Les Jeux Sont Fait?
The State and Legalized Gambling

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Working Paper 02/2004
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Abstract: The article argues that the debate about state decline or adaptability has not paid enough attention to the purposes of state action and to the objects of governing. It uses the case of legalized gambling to highlight some of the challenges faced by the state, especially with respect to public finances, regulatory competition and state capacity. While state intervention may be increasing in this area it is not a result of an enabling of state capacity but of its limitations. Gambling illustrates the ways in which the role of the state is increasingly one of providing a basis for governing based on individual initiative and risk.
1. Introduction

There is seemingly no end to the debate about the role of the state in a world of greater economic interdependence. The points of contention are many but two are particularly salient. First, does the state continue to have the capacity to shape outcomes in the economic and social spheres as it was reputed to have during the height of the Keynesian era? Second, is there a convergence in the forms of governing amongst industrialized states towards a model that favours a limited role for the state in regulating economic and social life? For every example of the "retreat" or "crisis" of the state, we can find counter arguments of state adaptability or re-definition. The two debates are not exclusive of each other, as claims that the state continues to retain a central role in organizing and regulating societies often point to diverging forms of governing as evidence of adaptability. The comparative and international political economy literature is replete with attempts to show how convergence is or is not taking place as evidence of state decline, transformation or adaptability. This article will wade cautiously into this debate by arguing that the two schools of thought – one that emphasizes the constraints placed on the state through globalization and the other the opportunities it provides for the state – while useful, seem to present an incomplete picture of emerging forms of governing. It is not enough to point out that convergence around economic liberalization policies is a sign of a weakening of the state; in the same way as it is not enough to look to divergent policies or new forms of intervention as signs of state resilience. It is equally important to examine the purpose of state action and who is to be its target.

The case of legalized gambling provides an interesting vehicle to examine some of these questions. State sanctioned gambling has emerged in both advanced industrialized democracies and in developing economies.\(^1\) It has become an important policy instrument in states with different constitutional and institutional architectures, different forms of territorial organization and by governments of all political stripes. Yet, it has gone largely ignored by the political science and political economy literature.\(^2\) This seems strange, as it is an ideal example of so many phenomena associated with the challenges to the state and governing in contemporary society. For instance, various forms of gambling have become an important source of revenue for governments at all levels at a time when

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the recourse to taxation as a source of revenue is seen to carry political risks. Next, it is perceived as an instrument for economic and regional development at a time when state intervention in industrial and economic policy is seen to be of limited effectiveness. Additionally, the rise of Internet gambling sites, and casinos on Indian reservations in Canada and the United States, raise challenges to the reach of the sovereign authority of the state within and outside of its boundaries. Finally, the race to legalize different forms of gambling – from lotteries to sports-betting – demonstrates many of the characteristics of regulatory competition between jurisdictions that is seen to be responsible for policy convergence.

How can we make sense of the fact that, in the last decade, governments across the globe, in both industrialized and developing economies, have become bookmakers and providers of games of chance while scaling back the level of intervention in other areas of social and economic life? It will be argued that the debate about state decline or adaptability has not paid enough attention to the purposes of state action and to the objects of governing. It may very well be the case that economic liberalization and globalization provide the state with more opportunities to regulate large parts of economic life, and it may even do so in the name of economic growth. However, it is equally important to ask why it is doing so, in whose name, and towards what end. The article, in addressing these three related questions, will illustrate that the continued presence of the state in regulating parts of economic and social life is not necessarily evidence of state resilience or even an “enabling” of state capacity. Are the constraints placed on the state’s capacity to raise revenue forcing it to look to sources that do not enhance its political authority? Is there a form of regulatory competition taking place that is leading governments to adopt similar policies and roles for the state? Is it possible that the “enabling” of state capacity may be a sign of the decreasing political authority of the state? The case of legalized gambling will illustrate that the answer to each of these questions is largely affirmative, reflecting that the basis and role of the state are not merely adapting but changing in a radical way. The argument will begin by a brief look at the debate about the state. It will then examine the case of legalized gambling by providing a brief history and then discuss gambling with respect to the problems of public finances, of regulatory competition and state capacity.

2. The State of the State

There is nothing new about a debate about the state of the state, nor are cries of its "crisis", "decline" or "eclipse" entirely unfamiliar. However, the current debate is distinct in that it openly questions the centrality of the state as the locus of legitimate political rule. Attention in the literature has primarily turned to the ways in which the state has responded to global pressures rather than projecting claims about its disappearance. The
question here concerns the extent to which the state retains the capacity to act as a sovereign authority within a bounded territory and over a clearly defined political community. There are at least two schools of thought on the issue. One says that the state is changing but it is not in danger of being eclipsed; indeed, it may become even more important in the wake of economic liberalization and new opportunities may emerge. The other approach argues that the state is being constrained by the pressures of globalization as political authority "seeps" or drifts in different directions, or disappears into forms of private authority. The state remains an important political site and actor, especially for citizens, but now it must compete with others and it can no longer assume a monopoly on legitimate political rule.

