

3 Agents and Incentives

Money is like fire, an element as little troubled by moralizing as earth, air, and water.

Lewis Lapham, American essayist (1988)

CHAPTER SUMMARY. In this chapter, we examine the social and economic forces that led the “players” in the casino drama – proponents, players, government, and opponents – to act as they did. The decision-making process has not always operated as it should. The main points of failure are lack of knowledge and good information, and the choice of the players to consider only a subset of the benefits and costs. There must be an informed agent that makes decisions based on all benefits and costs, however, if the social good is to be enhanced, and this must be the government in cases where externalities are present.

Copyright © 2004. Cambridge University Press. All rights reserved.

THE PROPONENTS

SUMMARY. Economics teaches that above-normal profit is an inducement for businesses to enter the market. Enormous casino profits, frequently based on government-granted monopoly rights, create pressure for gambling expansion that often finds expression in inappropriate attempts to influence government. Pressure for expansion will persist as long as entry is limited in any way so that casinos earn above-normal profits.

Owners

The evidence of tremendous casino profits is not difficult to find. In February 1993, *The New York Times* reported the success of investors in Argosy Gaming Company, which “has a monopoly on casino gaming in the St. Louis area through its Alton Belle riverboat.”⁵¹ According to the *Times*, “the insiders invested \$201,000 for their stock, or roughly a penny a share. In the offering, they sold 8.3 percent of their shares for \$31.7 million. Add in the \$13 million of dividends they have received, and their investment looks pretty good.” Finishing the story by doing the arithmetic, we find that \$201 thousand had become \$395 million in less than three years. “The insiders, including Jimmy Connors, the tennis star,” had cleaned up. The message was not difficult to understand: If investors moved fast enough and played their cards right, there was big money to be had.

High profits provide incentives that sometimes seem to rival forces of nature in their intensity and ability to induce new promoters to enter the market. During a gold rush, the way to riches requires staking a claim. What else is required? Knowledge and skill, perhaps, but these are not the main requirements. It is unlikely, for example, that the investors in the Joliet Empress were seventy three times smarter than the average businessperson (see box); neither is developing a superior product a requirement. Gambling at expansion casinos is similar to gambling elsewhere. Rather, the main impediment in most states to a casino of one’s own is the government license to a regional monopoly, much like the crown monopolies given to favored courtiers in the Elizabethan Era. High profits that reward socially valuable risk-taking, superior innovation, business

Incentives

In 1989, the state of Illinois was eager to enter the casino business. Iowa legislation that year allowed low-stakes casino riverboats on the Mississippi River. Not wanting to be left out, the Illinois legislature quickly followed suit with the Riverboat Gambling Act, effective February 7, 1990, allowing riverboats in Illinois. By December 1993, nine well-connected Illinois businessmen were feeling pretty good. They had put up the original money to finance the Joliet Empress casino riverboat in Joliet, which began operation in June 1992. Joliet is a nearby suburb of Chicago with access to a population in neighboring areas of more than 6.5 million. After just eighteen months, their starting investment, averaging \$778 thousand each, had produced profits of \$87.1 million.¹ Dividing the take nine ways, this translated into more than \$1 million of profits per investor . . . *every two months!* A typical stock-market return over the same length of time would have been 16 or 17 percent; 1,244 percent was more than seventy-three times better!

¹ Michael Hawthorne, statehouse reporter, "Report on Casino's Fortunes Shows Why Others Seek Boat of Their Own," *The News Gazette*, Champaign-Urbana, IL, May 1, 1994.

expertise, and the like are unobjectionable. However, there are other sources of profit; as the *Times* astutely noted, "In any business, a regional monopoly can be a very profitable thing."

Casino companies respond as expected. In 1996, midwestern newspapers, including the front page of the *Chicago Tribune*, reported that an out-of-state casino company offered to pay \$20 million to two Illinois government insiders if they could obtain a state license for the casino.⁵² One insider was a golfing buddy of the president of the state Senate, the other was a friend of the state Speaker of the House. Given the profits that earlier casinos had reaped, \$20 million was a small price, even considering the additional lobbying effort that would add to the cost.

Rather than reflecting a sudden change in public attitudes about gambling, the expansion of casinos reflected more the coming together of

events, leading to unintended market forces and incentives that emerged following the passage of the Indian Gaming Regulatory Act (IGRA) of 1988. No single agent – the proponents, the players, the opponents, or even the government – controlled the process. To a large extent, each was reacting to external forces that their collective behavior loosed.

According to Robert Goodman, professor of environmental design at Hampshire College, Massachusetts, in his study *Legalized Gambling as a Strategy for Economic Development*,

There is no popularly-based movement for the expansion of legalized gambling; expansion has resulted from the efforts of gambling industry companies and public officials. There are no state gambling plans. Gambling has grown in an ad hoc, “copycat” manner as states follow each other’s leads, responding to revenue shortfalls and the fear that neighboring states or Indian tribes will siphon off their gambling dollars.⁵³

Goodman ends with a warning, “Once gambling ventures are legalized and governments become dependent on their revenues, the future form and spread of gambling within a state become extremely difficult to control.”⁵⁴ An example is furnished by an incident in Missouri after the Missouri attorney general filed charges of perjury to regulators against members of the gambling industry. In response, legislation was created that would do away with the attorney general’s authority to bring criminal cases related to gambling.⁵⁵ When a state Court of Appeals ruling⁵⁶ recognized the attorney general’s jurisdiction to prosecute criminal gambling cases, a bill was put to the legislature for vote later *in the same day* to prevent him from exercising this authority. The approach taken, and the use to which influence on the legislature was put, makes this episode revealing. Missouri’s legislators wisely turned down the bill.

