

ALCOHOLIC BEVERAGE CONTROL POLICY: IMPLEMENTATION ON A NORTHERN PLAINS INDIAN RESERVATION

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Dr. Philip May's article in this volume, "Alcohol Policy Considerations For Indian Reservations and Bordertown Communities," represents a valuable contribution to the public debate concerning alcohol abuse on and near Indian reservations, and the range of policy options available to Indian tribes. As a practitioner in the field of Indian law, I am in substantial agreement with the main themes of the article. Therefore, this comment will, in light of some of Dr. May's major themes, briefly examine: (1) federal regulation of liquor traffic and the authority delegated to Indian tribes to regulate the use and distribution of liquor throughout their territories; (2) the need to dispel the "myths" surrounding Indians and alcohol abuse; and (3) the experience of one Northern Plains Indian tribe in fighting the "War on Alcohol Abuse."

Historical Background of Indian Country Liquor Traffic and Tribal Authority to Regulate Liquor

Alcohol abuse has been a "public health" concern for American Indians since liquor was first introduced into North America by the Europeans. Historically, liquor traffic with American Indians has been heavily regulated.² "Congress imposed complete prohibition by 1832,"³ but federal liquor laws did not stop the flow of liquor into Indian country. The U.S. Agent at Fort Snelling wrote in 1833: "Whiskey has been transported in carts from Prairie Du Chien to the Forks of Red Cedar and thence to the Des Moines River & from the same point pushed into the country along the Mississippi, and Rivers St. Peters. Many lives have been lost in consequence among the Indian tribes."⁴ Indeed, on occasion, federal agents distributed liquor to Indians during treaty negotiations.

Federal and tribal efforts to enforce the prohibition against providing liquor to Indians were later increased,⁵ but prohibition inadvertently added to problems of alcohol abuse among Indians by promoting a "binge" style of drinking, i.e., sporadic, heavy misuse of alcohol.⁶ In 1953,

Congress passed Public Law 277, codified as 18 U.S.C. § 1161, to end the discriminatory effects of the federal prohibition against liquor sales to American Indians through a concurrent delegation of authority to the states and the Indian tribes “to regulate the use and distribution of alcoholic beverages in Indian country.”⁷ Thus, Indian tribes have the power to regulate the use and distribution of alcoholic beverages throughout their territory; as May explains, with this power comes the potential for creative resolution of alcohol abuse on Indian reservations.

Dispelling Myths About Indians and Alcohol Abuse and Educating the Public About Available Regulatory Options

Common, negative misconceptions about Indians and alcohol inhibit effective policy-making by polarizing public debate around the issue of legalization versus prohibition.⁸ As May points out, many people share the erroneous beliefs that (a) Indians are more susceptible biologically to alcohol abuse than other ethnic groups, and (b) a greater proportion of the Indian population uses alcohol than other racial or ethnic groups. It is important to dispel these “myths” because they tend to deflect policy-makers from their desired goals.

A 1985 joint IHS/tribal study conducted on the Cheyenne River Sioux Reservation confirms that the stereotypical beliefs regarding the prevalence of alcohol use among Indians are false. As a percentage of their respective populations, fewer tribal members (45.9%) drank alcohol than neighboring non-Indians (61.0%). The study also demonstrated, however, that tribal members who drank alcohol were more likely to engage in “binge” drinking than non-Indians (37.1% tribal members versus 28.7% non-Indians had five or more drinks on any one occasion in the prior month; 14.6% tribal members vs. 10.1% non-Indians had sixty or more drinks per month). Therefore, tribal members suffered death from alcohol-related injuries at rates several times higher than the general population: suicide 5.6 times higher; homicide 2.9 times higher; accidents 4.1 times higher.⁹

These facts, consistent with the studies described by May, indicate that although the prevalence of drinking among tribal members may be lower than neighboring populations, “the proportion of problem drinking among those . . . who do drink is consistently higher . . . than in the general U.S. population.” Therefore, policy formulation should focus community attention on the range of policies available to change unacceptable drinking behavior (including drunk driving, public intoxication, violence, and drinking while pregnant), and the ability of the community to tailor those regulatory policies to the needs of the community.