Claims that the state is not in decline but simply adapting to new challenges can point to the need for state capacity to govern a range of activities from the environment to finance. Indeed, the state is essential not only in creating the conditions for economic liberalization but it also, "may play an invaluable role in stabilizing an open international economy by sharing up domestic support for liberalization". Liberalization and globalization, then, may be closing some avenues for the state intervention but opening others. However, the adaptation arguments do not provide a clear demarcation point beyond which the state changes to such an extent that it becomes something very different from what it has been or intended to be throughout the modern era. If states do not have the capacity to be the political epicentre of a polity, reacting to developments rather than determining them, and no longer having a monopoly of political authority, then they have not simply adapted but have been transformed into something different.

The state decline proponents point to a number of elements that, though not necessarily reflecting the end of the state as the principal form of organizing political life, certainly signal a serious erosion of its capacity to affect outcomes in society. The acceleration and intensity of the opening up of economic borders has given greater space to market forces, and this has favoured modes of governing founded on institutions, ideas and processes that place competition and efficiency ahead of the pursuit of collective objectives such as equality. It also supposedly favoured minimal state intervention, and an abandonment of the command and control structures of the Keynesian state. Among the problems faced by the state,

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3 Rodney Bruce Hall and Thomas J. Biersteker, eds. The Emergence of Private Authority in Global Governance (Cambridge: Cambridge University Press, 2003).

4 For instance, see the contributions to: Linda Weiss, ed., States in the Global Economy (Cambridge: Cambridge University Press, 2003).


three are highlighted: the problem of public finances, the problem of regulatory competition, and the problem of sovereignty and capacity. States have had to deal with the downward pressure on revenues from both political movements emphasizing lower taxes as well as threats of capital flight. Previous spending commitments in areas such as social policy, it has been argued, seem less sustainable when faced with global competition for inward investment and lower production (namely labour) costs. In addition, governments at all levels are engaged in forms of regulatory competition that create downward pressures not only on revenues but on areas of state intervention. Finally, state sovereignty is questioned by the fact that greater areas of economic and social life are shaped by decisions and forces beyond the boundaries of the state. In many cases, this loss of sovereignty is ushered by agreements entered into by states; in others, it is the result of changes in information and communication technology, such as attempts to control Internet content or broadcasting. The result of these pressures is a state whose capacity to act is eroding and, while not likely to disappear anytime soon, is in danger of being eclipsed.

Though convincing, arguments about state decline also face challenges. There is a great deal of evidence that the state seems to be doing just as much as it once did, and it has the capacity to intervene in and control the lives of individuals in an unprecedented way. The state is directly or indirectly involved in a series of activities, from the regulation of the Internet to anti-smoking legislation, that were not even on the policy and political horizon a few decades ago and which now touch the daily lives of citizens. Moreover, the same information and communication technology that was seen to challenge the authority of the state can be used to ensure its capacity to govern political and social life. The state may not respond in the same way as it once did, but it remains the focal point of political demands. As we will see in the case of legalized gambling, the supposed limits on the state’s capacity to raise revenues and to be an instrument of economic growth and development are not as restrictive as proponents of state decline claim.

The changes to the role of the state do not seem to be on a linear path in either the decline or adaptation direction. One way to begin to cut a path through the state of the state arguments is to focus attention on what kind of state may be emerging in the face of pressures from economic globalization and liberalization. Language, policies and prescriptions based on "efficiency", "flexibility" and "competition" point to forms of governing which make clear statements about the use of political power and its relationship to individuals. Despite calls for a minimal state from some proponents of market capitalism, it is widely accepted that economic

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liberalization does not preclude a significant role for the state. A continuing, albeit different, role does not necessarily mean that globalization enables the state to exploit new opportunities. It could also mean that state power is being used for different purposes than had been the case in the post-war period. There has been a marked shift in recent decades to what might be called "governing at a distance", or "advanced liberalism". This refers to forms of governing in which power is exercised through and on individuals by processes, structures and discourses that are based more on forms of self-government than on the command structures of the state.\textsuperscript{10} It does imply that there will be great space left to market forces, but also to ideas and practices which stress the notion of individual freedom and responsibility. It does not preclude that the state has a significant presence in economic and social life, and could even see those boundaries expanded. States will have a role but it may be to keep in place a form of rule that stresses the individual as the subject of governing and objectives that give little space to collective and redistributive goals.