Casino licensing can be treated in two ways. One model – followed by Nevada, Atlantic City, Deadwood (South Dakota), and the Gulf Coast of Mississippi – is to set standards for casino operators and effectively let all comers enter the market who meet licensing standards. The result of

adopting this approach is that casinos will continue to enter the market until they have competed the profit rate down to ordinary business levels. Thereafter, there is less incentive for more casinos to enter; for example, the number of Atlantic City casinos has been relatively stable at twelve for many years.

The second regional licensing model – followed by states such as Minnesota, Illinois, and Michigan – is to license individual casino operators in separate geographical areas. This method creates regional monopolies and results in monopoly rates of profit. The examples at the beginning of this chapter showed how high such profits can be. With competition and entry limited by government, the fortunate owner of a casino monopoly stands to earn a very good return indeed. Profits earned in one market can then be used to influence the necessary legislation to expand in others. We do not mention this because successful businesses acquiring capital to expand is a cause for complaint; expanding business is a cause for complaint only if the business leads to more losses than gains for society, which is the subject of a cost–benefit analysis. Rather, we mention it because it is a predictable process and part of the resulting dynamic of the casino industry.

An example illustrates this point. As part of a day-long session organized by the government of an eastern state to discuss the pros and cons of gambling, I was able to meet the individual behind the proposal to expand gambling in the state. His father and he had worked on the construction of a riverboat for a project that was never completed at its original site. They bought the boat and floated it to the state of Mississippi, where they finished it and operated it as the first casino in its new home. They did well. A few years later, the son owned a racetrack in the East, had business operations in Nevada, and wanted to add slot machines to expand the gambling available at his racetrack. His offer was that he would write an up-front check to the state for \$10 million in exchange for the permissions he sought. There was little doubt that he singlehandedly had the financial ability to make such a payment. Not bad for a man in his thirties who had started out in construction a short time earlier!

The response of local business owners to the arrival of outsiders with plans for casino projects mirrors the “fight or flight” dichotomy known in the animal world: they can either oppose the casino to retain the business they already have or, failing that, get a casino of their own to compete on equal footing. “If you can’t beat ’em, join ’em” makes perfect economic sense. Consider the case of the Richmond, Virginia, restaurant owner who contacted me when a proposal to create a casino riverboat was presented to the state legislature. It was scheduled to dock near the downtown area not far from his successful multistory restaurant, which had been lovingly converted from an old and historic tobacco warehouse into a well-known and popular eatery. He understood his options well. The casino riverboat would be able to offer food and drinks in addition to gambling, but he could legally offer only food and drinks. Faced with unequal ability to compete, his restaurant would be at risk of becoming a victim like so many others that lost large portions of their business to a neighboring casino. His choice was to oppose the casino, but he made it clear that – although he did not like gambling – if a casino were approved, he would have little choice but to seek a license of his own to protect his livelihood.

Lobbyists

With so much money available to it, the industry would be foolish not to use its resources in lobbying and public-relations efforts. Lobbying can be both defensive and offensive. The American Gaming Association (AGA) was established to represent the industry. It selected Nevadan Frank Fahrenkopf, formerly associated with the leadership of the Republican National Committee, as its chairman. Under the AGA’s leadership, the gambling industry successfully lobbied Congress to limit the subpoena power of the National Gambling Impact Study Commission (Public Law 104–169) to cover only documents and not individuals. This was a major coup for the industry because much more would have been learned from the ability to interview people.

According to Goodman, during the early 1990s the gambling industry quickly established itself as the most powerful lobbying group in

many state legislatures.⁵⁷ In Illinois, a former governor, former attorney general, former director of the state police, two former U.S. attorneys, a former Chicago mayor, a former Senate president, and former House majority leader, and countless former state legislators have all been lobbyists for the gambling industry.⁵⁸ Business law professor John Kindt reported that in Virginia in 1995, casino proponents hired *forty-eight lobbyists* representing virtually every lobbying firm in the capital to prevent antigambling groups from hiring lobbyists to compete.⁵⁹ The industry spent between \$18,000 and \$24,400 per day (\$820,000–\$1.1 million total) during the forty-five-day legislative session in its attempt to legalize riverboat casinos. In Texas, seventy-four lobbyists were hired at one time for an expansion push.⁶⁰ In Louisiana, critics complained, “Gambling is going to supersede business, trial lawyers, the unions, and teachers as the lobbying force in the Louisiana legislature for the foreseeable future. They will be the 800-pound gorilla.”⁶¹ In the carefully selected words of a president pro tem of the senate for a large state (not Illinois, Virginia, or Louisiana) east of the Mississippi, “They own the legislature.”⁶²

The numbers tell the story. Between 1991 and 1996, the industry paid \$4.5 million in national campaigns.⁶³ During the same period, it paid more than \$100 million in donations to state legislators and lobbying fees.⁶⁴ The newly formed AGA paid its director an estimated \$750 thousand salary⁶⁵ in contrast to the National Coalition Against Legalized Gambling, whose *entire* budget, raised primarily from donations, was \$140 thousand.⁶⁶ The U.S. General Accounting Office (GAO) reported that total gambling donations to federal candidates and political parties rose from \$1.1 million in 1992 to \$5.7 million six years later, an increase of more than 400 percent.⁶⁷ In 2000, \$13.4 million was spent lobbying in Washington alone.⁶⁸ In South Carolina, more than \$3 million was spent by the industry to defeat Governor David Beasley, who “tried to ban South Carolina’s \$2.2 billion video gambling industry because it was the right thing to do, even though it cost him a second term,” the press reported. “Hopefully, I can be a standing witness to any political figure in the nation to say it’s worth risking it all for something you truly believe in. . . . I don’t think there’s any question that

had we not touched video poker it would be elementary; we'd be here in a second administration," he was quoted as saying in the *Charlotte Observer*.⁶⁹

