



## The Government Gambling Racket

*Three decades ago, state governments muscled out organized crime to take control of the numbers gambling rackets in the United States and replace them with state-sponsored lotteries. Since the early 1990s, state and local governments have forged alliances with casinos, and have reaped billions in profits. Should government be the gambling racketeer-in-chief?*

Five years ago, a great gambling colossus swaggered into the droopy little New England town of Palmer, Massachusetts (population 12,140), bearing promises of jobs, tax relief, and infrastructure improvement. Mohegan Sun, an Indian casino in rural southeast Connecticut, nominally run by a long-extinct Indian tribe, is one of the largest casinos in the world, with 6,500 slot machines in a 364,000 sq. ft. gambling space. It proposed a project nearly as splendid in Palmer, fittingly called Mohegan Sun Massachusetts.

The slick marketers who concocted the casino plan started spreading money all around town, and the money made many friends in government. Palmer is a typical former mill town where industry has fled and the population skews 20 years older than average. It has few good financial prospects, and the casino appeared to many officials and citizens to be the ticket back to prosperity.

The ultra-modern casino would be built on a bluff overlooking the town, with the whole project costing upwards of a billion dollars. That is much more than the total assessed value of all the other real estate in Palmer.

Mohegan rented local offices, curried favor, and promised to upgrade roads, sewers, and other infrastructure. Money was no object. As the town's wish list expanded, no reasonable request for local aid was refused by Mohegan.

One obstacle remained: a vote of approval by the citizens. An ad hoc group of local opponents met and made efforts to be heard above the din of Mohegan's massive media buys, getting relatively little attention. Professional "Yes for Palmer" billboards and signs popped up on corners and in yards everywhere, interrupted by only a few hand-lettered "No Casino" signs.

As the November 2013 vote approached, it appeared to be a foregone conclusion that the Mohegan Sun dreadnaught would steam to victory. But then a funny thing happened.

### **Gambling and Government**

This article is not a moral screed against gambling, but a brief exposé of government cronyism and



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corporatism that brought about a massive surge of casino gambling in this country.

How did we get to the point where a thousand casinos around the nation, roughly half of which are on Indian reservations, provide billions in government revenue? In small towns, casino income is often the largest source of revenue. States and cities have now become more addicted to gambling than the glassy-eyed slot players who keep feeding the machines.

Government has a schizophrenic relationship with gambling. It prohibits it, except where it allows it, or even owns it, such as the casinos in the state of Kansas, or in the form of state lotteries.

A classic scene from the old Humphrey Bogart film *Casablanca*, set in Rick's Café, a club with an illegal gambling den in WWII Vichy French Morocco, is still referenced in modern political discourse.

Inspector Renault, the locale gendarme, regularly gets his "skim" from the gambling winnings in order to leave Rick alone and let him operate. One day he comes into Rick's, blows a whistle, and announces that everyone must leave immediately. When Rick protests (since, after all, he had paid off the cops), Renault delivers the immortal line, "I'm shocked — shocked — to find that gambling is going on here."

Just then, one of Rick's croupiers hands Renault a fat wad of money, saying, "Your winnings, sir." Without missing a beat, he says, "Oh, thank you very much," and continues to insist that the patrons clear the place because of the illegal gambling.

This perfectly illustrates the government's yes-no attitude toward gambling. It outlaws any citizen sponsoring it, yet it owns the gambling agencies itself. It takes its huge "skim" in the form of taxes (up to 50 percent of gross revenue in some states), all the while tut-tutting about what an evil it is, and paying for the rehabilitation of the problem gamblers it enables. A 2005 study by Professor Douglas Walker, a scholar at South Carolina's College of Charleston who specializes in scholarly research about gambling, states that the social cost of the average "pathological gambler" is about twenty thousand dollars per year. The term "social cost" includes criminal justice expenses, missed work, treatment, welfare, and the like.