Keynesianism aimed to govern "society", articulated in national terms with the instruments of the state. It was the notion of the social – expressed with terms such as "citizen" rather than taxpayer or client – that "set the terms for the way in which human intellectual, political and moral authorities...thought about and acted upon their collective experience".\textsuperscript{11} This collective experience was one that allowed for the state, acting on and through the "social", to assume responsibility for a large number of the risks inherent in the vicissitudes of life, such as health and old age, as well as for the risks that resulted from particular social relations, such as loss of employment. Advanced liberalism, on the other hand, looks to governing as increasingly relying on instruments that do not always call upon on the command and coercive powers of the state; indeed, they rely increasingly on individuals assuming greater responsibilities for governing themselves and for managing risks. In advanced liberalism, the political subject changes from the "social" to what has been identified as the "active citizen", or active individual.\textsuperscript{12} "Active individuals" are free to make choices, and the very quality of their lives is now seen in terms of the choices they make, or can make. As Miller and Rose argue, "This citizenship is to be manifested not in the receipt of public largesse, but in the energetic pursuit of personal fulfilment and the incessant calculations that are to enable this to be achieved."\textsuperscript{13} The active individual is not only


\textsuperscript{12} Nikolas Rose and Peter Miller, “Political Power Beyond the State: Problematics of Government”, \textit{British Journal of Sociology}, 43:2 (1992), p.201.

\textsuperscript{13} Ibid., p.201.
one who makes choices, but is one to whom falls the responsibility for those choices and their life chances.

The case of the legalization of gambling will be used to illustrate how a "meanner" or "harder", as well as hollow, state is emerging as a part of a form of governing that relies decreasingly on the command functions of the state and increasingly on active individuals governing themselves. The metaphor of the "bookie state" or the casino is an apt one. Gambling seems like a harmless activity that offers entertainment and the opportunity for punters to engage in mutually enjoyable activities that provide a chance to gain boundless wealth. However, the reality is that the casino is a mean place in which the odds are always in the house's favour. The contemporary state steers rather than commands in much the same way as the bet-taker acts as only an intermediary between the punter and chance. However, like the bet-taker, the state has to deal with the consequences when chance gets the upper hand. It cannot show compassion or allow second chances. It must ensure that everyone continues to play the game. It does this in both a gentle way, by offering even more ways in which to play again, as well as through harsher methods, by ensuring that debts are paid off. Moreover, state-sanctioned wagering is consistent with a state constrained by fewer opportunities for new sources of revenue and by regulatory competition with other states and jurisdictions, whose sovereignty is being questioned. It also is consistent with a form of governing that seeks to find ways to legitimize the shift from the collective to the individual assumption of risk.

3. The Legalization of Gambling

It is perhaps a coincidence that in the same period in which the boundaries of the state’s role in the regulation of economic and social life were being redrawn, and largely withdrawn in many cases, there was a precipitous rise in the legalization of gambling in a wide range of states. Governments from all political stripes, in different political, economic and social contexts, legalised various forms of gambling. Governments in the 1990s not only expanded the use of lotteries as sources of revenue, but they also began to legalize other forms of gambling such as the use of video lottery terminals (VLTs), sports betting and casino gambling; furthermore, they looked to new technologies such as the Internet to exploit each of these. In a short period of time, gambling went from something “illegal” and corrupt, to being called “gaming” and seen as a form of entertainment, not to mention an important form of government revenue and instrument for regional and economic development policy.

Gambling and games of chance have a long political history centred on debates about the extent to which they would be tolerated and
permitted to exist within the confines of the law. The arguments against gambling have remained fairly consistent over time. Moral claims made by some religious groups tended to be based less on reference to a prohibition found in a scripture, and more on the belief that it promoted idleness. Gambling is seen as producing rewards at the expense of others without the commensurate effort. This could be linked to socio-economic arguments against gambling, which claim that it lowers economic productivity. Moreover, the prospect that one’s life could be changed with a turn of the wheel might bring into relief some of the existing structural inequalities produced by the particular form of economic and social regulation. For instance, the emergence of capitalism coincided with a set of values that said that hard work and entrepreneurship, not fate, would shape economic destinies. It is no coincidence, then, that most forms of gambling were prohibited in Europe and North America as industrialization accelerated in the second-half of the nineteenth century.