The amount of gambling money brought to bear is impressive. The threat is that it will drown out the voices of ordinary citizens. In the words of Goodman,

It is simply an issue of an industry that can buy politicians, that has more power than most industries, that operates on a national and international level, and is trying to expand gambling to everywhere in the United States. It is as simple as that.⁷⁰

States such as Florida and Hawaii have been the ongoing focus of casino interests for obvious reason of the tourists that each attracts. Existing state interests recognize that because their states already attract tourists, casinos need Florida or Hawaii more than Florida or Hawaii needs casinos. Casino proposals have been rejected in a number of votes taken in the 1980s and 1990s. Unable to access land-based casinos in the 1980s, the first "boat to nowhere"⁷¹ entered Florida in 1982, with others following in 1988, 1990, 1993, 1994, and 1995. In 1994, the gambling industry paid \$16.5 million in an unsuccessful campaign to persuade the Florida legislature to legalize land-based casinos in the state. Whereas the gambling industry would be rewarded handsomely by its profits were it to win, opponents generally gain nothing by opposition except preservation of the status quo. It is true that an existing firm might sometimes contribute to public education – Disney World contributed in the case of Florida, for example – but the amounts are generally much smaller. In Florida, millions of dollars were pitted against fewer than \$800 thousand – hardly a balance.

From contests played out in Missouri, Florida, Hawaii, Iowa, Virginia, Ohio, West Virginia, Pennsylvania, and other states, citizen groups worked from the rule of thumb that gambling interests would lose in their bids if they did not outspend their opponents by at least \$75 to \$1.⁷² In Florida, for example, casinos were voted down, but the industry spent \$16.5 million, which was only twenty times greater than

its opponents. Even factors of 75:1 were not always enough. In Iowa, Casino America of Biloxi spent nearly \$477 thousand – \$73 for every vote it ultimately received – in its unsuccessful attempt to gain voter approval for a casino in Dallas County. It outspent opponents (who spent a total of \$3,126) by more than 152:1.⁷³ Fortunately for gambling interests, they are often able to outspend their opposition by even greater factors. Consider the following account from California: “California tribes have been flooding the airwaves with TV and radio commercials as spending in the battle over Indian gambling topped \$20.7 million just weeks before voters will decide the issue. The tribes had spent a total of \$20.7 million by February 19, the close of the last reporting period, while the opposition campaign spent \$3,783 by the same date.”⁷⁴

There also appears to be a one-way “ratchet effect” at work. In cases when the gambling industry loses a popular vote, it is often able to have additional votes taken a short time later. In Waterloo, Iowa, for example, casino gambling was rejected by voters on May 17, 1994. The issue reappeared for another vote on September 27, just four months later!⁷⁵ In Missouri, voters turned down riverboat casinos in April 1994, only to find that gambling interests were able to have another vote placed before them in November. This time, gambling interests spent more than \$7 million, compared to less than \$600 thousand in the first campaign. The industry won the second vote. Six months later, no further vote was taken. If the industry had lost a second time, it is an interesting question whether Missouri would have gone eight years without another casino vote, as has been the case. In Ohio, “voters twice rejected, by about a 2:1 margin, proposed constitutional amendments to allow some form of casino (land-based or riverboat) in Ohio.”⁷⁶ Other examples of closely repeated attempts are easily found.

Broadly speaking, these outcomes are predictable based on the money at stake and the resources available to gambling interests. As long as there is above-normal profit, there will be pressure for new casinos. The range of ways in which money can be used to acquire licenses will be limited only by the creativity of the human mind.

According to Nat Helms, a former high-ranking participant in the gambling industry's campaign to bring casinos to Missouri, "Because of the unlimited money it generates, gambling also generates unlimited potential for abuse. . . . I have never met anybody who could resist a full-court press by the gambling industry."⁷⁷ The concern, voiced by Congressman Frank R. Wolf, that the "flood of casino money into the states" will "drown out the voices of ordinary citizens and overwhelm state public officials"⁷⁸ is a real one, although to date it has not been universally borne out. Three of the fifty states (i.e., Hawaii, Tennessee, and Utah) have no legalized gambling, and further expansion has effectively been stopped in others. At this writing, however, another effort for casinos is being mounted in Hawaii.

A second ever-present threat, corruption, is exemplified in the case of Governor Edwards of Louisiana.

Former Gov. Edwin Edwards was convicted today of extorting hundreds of thousands of dollars from businessmen applying for riverboat casino licenses. The former four-term governor was convicted of seventeen racketeering and fraud counts and acquitted on nine counts. His son, Stephen, was also found guilty of racketeering, convicted on eighteen counts and acquitted on five.⁷⁹

In Missouri, casino lawyer, Michael Lazaroff, who pleaded guilty in federal court to multiple felonies, including misuse of more than \$800 thousand, described his relationship with former Missouri Gaming Commission Chairman Robert Wolfson as "an illicit and 'tacit understanding' that each would provide the other with useful information."⁸⁰ The casino executives involved challenged the Missouri Gaming Commission's investigative authority and refused to honor commission subpoenas.⁸¹ Gambling requires government oversight, oversight creates the motive for periodic corruption, and large amounts of money create the means.⁸²

American Indians

In 1992, the Mashantucket Pequot Indian tribe of Connecticut opened the Foxwoods Resort Casino in New London County, Connecticut.

