whether tribes are even able and what sort of obstacles they face as they move forward. There is a large focus on the disparity between the treatment tribes receive from the federal government and the treatment states receive from the federal government in their efforts for legalization. Many are aware of the trials and tribulations tribes face in efforts to exert their own sovereignty and that the federal government is often seemingly unfair to tribes (surprise). It is an astonishing thought that the 50 different states in the nation are able to pass laws that directly contradict what the federal government imposes, yet some tribes throughout the country are being kept from acting out these legalizations in the same manners on their own lands. It may prove to be particularly beneficial for tribes and tribal communities that there are several ongoing discussions around the country regarding the inability of tribes to exert their sovereignty in a cannabis context, especially when so many states are able to reap the benefits of this industry to the point of millions of dollars in profits. These discussions are important as it is vital that tribes are not complicit when it comes to the exertion of tribal

sovereignty to its fullest. Tribal governments and voting bodies should be able to pass legislation regarding their membership and tribal lands.

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