Response of the Cheyenne River Sioux Tribe to the Problems of Alcohol Abuse Within Its Territory

The exercise of tribal sovereignty, as May explains, will be most effective in fighting alcohol abuse when a clear, well-defined policy is adopted and effectively enforced. Members of the Cheyenne River Sioux Tribe identified alcohol abuse as the number one public health concern on the Reservation in 1985, and the Cheyenne River Sioux Tribal Council responded by enacting a clear law against drunk driving and imposing mandatory sentences on violators. Tribal police have vigorously enforced tribal laws against drunk driving; according to the IHS, the positive effects of tribal efforts can be seen in reduced motor vehicle accident mortality rates, which dropped from 56.5 per 100,000 for the years 1983 to 1985 to 48.3 per 100,000 for the years 1985 to 1987.¹⁰

In 1987, the Tribal Council adopted a more comprehensive approach to alcohol beverage control, declaring a War on Drug and Alcohol Abuse and establishing the goal of freeing the reservation of such abuse by the year 2000. In furtherance of its goal, the Tribal Council resolved to:

1. "[P]ursue state, federal, local and private sector funding to institute comprehensive regional alcohol and drug prevention programs utilizing elders, concerned volunteers, Lakota people and youth in each District,"
2. "[P]ass ordinances against alcohol and drugs and strictly enforce these ordinances through [the tribal] courts,"
3. "[Establish in] each school in each District . . . a comprehensive drug prevention program," and
4. "[Set] an example to our children and to each other [by prohibiting] alcohol [possession or sales] at any Tribal function."¹¹

Tribal agencies, including the tribal police department, tribal mental health department, tribal alcoholism treatment program, and the tribally controlled community college, established joint working groups to implement the Tribal Council's policies. At the same time, the tribe asked for assistance from the federal government to prevent the establishment of two "3.2 bars" near tribal housing projects, but the request was denied. The tribe then determined to use its own regulatory power to prevent the opening of these establishments. Pursuant to the congressional delegation of authority to regulate Reservation liquor traffic and its inherent sovereignty, the Tribal Council amended the Alcoholic Beverage Control Law to require, *inter alia*, all liquor establishments on the Reservation to obtain a tribal license.¹² The owners of the proposed 3.2 bars were informed that they would not be granted tribal licenses, and they voluntarily chose not to open.

Several liquor establishments operated by non-Indians on the reservation, however, refused to comply with the Alcoholic Beverage Control Law, although they have substantial business relations with tribal members. Therefore, the tribe sued them in tribal court. The testimony at the trial demonstrated the need for tribal regulation of reservation liquor traffic. The operations of the unlicensed liquor establishments were shown to have demonstrably serious, negative effects on the tribe and tribal members, including causing or contributing to the following:

1. Economic hardships, including unemployment and the deprivation of the essentials of life, due to alcohol abuse;
2. Alcohol-related elderly, spousal, and child abuse;
3. Alcohol-related disease, injuries, and fatalities;
4. Fetal Alcohol Syndrome and Fetal Alcohol Effect; and
5. Burdens on the tribal health care delivery system (90% of major trauma is alcohol-related), the tribal police (90% of arrests are alcohol related), the tribal courts, and other tribal agencies.¹³

Furthermore, the tribe demonstrated that the unlicensed liquor establishments were irresponsible in the operation of their businesses. For example, one bartender testified that a person could safely consume 6 to 10 drinks or more in one sitting. Another bartender opened at 7:00 a.m. every day of the week, including Sundays, cashed Bureau of Indian Affairs general assistance checks and accepted the proceeds of those checks in return for liquor, all in violation of tribal law.

Significantly, testimony at trial indicated that the tribe's War on Alcohol Abuse has had initial success. For example, one expert testified that the tribe's efforts, including the operation of Drug Abuse Resistance Education (D.A.R.E.) programs by the tribal police in the junior high schools, had contributed to a 30% reduction in students at-risk for drug and alcohol abuse on the reservation between 1985 and 1989.¹⁴ Based on this record, the Cheyenne River Sioux Tribe Superior Court concluded that the licensing and regulation of liquor establishments were essential to address the problems of alcohol abuse on the Reservation, and ordered the defendants to come into compliance with tribal laws or cease doing business.

Conclusion

Despite these initial successes, the War Against Alcohol Abuse has demonstrated to the Cheyenne River Sioux Reservation community that there is no single solution to the problem of alcohol abuse. Tribal law enforcement, court systems, schools, and voluntary community organi-

zations must work together, and the effort must be dynamic — ready to change to meet changing circumstances — if the tribe is to win the fight against alcohol abuse.