Another longstanding claim has been that games of chance have an appeal to those who can least afford to lose even small amounts of money on what is likely to be a losing proposition. Gambling is, then, a form of regressive taxation when it is legalized. However, there are also historical instances when it was prohibited to protect the aristocracy from losing large amounts of their inheritance through gambling. There is a prevailing “public health” or “danger” argument against gambling that sees it as an activity with a high degree of risk for individuals and society. Even proponents of legalized gambling do not refute that it can produce compulsive or pathological behaviour. Opponents of gambling liken it to other activities, such as use of narcotic drugs, that can lead to addiction and forms of dependency. The social costs associated with it include personal bankruptcy, tensions and disruptions in families, youth gambling, and suicide. Furthermore, there are other social costs that some associate with gambling, such as increased crime rates and destruction of local economies with the creation of casinos. The public health or “danger” arguments

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18 The coroner for the province of Quebec attributed over 100 suicides in the 1996-2002 period to gambling-related reasons. This figure only counts those who left clear indications that their suicide was due to gambling. See: Lynn Moore, “Loto-Quebec tackles problem players”, *Montreal Gazette*, 13 March 2002, p. A5.
tended to dominate in most jurisdictions as popular attitudes towards gambling looked to it as a possibly harmful and corrupting activity.\textsuperscript{20}

The legal restrictions on and prohibition of gambling did not prevent it from being widespread.\textsuperscript{21} Legal and limited forms tended to be in strictly regulated “charity” games, usually \textit{ad hoc} events, with a specific destination for funds that might be generated; this normally included church hall games such as Bingo or raffles. Lotteries could be found in parts of Europe, such as Italy, and Ireland with the Irish Sweepstakes, but these seemed to be marginal to government policy. Another notable exception to gambling prohibition has been horse racing, which has not only been tolerated but has also been made “respectable” by association with an aristocratic past. Annual events such as the Royal Ascot in Britain or the Kentucky Derby in the United States are seen more as social occasions, often with royalty present, than as opportunities to engage in gambling. The most notable exceptions to the restrictions on gambling were the casinos of European cities and those in Nevada. In the case of the first, they were not very accessible to the average punter as often they were open only to non-residents. Moreover, they tended to be aimed at a very elite and wealthy clientele. Like the images of the aristocrats at the Royal Ascot, men and women in evening wear represented the players at casinos in Monte Carlo. There was little here to raise the public health fears over gambling. In this guise, it was more a social function than a game of chance or a form of risky behaviour.

The casinos in Nevada, and more particularly Las Vegas, were much different. One would not expect to see a James Bond-like figure to walk into the Stardust Hotel of the 1950s. Roadside and riverboat casinos were very much part of the nineteenth-century landscape of the western United States, and were located along important waterways such as the Mississippi River.\textsuperscript{22} Games of chance seemed to complement the expansionist spirit of the middle of the century, and were an important part of the lifestyle for those involved in mining, trapping and cattle drives in the west.\textsuperscript{23} However, by the end of the century, a series of corruption scandals and structural changes, such as the increased use of railroads and industrialization, had contributed to the prohibition of almost all forms of gambling in all states. Nevada was one of the last states to do so in 1910. In the midst of the Depression, it looked to the legalization of gambling in 1931 as a means of generating revenues. For the most part, gambling was prohibited and was not a salient feature of government policy throughout North America and most of Europe for the large part of the twentieth century.


\textsuperscript{22} \textit{Ibid.}, ch. 6.

\textsuperscript{23} Vicki Abt, James F. Smith and Eugene Martin Christiansen, \textit{The Business of Risk: Gambling in Mainstream America} (Lawrence, Kansas: University of Kansas Press, 1985), p.22.
4. Gambling and the Problem of Public Finances

There is a widespread perception that the opportunities to find new sources of tax revenues in an era of global competition are limited. Political discourse since the 1970s has increasingly been about finding ways to govern in an era of “permanent austerity”. Governments, when not cutting spending, have had to find new sources of revenue: legalized gambling has been an increasingly attractive option. This has meant a shift from policies and political positions that have been in place for nearly two centuries in many parts of Europe and North America. The prohibitions against gambling in North American and European jurisdictions began to lift slowly in the 1960s and 1970s. The shift began in 1964, when New Hampshire became the first jurisdiction in the United States to institute a state lottery. Lotteries had been banned throughout North America for most of the twentieth century. British legislation, which had been implemented in the thirteen colonies and in British North America had allowed for gambling in the eighteenth century. In the newly formed United States, lacking a tax system and fully developed banking system, lotteries were important sources of revenue for infrastructure projects such as roads, bridges and even schools (prestigious universities such as Harvard were founded with lottery money). However, fraud, scandal and growing opposition from religious groups led to the prohibition of state and private lotteries throughout the United States by 1840. In Canada, lotteries, like most other forms of gambling, were covered by the Criminal Code and were banned after 1892. The New Hampshire move, then, was a reversal of a century-long opposition to a state sanctioned game of chance. Similarly, an amendment to the criminal code in Canada gave provincial and federal governments the right to use lotteries to fund what were deemed worthwhile activities. Provincial governments gained exclusive jurisdiction over gambling, and the pretense of having lotteries linked to specific social objectives, such as education, or special events such as the Olympics, was dropped over time.