Most states now run lotteries. Up until the 1970s, organized crime ran the numbers business. To get those state lotteries going, they had to muscle out the mob and take over the numbers rackets by force of law. The state lotteries are now little more than the old mob numbers games, with better graphics and lousier payouts.

Woe unto anyone who tries to pull the same maneuver and run the state out of its new turf. If one were to set up a private lottery, that person would probably be arrested and charged with fraud, racketeering, gambling without a license, and a bunch of other crimes.

The venerable investor Warren Buffett said of gambling, "I don't like the idea of government ... essentially hoodwinking the citizenry.... It is basically a tax on ignorance." Anyone who has cursed a "one armed bandit" for taking his money should remember who really calls the tune in the gambling industry: the government.

### **Casinos — Government's New Best Friend**

Casinos were traditionally outlawed by most governments, except in Nevada, whose legislature legalized gambling in 1931. A few casinos began to appear in Las Vegas in the 1940s, and by the late 1960s and early '70s, the large conglomerates started building huge "destination" casinos there. Their number and size expanded greatly over the next decades.

In the mid-1970s, Atlantic City, New Jersey, became the first East Coast entry for the casino business,



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allowing them to be built in its seedy boardwalk area. “The Donald” Trump became nationally known when he built several of them there, and sponsored spectacular shows.

The results are decidedly mixed. Several have gone bankrupt, and the area is worse than ever. In a 1994 *Los Angeles Times* article, one wag observed, “But look at Atlantic City. It used to be a slum by the sea, and now, it’s a slum by the sea with casinos.” Despite the immense cost to the state and the people of New Jersey, the state gets only \$278 million per year in taxes from 12 casinos. Contrast that with Connecticut, whose two Indian casinos pay the state considerably more than that each year.

About one half of the one thousand casinos in the United States are so-called commercial casinos, meaning they are owned by companies such as MGM Grand, Wynn, Las Vegas Sands, Caesar’s Entertainment, Harrah’s, and others. Commercial casino revenues in the United States are about \$37 billion per year. Indian casinos spread out in various states make up the rest, and take in about \$30 billion yearly.

Indian casinos present a thornier problem for governments. Indian tribes are regulated both by states and by the federal government. The arrangements for these tribes to open casinos on their tribal lands gelled in 1986 when the U.S. Supreme Court ruled that Indian gambling was to be exclusively regulated by Congress, not by the states. In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA), signed by then-president Reagan, which opened the floodgates for Indians to partner up with wealthy financiers and build staggeringly expensive casinos on their reservations.

The way states tax casinos varies widely, and the amount is generally much higher at racetrack casinos, or “racinos.” Delaware’s three gambling operations are racinos where operators split 40.5 percent of the total take, the state gets 43.5 percent, the horse breeders get 10 percent, and vendors, six percent. Nevada takes a much smaller percentage. Indiana and Missouri take 20 percent of gross revenues, while Illinois has a graduated tax of 15-50 percent, averaging about a third. By contrast, Indian casinos are not subject to either state or federal income taxes, but sometimes negotiate private “payments in lieu of taxes” (PILOT) agreements, such as in Connecticut, where the two Indian casinos voluntarily agreed to pay the state 25 percent of gross gaming revenues. The U.S. internal revenue code exempts Indian casinos completely from federal income taxes, while the Federal Indian Gaming Regulatory Act exempts them from state income taxes. Various Supreme Court cases have upheld these exemptions.

### **The Same Old Corporatism**

Should government play a role in sponsoring, approving, or even regulating gambling at all? Lobbyists spend untold millions of dollars seeking the favor of governments in order to obtain the right to build casinos, which has produced inevitable corruption, given the huge amounts of money at stake.

In the middle of the last decade, prominent power brokers Jack Abramoff, Ralph Reed, Grover Norquist, and Michael Scanlon bribed members of Congress and overcharged their Indian clients some \$85 million to get favorable treatment. Felony convictions followed in 2006 for Abramoff, Scanlon, and some congressional staffers.