A regional monopoly, Foxwoods was the only casino in all of New England. By 1995, it was the largest and most successful casino in the world, with annual revenues of more than \$800 million and a payroll of \$242 million.⁸³ A similar success story was playing out with the Mde-wakanton Dakota tribe of Shakopee, Minnesota, a suburb only 15 miles from downtown Minneapolis. The casino is, therefore, the closest casino to the millions of adults who live in the Minneapolis–St. Paul metropolitan area. From the time of the casino’s opening in 1992 to 1997, the enterprise converted 150 tribal members to millionaires through the distribution to its members each year of hundreds of thousands of dollars in casino profits.⁸⁴

Although most Indian casinos are not of the Foxwoods or Mdewakanton Sioux “type” (meaning that most do not enrich their purveyors so copiously), casino owners and proponents both like to portray casinos as economic development tools. The truth of this claim depends on whether one considers net benefits to everyone or looks just at net benefits to a subset of individuals. The owner of a casino certainly benefits, as would a tribe that owns a casino, although experience shows that even the latter may not be true. Some casinos have been helpful to their tribes and/or communities; some have not. Whether the entire community that has the casino benefits depends on the size of the community relative to the casino’s market. The fundamental reality is that within their market, casinos neither create nor destroy jobs. It is true that if unemployment is present, a new business might have the temporary effect of reducing unemployment below the level it otherwise would have taken; however, in the long run, employment and unemployment are determined by overall business conditions and macroeconomic policy. A region can have full employment with or without casinos. (Chapters Four and Five focus on issues of estimating and evaluating jobs and development impact.)

Expansion of the casino sector comes at the expense of other sectors whose revenues are diminished when they are diverted to the casinos. There is nothing unusual or wrong with shrinking other sectors – it is a normal feature of a flexible economy that is responsive to the changing

desires of its consumers – but it does mean that the geographical extent of the casino market is the key to understanding its local effects. In the case of Foxwoods, the effective market is much of New England. Neighboring states and areas lose revenues to Foxwoods. The Mdewakanton Sioux casino serves a smaller area, but it just happens to include the largest metropolitan area in Minnesota and the neighboring states. Losses from Minneapolis–St. Paul are Shakopee’s gain. Neither Foxwoods nor the Shakopee casino represent job creation for their markets, meaning the area from which clients come.

Indian owners of casinos are concerned about casino revenues and profitability. If the market area includes large numbers of people and major cities, a well-run casino will prosper; otherwise, it will not. This means that profitability to the owner and the effect of a casino on economic development to the local area are separate questions.

Despite the prominent examples just cited, most Indian casinos have *not* been particularly beneficial to their tribe or to the surrounding local area. Casinos like Foxwoods that are hugely profitable shift economic activity into the local area because they draw from a large population and their geographical market is large relative to the local area. Casinos like the Shakopee casino are profitable because they draw from markets with large populations, but have little or no effect on economic development in the surrounding areas because the surrounding areas (in Shakopee’s case, the St. Paul–Minneapolis metropolitan area) include their markets. The third possibility includes casinos that are not particularly successful because their geographic market does not include a large population. They have little or no economic impact on development in their local area because the local area includes the casino’s market.

The Apache Gold Casino of the San Carlos Apache Tribe, established in 1993 to “enable the San Carlos Apache Tribe to give a better quality of life to its tribal members” according to a plaque displayed outside the casino, did not stop the increase in reservation unemployment from 42 percent in 1991 to 58 percent in 1997, for example, nor did it prevent the number of tribal members receiving welfare from jumping 20 percent. “We get no help from the casino, no money, nothing,” according

to one lifelong resident of San Carlos.⁸⁵ An Associated Press (AP) computer analysis of federal unemployment, poverty, and public-assistance records indicated that the majority of American Indians has benefited little from casinos. Of the more than 130 tribes with casinos, “a few near major population centers have thrived while most others make just enough to cover the bills,” according to the AP analysis. This agrees with what we would expect from the previous analysis.⁸⁶

A Minnesota study also questioned the extent to which casinos had generally benefited the rural counties where most of them resided. Among the concerns of residents, for example, was the complaint that business volume fell at restaurants located within a 30-mile radius of casinos with food service.⁸⁷ Survey respondents estimated that the business drop was 20 to 50 percent. The numbers are similar to other experiences reported frequently in the press.⁸⁸ The 1990 Clark County [Las Vegas] Residents Study, conducted in conjunction with the Las Vegas Convention & Visitors Authority, asked residents who gambled in casinos if they usually ate in a restaurant outside the casino or in the casino itself. Only 18 percent reported that they ate in a restaurant outside the casino; the rest either ate at the casino (73 percent), did not eat (7 percent), or were unsure. Lack of general benefits to rural counties is consistent with the finding that the market for rural Indian casinos is commonly no larger than the host county plus part of the neighboring county or counties. Casino revenue, therefore, must come at the expense of other local sectors. The same is true of casinos in large metropolitan areas that draw patrons from nearby, although these casinos would be many times more profitable to their owners.

According to the IGRA of 1988,⁸⁹

Class III gaming activities shall be lawful on Indian lands only if such activities are—

- (A) authorized by an ordinance or resolution that—
 - (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
 - (ii) meets the requirements of subsection (b)⁹⁰ of this section,
- and

Class III gaming is approved by the Chairman.

- (B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and
- (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

In other words, Indian tribes must be sanctioned to operate **Class III gambling** facilities under a state-agreed compact if the state allows such gambling elsewhere in the state. It follows that a profitable Indian casino requires that the Indian promoters

- be a federally recognized tribe
- have land near a major population center
- be in a state that allows some form of Class III gambling

Although most prospectors do not strike it rich in a gold rush, the possibility of riches is enough to attract others. We expect, therefore, an assault on all three of these barriers to an Indian casino. What *should* constitute a valid tribe and how tribal land *should* properly be acquired if it is desired near a large population center are not intrinsically gambling-related questions. They become gambling-related matters, however, when incentives provided by casinos interact with them.