By 2000, lotteries could be found in 38 U.S. states and the District of Columbia, and in every Canadian province. In addition, European governments such as those in Spain, Britain, France and Italy either introduced or significantly expanded the use of lotteries. For instance, the

29 Throughout Canada and the United States, lotteries and other forms of gambling were now legal everywhere except three US states. The exceptions are Utah and Hawaii.
The National Lottery was introduced in Britain in 1994. In less than a decade, 30 million Brits played it weekly, leading to £4.6 billion in sales for the 2002-03 fiscal year: 28% of sales is dedicated to “good causes”, while 12% is paid in lottery taxes. The money generated from the lotteries became an important source of revenue for the state and provincial governments in which they were made legal. For instance, in fiscal year 2003, lottery sales in the United States amounted to $45.3 billion, with profits of $14.1 billion for state governments. This represented a 6.8 per cent increase in sales from the previous year and an increase in profits of close to $700 million. In Canada, lottery sales in the 2003 period reached $8.1 billion (Cdn) in sales, with profits of $2.8 billion (Cdn) for provincial governments.

Gambling has become an important fiscal and employment policy instrument for governments. They have either designated gambling, including lotteries, revenues for specific purposes – education and health make legalization more politically acceptable – or they have added them to general tax revenue. The amounts are not insignificant at a time when they have been under pressure to reduce levels for most forms of taxation. For instance, in Canada, gambling contributed to 5.6 per cent of total provincial revenue in 2002. In Australia, government revenue from gambling has increased in real terms from $1.28 billion (Aus) in 1974-75 to $4.4 billion in 1999-2000. The gambling industry also has become an important source of employment. For instance, the total number of people working in gambling activities reached 50,000 in Canada in 2003; along with gambling related jobs, they make up one-quarter of all amusement and recreation employment in the country. Similar figures may be found in Australia, where gambling has been responsible for one-quarter of revenue for the hotel and clubs industries.

In general, governments have a virtual monopoly on the lottery business and have set up authorities to regulate and administer the large amounts of money that are wagered and won. Changes in information and communication technology have made it fairly easy to set up a vast network of lottery retailers, mostly through private vendors, and to carry out daily, bi-weekly or weekly drawings. Some of the lotteries, with names such as Powerball or EuroMillions, are jointly administered by a number of states or provinces, even across national borders in Europe, allowing them to pool larger amounts of money and offer larger prizes. What has emerged in a short period of time is an effective, extensive network to administer a growing industry. What was once illegal and known as “numbers” has

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become a regular feature of daily experience for most people through the sale of lottery tickets and the announcement of large prizes. The prizes are larger, and one can now safely make a bet on their favourite numbers while buying bread, but lotteries operate according to the same principles as “rackets” that helped create large amounts of money for people who had been previously deemed to engage in a criminal activity.

5. Gambling and the Regulatory Competition Problem

Government involvement in gambling did not stop with lotteries, and the period since their legalization, especially the 1990s, has seen a significant growth in the range of activities that are now legal. For instance, many Canadian provinces and a few states have government-run sports betting. One of the most controversial forms of gambling, at least in terms of popular opposition, is the video lottery terminal (VLT), also known as “slots”. The VLTs operate very differently from lotteries as the latter involve choosing numbers or buying tickets, and waiting for a draw at a later time or date. VLTs, on the other hand, are electronic machines that allow the gambler to play a range of games from keno (a form of bingo played in casinos), poker and slots such as those found in casinos. An individual can place bets with the prospect of an immediate pay-off, and can do so at a machine that looks no different from a computer screen or automated bank teller. From the point of view of who runs the machines, VLTs are very attractive: they require lower labour costs than paying for dealers or retailers to take bets; they can be diffused throughout a vast territory easily and inexpensively; and they can be calibrated to determine the level of profits they will make. In allowing VLTs in places such as bars and restaurants, governments can have casino-like games generating revenues without the cost of having to build and run a casino.³⁶ Local retailers can be given a share of the amount wagered, with few costs involved other than providing space.