In Massachusetts, which just passed legislation authorizing three casinos in the state, including Mohegan Sun Massachusetts, a politburo of five governor-appointed insiders will decide who gets the three licenses in the state to build a casino. The legal bribes that the state requires are breathtaking. The fee merely to submit a proposal is \$35,000. Then, if the proposal passes first muster, the casino proponent has to tender another \$400,000 with the application. One can speculate whether fantastic sums may have also changed hands in order to steer licenses to favored insiders.



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Then starts the public relations battle to convince the host community to accept a casino. These secondary costs are always in the tens of millions of dollars, and involve a lot of payoffs to government officials, state and local.

Indian casinos, in particular, have sent breathtaking sums to politicians. According to a recent Bloomberg News article, in the last five years alone, tribes have contributed \$235 million to political parties and various lawmakers who will favor their gambling interests.

### **Indian Gambling Atrocity — The State of Connecticut**

Connecticut was one of the earliest states to develop agreements with Indian tribes regarding casino gambling. Its relationship with its casinos perfectly illustrates the mutual parasitism between government and casinos, along with the moral compromises by government officials that led to their existence in the first place.

Meet “Indian” Richard “Skip” Hayward, a whiter-than-white man born in New London, Connecticut. Skip drifted around the country from job to job until he heard about a unique opportunity back in Connecticut to get in on one of the richest scams of this era. Hayward’s elderly grandmother, Elizabeth George, lived on a 200-acre Indian reservation in Ledyard, Connecticut, the remnant of a 1,000-acre tract in rural southeast Connecticut given by the state to the Pequot tribe after most of the tribe was slaughtered in the early 1600s.

George was the last person living on the reservation, like a noble survivor, but it is highly doubtful she had even a drop of Indian blood. It was not uncommon for non-Indians to squat on reservations in the early part of the 20th century, and census takers did not distinguish those who may have been genuine Indians from those who were not.

The Pequot tribe had long since died out. There was no actual tribe living there, no tribal government, no tribal gatherings or activities, no housing, and no Indian way of life on the small reservation, all requirements for federal designation as an Indian tribe. There was only one shabby residence where George lived.

But lady luck favored Hayward. Before his grandmother died in 1973, a very determined and well-financed lawyer named Tom Tureen started a one-of-a-kind effort in Northern Maine to restore the long lost lands of the eastern U.S. Indian tribes, much of which had been sold or forfeited hundreds of years before.

Using a quaintly named law called The Nonintercourse Act, passed by Congress under President George Washington in 1790, attorney Tureen sued tens of thousands of landowners who now resided on what was former Indian land. That law, basically unnoticed for two centuries, stated that no Indian land could be transferred without federal government approval. Because most of the tribes in the 13 original colonies were overseen by state governments, rather than by the feds as were the western tribes, most land transfers since 1790 were done entirely by states without the required federal approval.

So Tureen filed lawsuits in at least seven of the former colonies in federal courts. He used the federal Nonintercourse Act to trump the expected defenses to such a lawsuit involving very old land transfers, such as statutes of limitation and the doctrine of adverse possession, which vests title in a new owner after 20 years of open and continuous use by a new owner, regardless of a recorded deed.

One of Tureen’s lawsuits sought to reclaim about a third of the state of Maine for the Passamaquoddy and Penobscot tribes. Another claimed a right to retake most of Cape Cod in Massachusetts for the



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Mashpee Indian tribe.

Federal recognition of tribes was critical. It meant exemption from the crushing burdens of state environmental laws, building and zoning regulations, and property taxes. This meant savings of untold tens of millions of dollars on a major building project such as a casino, and the opportunity to bypass the red tape that always causes endless delays to every business venture in this era of government overreach. What business would not seek such an advantage if it were available?

Tureen was funded by a well-endowed advocacy group called the Native American Rights Fund (NARF), which obtained its money from government grants and private sources. Through winning many of these lawsuits, he won vast tracts of land and huge sums of taxpayer dollars in compensation for his Indian clients, who built homes and communal facilities on their reservations using HUD funds, and which served as seed money for casino planning. Much of the start of Indian gambling was a giant welfare scheme.