In 2000, sixteen states had tribal-state gambling compacts.⁹¹ The first step to gaining such a compact and a casino is to be a recognized tribe. From 1960 to 1979, the Bureau of Indian Affairs (BIA) recognized eleven new Indian tribes. For this twenty-year period, the average number of recognitions was 0.55 tribe per year, or about one new tribe every two years.⁹² In the 1980s, tribal interest in owning casinos rose, and the IGRA was passed on October 17, 1988. The December 29 *Federal Register* of the same year listed 309 federally recognized tribal entities in the lower forty-eight states, an increase of thirty-two – or 3.6 new recognitions per year. The noticeable upsurge in tribal recognitions continued in the 1990s at a reduced rate, but still 3.5 times the rate of the 1960s and 1970s. By March 13, 2000, the *Federal Register* list was up to 331 tribes, and 199 cases of the 210 new petitions received from 1978 to 2001 were in

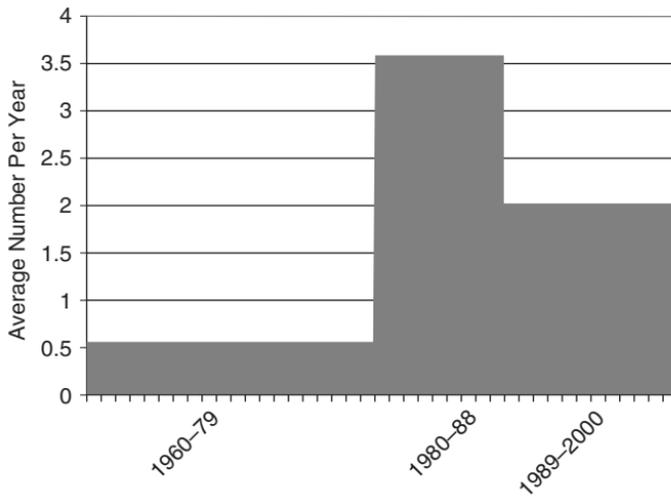


Figure 3.1. Tribal Entities Recognized per Year by the Bureau of Indian Affairs

some status other than resolved. Figure 3.1 shows the average number of recognitions per year for the three periods 1960–79, 1980–88, and 1989–2000.

The definition of what currently constitutes an Indian tribe is not consistently well defined. According to IGRA, the term *Indian tribe* means

any Indian tribe, band, nation, or other organized group or community of Indians which

- (A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and
- (B) is recognized as possessing powers of self-government.

In at least one case, the “tribe” requesting recognition consisted of the descendants of a single individual, William Sherman, who died in Connecticut in 1875 and was listed in the 1880 census as an “Indian,” but was identified in the 1850 and 1860 censuses as non-Indian. The “tribe’s” land at one point dwindled to Sherman’s quarter-acre lot in Trumbull, Connecticut. According to the news account, “Quiet Hawk [the leader of the tribe, who was born Aurelius Piper, but began calling himself by the

Indian name] and many of his followers appear more African American than Native American, and he and others, including the Connecticut NAACP, have suggested that racial prejudice has played a role in opposition to his efforts.”⁹³ Were Quiet Hawk’s 324 followers to be recognized, “their preferred site [for a casino] would be on the Bridgeport [CT] waterfront – only 55 miles from New York City, and even nearer to the city’s wealthy northern suburbs. Profits, gambling experts say, would be at least \$1 million a day.”⁹⁴ In its 2002 Special Report on Indian casinos,⁹⁵ *Time* reported the case of Maryann Martin, a one-person tribe, who was raised in an African American home and

knew little of her Indian ancestry until 1986, when at age twenty-two she learned that her mother had been the last surviving member of the Augustine band of Cahuilla Mission Indians.

In 1991, the BIA conferred Maryann and her two brothers with tribal status. After the brothers were killed in street shootings, she became the sole member of the “tribe,” which allowed her to develop and manage a casino.

In addition to tribal recognition, those wanting an American Indian casino must have land, and all land is not created equal. Rather than the casino economically developing whatever tract it occupies, land in proximity to a large population center – where reservations often are not located – is sought. According to IGRA, the term *Indian lands* means

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Because reservation land is not always situated the best to attract the desired clientele, many Indian tribes have tried to acquire land to put in trust upon which to build their casinos. This land is generally selected with an eye to the urban and more populated market. New York was

the target population in the previous example, but many areas such as Detroit, Milwaukee, San Francisco, and east-central Illinois have been the target of legal maneuverings. A 2001 AP story reported,

Circumventing the Interior Department and the California governor, a congressman quietly pushed through a new law for a landless Indian tribe in his district that could open the San Francisco Bay area to Las Vegas-style gambling. . . . Miller's amendment places a 10-acre parcel that is a 25-minute drive from downtown San Francisco into reservation status for the Lytton Randeria band of 220 Indians. President Clinton signed the act containing the amendment in December. . . . Gambling opponents didn't spot Miller's [three-sentence] provision.⁹⁶

The Miami Indians participated in ceding midwestern lands in Ohio and other states in the 1795 Treaty of Greenville and the 1805 Treaty of Grouseland with William Henry Harrison, later the nation's ninth president. In 1818, Illinois became a state. By 1846, the Miami were settled in Kansas, later moving to the northeastern corner of Oklahoma. In June 2000, 195 years later, the tribe decided that Illinois did not have title to the Wabash watershed serving 2.6 million acres in Illinois because the Miami had never ceded it; they sued to reclaim this territory in Illinois. Many question whether the Miami ever had any claim to the Wabash watershed. Legal experts may have to answer this question: If purchase was invalid and right of conquest and right of occupation do not grant valid title, then how do the Miami themselves prove valid title?