There have been failed attempts in some jurisdictions to ban or limit the machines through referenda; for instance, in the Canadian provinces of Alberta and New Brunswick. Opposition is not likely to abate as revenues from video gaming machines grow at significant rates, and provide high returns for government coffers.³⁷ Governments have found it hard to resist the legalization of VLTs, especially when neighbouring jurisdictions allow for them. They have spread quickly throughout North America and Europe, with each successive government claiming they are losing revenues

³⁷ For instance, video lottery terminals in Quebec in 2000-2001 recorded revenues of $1.053 billion (Cdn), with a net profit of $639.1 million. This represented an increase of 15.7% over the previous year. In contrast, lotteries in the province had revenues of $1.8 billion and net profits of $712.8 million; this was only a 3.2% increase on the previous year. See: Loto-Quebec, Annual Report, pp.16 & 37.
to neighbouring jurisdictions that have approved the electronic games of chance. For instance, the state of Maryland had been considering the legalization of the electronic devices but an added impetus came when neighbouring Pennsylvania approved the installation of 37,000 machines throughout the state. The arguments are based on lost tax revenues, opportunities for economic development and even employment.\footnote{Matthew Mosk, “Slots Deal reached by Pa. Leaders”, \textit{Washington Post}, 25 June 2004, p. B1.}

Moreover, the case of VLTs has begun to highlight the growing dependence on gambling revenues. States that do not allow them fear losing existing forms of gambling revenue that have become a regular feature of budgetary projections. The pressure is then on to find ways of keeping those gambling revenues; this normally means expanding beyond just VLTs to other forms of gambling such as casinos.\footnote{The same argument is made in numerous jurisdictions. For instance, in Australia, “Poker machines were legalised in Canberra to prevent the loss of income caused by people travelling to nearby towns in NSW to play gaming machines.” New South Wales (NSW) Parliament, “The Economic and Social Implications of Gambling”, p. 23.}

The sudden rise in revenues from electronic gaming devices parallels another development, namely, the growing legalization of casinos not only in North America, but also in states as diverse as Slovenia and Macao. In the United States, voters in the state of New Jersey supported a referendum in 1976 that would allow for licensed casinos in Atlantic City. The arguments for legalization of casino gambling stressed that it would revitalise the seaside town that had once been a vacation destination for many residents of the north-eastern United States. It was hoped that Atlantic City would become the Las Vegas of the eastern United States, drawing on the large population centres of New York and Philadelphia. It is debatable whether casinos have generated the urban re-development that was hoped for in the 1970s. However, the economic and urban development argument was used repeatedly as other jurisdictions began to license casinos in the 1980s and especially the 1990s.

The spread of casino gambling in the United States centred around three developments: the return of riverboat gambling; the development of racinos (namely, installation of electronic gaming devices or other games of chance at race tracks); and gambling on Indian reservations. Riverboat gambling was very much a part of the nineteenth-century regional history of the United States. Along the major rivers, such as the Mississippi, riverboats were not only an important part of industrialization and territorial expansion, but also important sites for gambling.\footnote{Timothy O’Brien, \textit{Bad Bet: The Inside Story of the Glamour, Glitz and Danger of America’s Gambling Industry} (New York: Random House, 1998), pp.99-100.} They reappeared in April 1991, when riverboat casinos were opened in two towns in Iowa, Bettendorf and Davenport. The area had been hard hit by de-industrialization as large manufacturing plants, such as John Deere and Caterpillar, were closed. It was hoped that legalizing gambling would attract tourism dollars from other parts of the Midwest, providing a basis
for urban renewal and economic development. However, neighbouring states and jurisdictions along rivers and lakes throughout the country followed shortly after with similar establishments. While the original Iowa plan placed strict limits on the amounts that could be wagered, and taxed operators at a rate of 20 per cent, other jurisdictions placed fewer limits and drew less revenue from operators.\textsuperscript{41} States, in the attempt to make their riverboat casinos as attractive as possible, engaged in various forms of regulatory competition, whose result was that casino gambling became more accessible and with fewer restrictions. These factors helped create riverboat casino markets in areas such as the Gulf Coast in Mississippi, where casino revenues rank third in the country ($1.7 billion in 1995) after Las Vegas ($7.3 billion) and Atlantic City ($3.3 billion).\textsuperscript{42} In addition, many states have allowed casino operations at race tracks (racinos), arguing that this was one way to help an industry in trouble (horse racing and breeding) and compete for tourists with neighbouring jurisdictions. From a rather modest beginning in Iowa, casino gambling spread to 36 states and contributed $5 billion to states and municipalities in direct gaming taxes in 2002, moreover employing over 360,000.\textsuperscript{43}