The usual path to obtain federal designation for an Indian tribe requires a massive application to the U.S. Bureau of Indian Affairs (BIA), often amounting to tens of thousands of pages. The tribe must prove an unbroken history of tribal existence on its land, and that its claim to be Indians is genuine. It can also take up to 10 years of tortoise-like bureaucratic plodding to get the final approval from the agency.

In the case of the Connecticut Pequots, however, insider machinations by Connecticut's congressional delegation allowed them to bypass the BIA application process entirely, and go directly to Congress to get federal recognition for their (non-Indian) tribe. The bill, which was introduced in both chambers of Congress, would recognize the Pequots as a legitimate tribe, would take land by eminent domain to expand their reservation by a factor of 10, and would transfer a large sum of taxpayer funds to the "tribe's" leaders under the control of Skip Hayward.

At congressional hearings on the bill in July of 1982, the fix was in. No one even raised the issue of whether the Pequots were actually a real Indian tribe. Hayward's lack of credentials as chief were never questioned, and not a shred of evidence was submitted about the tribe's authenticity. Incredibly, only one senator attended the subcommittee hearing on whether to approve the legislation, Sen. William Cohen of Maine. With the recommendation of Connecticut's Senators at the time, Lowell Weicker and Chris Dodd, and Rep. Sam Gujdenson, the bill, now called the "Mashantucket Pequot Indian Claims Settlement Act," passed both houses of Congress unanimously, and was eventually signed by President Reagan after an initial veto.

By this vote, a group of about 50 of Skip Hayward's 100-percent white, non-Indian relatives were given the makings of what turned out to be a multi-billion-dollar cash cow. Up until that time, all of the Haywards had always called themselves "white" on every job application, census statement, marriage license, and every other document later reviewed. Skip Hayward's "Indian" grandmother, deceased in 1973, called herself "white" while on the reservation. But now, after the congressional vote, Hayward, his eight siblings, his mother, and his other more distant relatives began to call themselves "Indians."

In the next few years, the newly minted tribe acquired land, opened a high-stakes bingo parlor which made millions, and culminated in the creation of Foxwoods Casino, which opened its doors on February 14, 1992. It was a gold mine from the beginning, and it continually expanded in size and revenue to become one of the world's largest casinos.

### **Government, Gambling, Entertainment, and Morality**

Most persons have already made a moral judgment about gambling, concluding either that it is at least



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morally questionable, if not a vice to be shunned, or that it is harmless entertainment as long as it is done in moderation. Few would justify a gambling addiction as a moral good. The well-known consequences of compulsive gambling are marital disharmony, divorce, child abuse, alcoholism, substance abuse, and suicide attempts.

Why does government own lotteries and promote casino gambling, when it addicts, impoverishes, and destroys the families of many persons who participate in it? The answer appears to be: money. Barrels of money. By its involvement in gambling, government engages in a conflict of interest with its duty to protect the citizens from harm. One could also ask, what business does government have in owning entertainment and recreation businesses? Constitutionally, none. So it must be money that pulls the government into the mixture.

Murray Rothbard, the libertarian economist, contrasted gambling with entrepreneurship. In his view, an entrepreneur is not “gambling” in the sense that a casino patron does it. The business owner tries to control the unknowns and bring about a profit. The gambler cannot control the unknowns, and is almost certain to suffer a net loss. Rothbard reminded us, lest we forget, that the games are all rigged in favor of the house, whether by one percent at the low end up to 10 percent for some of the games.

Government should clearly not be involved in the business of gambling under our constitutional system. But should government regulate it as a crime? The answer becomes clear when we distinguish between the nature of a “vice” versus a “crime.”

“Vices are those acts by which a man harms himself or his property. Crimes are those acts by which one man harms the person or property of another,” wrote Lysander Spooner, a 19th-century lawyer and political radical, in his 1875 book *Vices Are Not Crimes*. In other words, a vice is a personal failing, while a crime is an act that improperly intrudes on the rights of others.