Illinois has had riverboat casinos since 1991 and has no Indian tribes. From the Indians' point of view, the land would be ideal for a casino and various spokespersons indicated the tribe would want to talk about a casino – although their true desire, they allege, is simply to reclaim the land that they avow is theirs. The suit alleged that the government violated the two treaties when it sold the Illinois land to settlers. This raises interesting legal questions because the treaties predate the federal grant of land to form the state of Illinois, under whose jurisdiction the current landowners reside.

The Indian Gaming Regulatory Act of 1988

The fact that the Indian Gaming Regulatory Act of 1988 was the turning point for expansion of Indian casinos all across the nation is significant in light of its legislative history. The stated purpose of the Act was to regulate Class III gambling on Indian lands for the benefit of Indian tribes, but its requirement of the need for a state compact also was intended to give states greater control over the gambling within their borders. In this respect, it had the opposite effect,² demonstrating Friedman's Law, named for Nobel Laureate economist, Milton Friedman. Friedman's Law says to write down the purposes of a piece of federal legislation; then write down the exact opposite of the purpose. The law will often more nearly accomplish the exact opposite than its original purpose.

² For example, the state of Ohio, citing the National Gambling Impact Study Commission's staff report, was aware of and so noted in its legislative report the fact that, in practice, the Secretary of the Interior under certain conditions may authorize an Indian casino even if the state opposes it. Committee to Study the Impact of Gambling in Ohio (2002), p. 44.

The story of the IGRA began with Indian bingo halls. According to Greene, the first was on the Seminole reservation in Florida.⁹⁷ The idea of bingo parlors spread to other states and, as tribes began to offer cash prizes too large for state laws, the states began to object.⁹⁸ Disputes between tribes and the states ended in court, culminating in *California v. Cabazon Band of Mission Indians* (480 U.S. 202 [1987]), in which the Supreme Court ruled that Indian sovereignty prevented states from regulating gambling on Indian land if it is permitted elsewhere in the state. To provide a structure for the process, and partly to rebalance the respective power of the states relative to the tribes, Congress passed the IGRA at the end of the following year. A state-tribal compact establishes the kinds of gambling that can be offered, the size of the casinos, betting limits, and security issues, and allows for revenue sharing with the state if applicable. Under IGRA, Indian tribes are exempt from the

Freedom of Information Act and do not have to report revenues or other financial information. Furthermore, tribes do not have to pay state or federal taxes on their gambling profits.

As would be expected, there are continuing conflicts over jurisdiction. States such as Florida have resisted being forced to sign compacts when the state allows no casino gambling elsewhere, even though Florida is home to “boat-to-nowhere” casinos that travel to international waters to gamble and then return to port. In *Seminole Tribe of Florida v. Florida* (116 S. Ct. 1114 [1996]), the Supreme Court ruled that the state’s sovereign immunity prevented the tribe from forcing the state to have compacts. In Florida, California, and Washington, Indian tribes have opened Class III casinos without compacts. In other states, such as New Mexico, Indian tribes that began casino gambling illegally have been able to apply pressure on states to forge compacts. The history of Indian sovereignty and how it is treated in the courts has moved from one extreme to the other. Now that sovereignty issues matter to non-Indian and Indian casinos, it is likely that the last legal word on state versus Indian tribal sovereignty has not been heard.

THE PLAYERS

SUMMARY. Participation and interest in gambling is uneven. Although most individuals might enjoy it occasionally, they would barely miss it. The losses of a tiny percentage of gamblers account for a greatly disproportionate share of gambling revenues. Among this group are problem and pathological gamblers.

Whereas casino owners want profits, driving them to convince communities to give them places to make them, players are a more mixed group. Approximately one third of the population consists of nonbetters, meaning that if you ask, “Have you gambled in the past twelve months?” the answer will be “No.” Even in Clark County, Nevada – home to Las Vegas, the gambling capital of the nation – the residents survey found that 33 percent did not gamble⁹⁹; 46 percent gambled in casinos

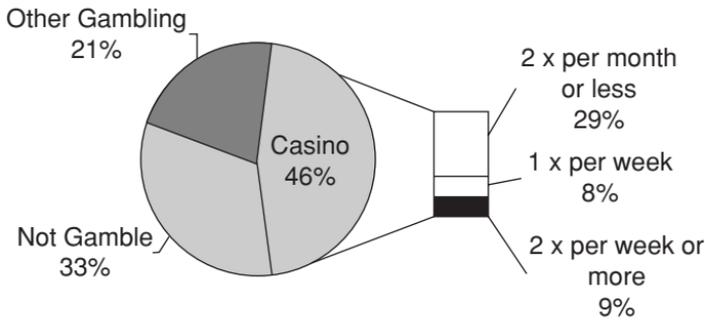


Figure 3.2. Gambling Shares: Las Vegas Residents

(69 percent of those who gambled) and 21 percent did other types of gambling. Breaking down further the number who gambled in casinos, 28 percent gambled twice per month or less, 8 percent once per week, and only 9 percent gambled twice per week or more. Figure 3.2 shows these percentages.