Furthermore, the tribe has also come to realize that tremendous resources are needed to establish the necessary education, enforcement, prevention, and treatment programs. Federal funding has proved inadequate. Increased funding is essential to the successful implementation of the tribe's comprehensive approach to the problems of alcohol abuse, especially to establish much needed inpatient treatment facilities and halfway houses on the reservation. To provide the necessary increased funding for tribal alcohol treatment programs, the tribe has begun the process necessary to implement an excise tax on all alcoholic beverages sold on the reservation. Such a tax is expected to also have the beneficial effect of reducing overall liquor consumption.

Other proposals soon to be implemented include mandatory server training, mandatory warning signs setting forth the dangers of drunk driving and drinking during pregnancy, the elimination of drive-up windows, and a "dram shop" law. As the tribe gains experience in this difficult regulatory arena, its regulatory approach is becoming more comprehensive, more cohesive, and more effective. As May urges communities to do, the Cheyenne River Sioux Reservation community is working out its own battle plan for the War Against Alcohol Abuse, gaining knowledge and insight from its own experience and the experience of others. So far, the results have been encouraging.

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Notes

1. Mark C. Van Norman is a 1986 graduate of Harvard Law School and a member of the Cheyenne River Sioux Tribe. He served as Attorney General of the Cheyenne River Sioux Tribe in 1989 and 1990, and has been with the law firm of Greene, Meyer & McElroy, P.C., since February, 1991.
2. *Rice v. Rehner*, 463 U.S. 713, 722 (1983).
3. *Rice v. Rehner*, *supra*, at 722.
4. H. Hoover, "Whisky Trade in the History of Sioux Country Since 1802," *Platte Valley Review*, vol. 19, no. 1 (Winter 1991), p. 14, quoting Letter of Lawrence Taliaferro to William Clark dated August 15, 1833.
5. H. Hoover, *supra*, at 20.
6. Statement of Rep. John J. Rhodes (Arizona), Hearings on H.R. Doc. No. 1055 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83d Cong., 1st Sess. (March 18, 1953) at 2-4 ("I do know, however, of my own knowledge that every responsible person who has dealt with the Indians of Arizona believes that the continued prohibition of the sale of legal liquor to these Indians is detrimental. . . .

[Some of the potions that come out of these tribal stills are rather amazing in their permanent effect on the individual. Further, the Indian, when he buys a bit of liquor, is almost in the same situation that perhaps a few other people were in the days of prohibition when, as soon as the bottle came into one's hands, it was immediately consumed before somebody came around and took it away.”).

7. *Rice v. Rehner, supra*, at 715.
8. It is the author's experience that misconceptions about Indians and their susceptibility to alcohol misuse, which are held by many tribal members as well as non-Indians, are related to the recurring idea that prohibition, rather than regulation, is necessary to address the health problems caused by alcohol misuse among Indians. Indeed, during the course of the Cheyenne River Sioux Tribe's litigation against unlicensed liquor dealers on the Reservation discussed below, the liquor dealers repeatedly asserted that federal prohibition only worsened the problems of alcohol misuse and therefore, the Tribe should not even attempt to regulate the defendants' liquor establishments.
9. The figures cited in the preceding paragraphs are drawn from the *Planned Approach to Community Health, Program Summary* (Aug. 1988), produced by the Cheyenne River Sioux Tribe Health Dept. and the Aberdeen Area Indian Health Service.
10. Testimony of Dr. Terrence Sloan, Aberdeen Area Director of the Indian Health Service. Trial Transcript, vol. 1, p. 154.
11. Cheyenne River Sioux Tribe Resolution No. 313-87-CR.
12. Cheyenne River Sioux Tribe Ordinance No. 48, Alcoholic Beverage Control Law.
13. See generally, *Cheyenne River Sioux Tribe v. Dupree, et al.*, C-224-88 (decided Jan. 8, 1991), appeal docketed Cheyenne River Sioux Tribe Court of Appeals, February 7, 1991; see also, *Rice v. Rehner, supra*, at 724 (discussing “spillover effects” of reservation liquor traffic on surrounding state).
14. Testimony of Prof. William Wolf, Colorado State University. Trial Transcript, vol. III, p. 148.