A government dedicated to natural law and liberty would punish only crimes, not vices, and would rely on non-government authority structures to provide a moral bulwark against vice — such as the family, the community, the church, and fraternal organizations.

Government has steadily encroached with its laws into the swamps of vice, as though it could “fix” the wayward sinner. Courts now routinely order drunks to go to alcohol treatment, and others to go to anger management programs and diversity training.

These programs rarely work, because external pressures cannot produce virtue in their targets. Virtue comes about in those who want to change from evil to good, as a result of self-discipline, hard work, and sacrifice. Government takes a mechanical view of the human spirit, hence its official policy that it can force a person to change bad behavior.

Governments have continued in their double-minded treatment of gambling, prohibiting some persons and entities from sponsoring it, allowing others to do so, while promoting its own ownership or sponsorship of gambling enterprises.

Government schools and other sympathetic recipients of tax largess are often the bait to justify improper state intrusion into the gambling business. For example, gambling machine owners in South Carolina have run ads to remind the citizens to gamble because some of the state rake-off goes to education, using the slogan, “Education can’t wait in South Carolina.” What lesson does that teach the children — gamble your way to education excellence?

So what is gambling — is it right, or is it wrong? Is it a crime or a vice? That seems to depend on



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whether the state is getting its full measure of the take or not.

### **All Is Not Coming Up Aces**

All the cards are not coming up aces for the gambling industry. Most casinos and other facilities have seen large decreases in their gross revenues during the last few years. As more facilities are built in a race to capture a larger portion of the available entertainment dollar, they have begun to saturate the market and squeeze each other financially.

Some casinos have even failed, leaving great empty hulks behind. Others are feeling the pinch, and asking for government rescue. Now that Pennsylvania has become a massive gambling powerhouse with 11 casinos in operation, lawmakers in nearby Delaware are considering whether to subsidize its three racetrack casinos to the tune of \$8 million.

### **Meanwhile, Back at the Massachusetts Voting Booth**

The proposed Palmer, Massachusetts, casino project was voted down by a narrow margin on November 5, 2013. On the same day, Boston voters nixed one there as well, leaving doubt as to whether gambling will even come to the Bay State. Voters can be fickle, but this time they ignored the saturation advertising, the “jobs, jobs, jobs” propaganda, the promise of a property tax cut, and considered what such a behemoth would do to the culture of a small town.

This defeat for big casino interests still raises an important question: If not casinos, what can small, former industrial towns do to revive their flagging fortunes? Ironically, the answer lies in a similar voter uprising against the other parts of the same overarching government interference in the economy that attempted to impose a casino. That very same government, which sponsored a casino initiative, is primarily responsible for the policies that created the demise of the large textile industry (among others) in the northeast. Government union and taxation policies were instrumental in these businesses relocating to southern states, financially gutting countless New England cities and towns. Voters don't seem to make the connection, or to have the courage to take that next step toward their liberation, and to throw off the yoke of their power-mad, greedy governments.

### **A Peek at the Cards**

What is the future of the casino business? Online gambling, of course. Two states have already approved it, with another 10 considering it. You can be sure the rest will jump into the game, as soon as they can get their Luddite legislators to smell the money.

When that happens, it could spell doom, or at least drastic decline, for the fantastically expensive casino facilities around the country. Some persons will always be more attracted to the glitz and false elegance of physical casino buildings, and consider them to be meaningful entertainment. Others, however, will be satisfied with gambling on computer screens in their homes, if the casinos can provide big-screen software that will simulate the whirring slots and allow the players to enter into that state of euphoria that they get in the casinos.

I'm betting they can make it work. Then, millions of furtive Internet gamblers will join the millions of furtive Internet pornography viewers to bring another vice home. Its future probably depends on when and whether the government can lay its heavy hand of taxation and regulation on the process to skim off a portion of the money as it goes by.

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