Based on their share of total gambling, the majority of the population is relatively indifferent to gambling. As noted in Chapter 2, one third do not gamble. Another 50 to 60 percent could be termed light bettors, frequenting casinos occasionally and not losing much. It is the remaining 10 percent who are heavy bettors, who are in the casinos frequently, and who account for the bulk of casino revenues. According to studies, the top 10 percent of gamblers account for approximately 61 percent of casino revenues in table games and gaming machines.¹⁰⁰ In lottery play, the top 10 percent accounted for 65 percent, according to Clotfelder and Cook's study of the same issue.¹⁰¹ If 33 percent of the population does not gamble, the next 57 percent provides 39 percent of casino revenues, and the top 10 percent provides 61 percent, then for every \$100 gambled by an average member of the first two groups, the heavy-bettor group must spend \$1,408. The nonbettor, of course, would contribute zero percent of the total gambled by a group of three such gamblers, whereas the heavy bettor would contribute 90 percent.

For the third of the population that does not gamble or that gambles infrequently and who are unaware of the magnitude of gambling's social

Risk

Technical rock climbing, hang gliding, skydiving, and small-plane flying are risky activities. They are particularly unforgiving of errors in equipment, judgment, or execution, and people are regularly killed in each activity. Popular singer John Denver, flying his small experimental one-man aircraft, died in a crash due to running out of gas. John F. Kennedy, Jr., son of the former president, killed himself, his wife, and his sister-in-law in a crash off Martha's Vineyard, Massachusetts, caused by "spatial disorientation." Many technical climbers climb without aid (ropes are an aid; even the use of chalk to enhance grip – in some climbers' views – is a climbing aid). In all of these cases, Americans question whether it is the proper role for government – the rest of us – to interfere with these choices simply because they are dangerous or harmful.

costs, there is little reason to object to gambling by others. Even after a choice is known to be harmful, as in the case of smoking, there has been a reluctance to interfere until it was widely understood that significant costs were imposed on the public. It was increased awareness that led to the mega-lawsuits against the tobacco industry in the 1990s. Thus, unless Americans are aware of and believe that the social costs of casinos are high for themselves (including those who do not gamble), the votes of the uninformed, the indifferent, and the gambling enthusiasts will be to allow freedom of choice.

THE GOVERNMENT

SUMMARY. Government decision-makers need good information to make informed decisions. Unbiased information is difficult for them to identify and obtain. Often it is drowned out by a snowstorm of industry-sponsored claims and studies. Some participants in government have been co-opted by gambling industry money and appear no longer open to unbiased information.

The arbiter of most social issues that require expertise, wisdom, and judgment is government. Many city and state officials are sincerely interested in finding ways to develop the economies of their communities and states. They are ardent in their desire to do what is best for their constituents, including lessening for them the burdensome commitments to social spending that frequently strain their budgets. This group often perceives the granting of a casino license as a painless way to raise revenues without raising taxes. Casino promoters are eager to exploit this belief by promising tax dollars for little effort other than the granting of a license and permission to begin business. At public hearings held by the National Gambling Impact Study Commission, representatives of cities that took this route gave enthusiastic testimonials to gambling tax dollars. By becoming casino stakeholders, however, and focusing primarily on taxes collected, cities and states take on the mantle of partner or entrepreneur rather than impartial observer and benevolent regulator considering the benefits and costs to everyone. In the words of an Oregon state senator, “The state is a whore. The state wants revenues, and whatever game falls off, they’re looking for new games to entice people to bet and play more.”¹⁰² “Governments used to be protectors that provided police and fire,” according to Professor John Kindt of the University of Illinois. “Now they’re predators, advertising to and preying on the public.”¹⁰³

The lavishing of gambling-industry attention on legislators and public officials invariably compromises a subset of them and separates them from their public loyalties and duties. We have already mentioned the corruption case of Louisiana Governor Edwin Edwards. “Gray” practices also result; the *New York Law Journal*, for example, describes a lawsuit alleging illegality in the way that gambling legislation was passed in New York State: “... an 81-page bill approved after midnight with less than an hour’s debate, authoriz[ing] the Governor to enter into compacts with Native American tribes for the operation of up to six Las Vegas–style casinos.”¹⁰⁴ The state constitution bans commercial gambling. Moreover, state law requires bills to be on the desks of lawmakers for three days, but the governor had waived that requirement

using a “message of necessity” provision designed for situations in which immediate action is needed. “The proposed legislation was not subjected to committee study; there were no public hearings and no opportunity whatsoever for input by the average citizen. Instead, the impetus for the bill came from powerful gambling interests who mounted one of the broadest, most expensive lobbying campaigns in state history in order to obtain passage.”¹⁰⁵ In the words of the attorney filing suit,

It is a sad situation when representatives elected by the people don't get to see a bill and rank and file members don't see a bill that lobbyists have had a hand in preparing. . . . Who is representing the people, the elected representatives of the people or the paid lobbyists? It is a disgrace, and it is becoming common practice.¹⁰⁶

In South Carolina, the Senate finance committee chairman “found a way to do secretly what could never have been done in an open democratic process.”¹⁰⁷ By dropping the two words “or property” from the ban prohibiting any gaming machine from disbursing “money or property,” he opened the way for video gambling machines in the state, even though they violated the state’s constitution – as later action of the Supreme Court affirmed. The change would not have been passed had it been noticed among the hundreds that were made in the last phases of the budget process.¹⁰⁸ The *Indianapolis Star* reported the example of the House Ways and Means Committee chairman who “failed to report earnings he received while working indirectly for the gambling industry.”¹⁰⁹ His career ended when his secret activity became known. Why was a legislator working indirectly for the gambling industry? The report goes on to document other cases such as the political-machine allies of an East Chicago mayor and former party chairman who “formed an investment group in order to reap millions of dollars from a riverboat casino license. They were never charged with a crime, but the political connections of the group suggested that gambling licenses were aimed as much at political payoffs as economic development.”¹¹⁰

Jurisdictional Conundrums

The decisions of governments are hampered by regional considerations that often prevent proper and unencumbered decisions. One problem deals with unexamined consequences. In Joliet, Illinois, for example, casinos act as tax-collection “boxes” for the city. Gamblers come from the nearby Chicago metropolitan area and lose their money gambling, a part of which goes to the city of Joliet as taxes. City officials have no incentive to measure or even care what the harmful consequences might be that their casinos cause in the Chicago area. Their interests extend only to the visible effects within their small jurisdiction; taxes are visible. Social costs are more difficult to count, less visible, and easy to ignore.