As in the case of VLTs, the decision by neighbouring jurisdictions to open some form of casino gambling generates a move for legalization. For instance, the government of Ontario has located large casinos in the border cities of Niagara Falls and Windsor, Ontario to attract players and tourists from the respective neighbouring states of New York and Michigan, and beyond. It seems to have accepted the argument that, “The best and safest gambling operation is one designed for tourists, taking disposable income from non-residents...A casino acts like a black hole sucking money out of the local economy.”\textsuperscript{44} The U.S. jurisdictions have followed suit with the establishment of casinos in Detroit and the approval to do so in New York State. In the case of the latter, the decision was also spurred by the popularity of two large casinos in Connecticut that draw largely from the New York City metropolitan area. The establishment of casinos in upstate New York was presented as an important tool in economic development for the area.

6. Gambling and the State Capacity Problem

The rise of Internet gambling and casinos on Indian reserves challenge traditional notions of state sovereignty based on a monopoly of political authority within a bounded territory. Arguments in favour of legalisation

\textsuperscript{41} Ibid, pp. 110-111.
\textsuperscript{42} Ibid, p. 116.
often point to the incapacity of the state to prohibit something for which there is a strong social demand, and which can be accessed through changes in technology.

Internet Gambling

The challenges and opportunities to political authority afforded by communication and information technology have been a source of debate for the last decade.\footnote{Geoffrey Herrera, “The politics of bandwidth: international political implications of a global digital information network”, \textit{Review of International Studies}, 28 (2002), pp. 93-122.} The Internet as an infrastructure for global markets, from capital to pornography, was identified almost immediately as an economic opportunity and/or a challenge to state sovereignty. At a minimum, it forces governments to at least take into consideration competition from other jurisdictions with respect to the regulation of some forms of economic activity. States may choose to limit or prohibit certain activities or services, such as access to pornography, but individuals can still gain access through the Internet. Moreover, even if states can somehow limit Internet access, they may still have to address questions about lost economic opportunities. Regulatory competition between jurisdictions can now have a global reach for some goods and services.

These questions of limited state capacity and regulatory competition are at the heart of the debate over Internet gambling. In a relatively short period of time (less than ten years), it has emerged as a major industry that totals over $4 billion in the United States alone. It has been seen to touch upon a range of issues from the possible laundering of money by organised crime to a trade dispute before the WTO. Internet gambling takes a number of forms. The most popular is sports betting which is simply an upgrade from betting over the phone, with a legal betting shop as was the case in Britain, or illegally as was the case in most of North America. Online casinos, while ever more present on the Internet, give players fewer guarantees that the games are being carried out in a fair way. The odds are always stacked against players in a casino, but could be even more so when the casino is a computer program that could be programmed to never pay out. Lotteries’ sales are also starting to develop over the Internet. Liechtenstein has tried to establish a primarily international lottery but with limited success. In North America, one obstacle has been that legislation prohibits the sale of lottery tickets across state or provincial borders unless there is an agreement between jurisdictions. For instance, the Appeal Division of the Supreme Court of Canada ruled in 2002 that the “Earth Future Lottery” by the province of Prince Edward Island (PEI), which sought to sell tickets only by telephone and the Internet, was illegal. The decision stated that although the contract for the lottery claimed that the
“sale” of tickets would take place in PEI, the Internet provided no assurance that this would be the case.\footnote{Supreme Court of Canada. Appeal Division. “Reference Re Earth Future Lottery” (P.E.I.), 24 April, 2002, PESCAD 8.}

One of the attractions of Internet gambling for governments is that they offer many of the benefits of legalization, such as revenues and jobs, with the possibility that the costs, in terms of public health issues and social problems, are borne in some other jurisdiction. As a report to the South African government states, "Internet gaming is a dollar-earning export business. Almost all sound strategy relating to its regulation follows from this fact."\footnote{National Centre for Academic Research into Gaming, \textit{Internet Gaming and South Africa: Implications, Costs and Opportunities - Interim Report for the National Gambling Board} (Cape Town, August 1999), p.3} The report goes on to argue that the many benefits to South Africa will depend on it developing businesses and regulations before competing countries. This was a sentiment echoed in 2001 by that cameo known as the Budd Report in Britain, which called for the legalization and regulation of Internet gambling. Australia was seen to be one state that had anticipated its potential rivals as many of its state governments had put in place a framework to govern gambling over the Internet. Interestingly, the Interactive Gambling Act 2001, which set out rules at the federal level in Australia, prohibits online gambling operators from allowing access to Australian residents but does not prohibit their establishment. Lotteries and sports wagering are state and territorial jurisdictions. The trend here has been to only allow for wagering with operators that are licensed in the jurisdiction.\footnote{For a close examination of U.S legislation as well as a survey of various jurisdictions, see: United States General Accounting Office, \textit{Internet Gambling: An Overview of the Issues - Report to Congressional Requesters} (Washington, December 2002).}