Borders play a large role in the economics of casinos. Casinos are often intentionally placed near political boundaries to conduct “border raids” on the revenues of neighboring cities and states. The casinos in Tunica, Mississippi, are aimed at Memphis, Tennessee, for example; the casinos of Hammond, Indiana, are aimed at Chicago; and so on.

The process often works as follows. Imagine two identical regions, A and B. Originally, the unwritten social compact said, “We will not permit casinos in our jurisdiction if you will do the same.” When this compact is broken, the first step frequently is a casino planned near A’s border. The objective is to raid the money of B. Region A performs a cost–benefit calculation that finds its casino can collect money from Region B, leaving most of the social consequences across the border at the home base of the patrons. Reports and studies financed by the casino promoter reports to A’s officials that economic development will take place because net new money will flow from B to A. The social costs to A are minimized in the report, either by not calculating them, assuming that they are small, or by ignoring those that accrue to B.

Time passes. The officials of Region B see that their residents gamble in Region A. B’s government officials may not want gambling, but they feel they have little recourse except to create a dueling casino of their own: if residents are going to gamble and create social costs anyway, at least their money can stay at home. Casino promoters again produce a study, this time saying that the casino will create economic development because

it will return home the dollars now being spent across the border. Because both areas are identical, however, the end result is that neither gets money from the other, but each suffers the social costs of gambling. The presence of border issues are often well known to casino promoters and exploited in their recommendations to government officials. In our example, the border considerations caused the “race to the bottom” to result in net losses to both regions, even though each had a study (correctly) pointing to gains if one accepts the different assumptions. Only if a consistent set of assumptions were used and an area encompassing both A and B applied would the cost–benefit studies show that the original social compact (i.e., no gambling in either region) was best.

Ultimately, the question of finding a proper government attitude about casinos devolves to finding the proper role of government in society: Should government present itself in the role of business owner in order to earn its money? There are many kinds of businesses that government could run to generate the money needed to supply services. Most political experts frown upon government-run industry because they believe government has less incentive to conduct business well than the private sector does. A private business must make a profit or disappear. Government can operate well or badly and still maintain its business presence through tax subsidies.

Presuming that government runs its enterprise well, however, still leaves the philosophical question as to whether government should engage in business at all. If legitimate government activity, such as the establishment of law and order, provision of **public goods** like national defense (but not publicly provided **private goods** such as shoelaces or ketchup), and enforcement of an environment of market competition as opposed to monopoly or firms operating in restraint of fair trade, are justified, then government is justified to collect taxes to accomplish those ends. The logical question becomes: What is the best way to collect the needed taxes? Experts agree that the social cost of an additional dollar of taxes collected through a conventional tax is more than one dollar, but undoubtedly less than \$1.60. In the case of casinos, the cost of collecting the same dollar is likely to be more than \$3.¹¹¹

THE OPPONENTS

SUMMARY. Average nongambling citizens have little incentive to become educated about the costs and benefits of gambling. When they do, there is little incentive for them to spend their time and resources in public advocacy.

Finally, there are citizens who oppose gambling because they believe it is harmful social policy. Unlike commercial casino owners, Indian tribes, or tax-seeking governments, they have no direct economic stake. They do not stand to make large amounts of money if they succeed in halting the spread of gambling. These citizens and their groups are generally poorly funded and, as stated previously, hope only to maintain the status quo. Occasionally, such groups will be helped by businesses that feel they would suffer from casino competition, which sometimes includes other casinos or gambling outlets. The primary reward for such opponents is often nothing more than the sense of having done one's civic duty.

SUMMARY

An old Indian trick for killing buffalo was to stampede them over a cliff. The device worked because the buffalo in front, who knew danger was approaching, had no ability to stop; the buffalo in the rear, who had the ability to stop, had no knowledge that they should. A similar situation exists with respect to the various gambling constituencies. Dysfunctional arrangements of knowledge and incentives explain a great deal of the growth of casinos in the 1990s. The general public, which had most of the power to influence the spread of gambling often had the least knowledge of why it should want to influence it at all. Consequently, the general public was neutral to mildly in favor of gambling. The casinos owners, commercial businesses, and American Indian tribes, on the other hand, had – and continue to have – personal gain at stake if they can site casinos in locations near prominent population centers. They have the resources to finance studies to convince legislators to give them what they want. Legislators, taking much of their information from the casinos,

usually want to do what is right, but are forced by competition with other states and jurisdictions to outcomes that they never planned or foresaw. Sometimes they are blinded by the need for tax dollars, and consider only that. Some legislators skirt the limits of legality and propriety to help casino interests that have bought their aid. A small group of civic casino opponents may have the desire to investigate and apply their knowledge to the decision-making process, but they have little means to fund the necessary research or make their voices heard. In addition, it takes time to organize volunteer effort, and time is frequently the least available commodity when legislation is rushed through. The end result is a process that drives itself to a social conclusion, but not necessarily to the public good.