An interesting point is that regulation of the Internet by government is seen as important not just to make the activity legal, but because it makes the gambling sites credible to potential customers. It is not enough that states allow website operators to take bets; they must also have credible rules that give players a certain degree of certainty that they will be paid their winnings and that the games are carried out in a fair way. Such guarantees might include: provision to ensure financial solvency of operators of the games of chance; what to do if a game is interrupted by some sort of technical problem; how to ensure that players will be paid in a timely way; how to ensure that operators cannot interfere with random outcomes in casino games; how to protect against underage gambling.\footnote{Underage and youth gambling is a recognized as major problem by public health experts and officials. It is especially the case with respect to sports betting.} States and governments are called to provide these forms of protection, not for the own citizens, but primarily for those of another state as they are the target clientele for Internet gambling. This is an interesting version of some of the dynamics of regulatory competition in a globalized economy. It is often assumed that states will compete to attract inward investment by
creating a favourable environment that places few controls on capital. This could result in difficult economic and social conditions for some of its citizens as they may have to suffer through the consequences (such as environmental damage) of what is often a downward regulatory spiral. In the case of gambling, regulators must try to find a balance between trying to create a favourable environment for operators and one that will provide guarantees for customers in a virtual market place. It must expand the boundaries of state intervention to protect individuals that are not its citizens rather than the dynamic of the “race to the bottom” to withdraw the state at the expense of its own citizens.

There are currently over 50 jurisdictions throughout the world that allow for some form of Internet gambling. A random sample survey of 202 of the 1783 gambling sites identified by the General Accounting Office found that, of the 88 gambling sites that listed a licensing country, 48 were either in Antigua or Curacao. Indeed, 63 sites listed a Caribbean country as issuing their licence, while the United Kingdom had seven sites, Costa Rica eight, two were found for Australia and four claimed to be based on an Indian reservation in Canada.\(^5\) States have had to adopt laws and restrictions on gambling that were often drawn up when the concern was over riverboat games of chance. For instance, British betting shops were allowed to take bets over the phone but it was not clear whether they could do the same online. This legislative ambiguity – interpreted by the bookies as permission to do so – was subject not only to British authorities but also possibly to European legislation. The British government is expected to present legislation that will legalize and regulate the activity. There are two ways in which states can try to regulate or even prohibit Internet activity; one way is to address the supply problem. Some jurisdictions, such as those throughout North America (Nevada is an exception as are Indian reservations), have largely prohibited operators of online gambling sites. Others have looked to them as sources of revenues – through taxation of winnings – or job creation, so have permitted them to operate on their territory. The Caribbean is one area in which many Internet gambling sites are located as they have found a friendly legal and tax environment. However, as South Africa and other jurisdictions have claimed, many Caribbean states have made great efforts to attract Internet operators and fewer attempts to protect players.

The second, and not exclusive, way for states to regulate Internet gambling is to address it at the demand side. In this case, jurisdictions seek not only to prohibit Internet operators from establishing sites in their territory, they also attempt to prohibit individuals from placing bets. This raises the classic problem of how to ensure that the Internet remains an open and free instrument for communication while respecting community norms and values of societies that are still rooted in particular territories. Since most states, especially in Europe and the United States, have chosen

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not to assume the huge costs of limiting Internet access, they have had to come up with different ways if they want to limit or prohibit online gambling. This has meant devising mechanisms to prohibit payment of players' winnings by limiting use of credit or debit cards. Most Internet gambling sites require that players set up an account, either through the transfer of funds from a bank or through use of debit or credit card. The Unlawful Gambling Funding Prohibition Act, approved by the U.S. House of Representatives on 10 June 2003, would ban the use of credit cards for wagers on offshore Internet sites. In the absence of legislation dealing specifically with the Internet, some U.S. officials, such as the Attorney-General for New York, have used the 1961 Wire Wager Act to curtail online gambling by forcing large banks and online payment services to block the transfer of funds to known gambling sites.  

This sort of crackdown on American users of sites has led to the first dispute involving electronic commerce to come before the WTO. Antigua and Barbados, who have come to rely on Internet gambling as a way to offset reliance on tourism, challenged the U.S. restrictions on the grounds that it already allows Americans to spend over $26 billion annually on various forms of legalized gambling. The WTO decision (ad interim) in March 2004 ruled in favour of Antigua and Barbados, claiming that the U.S. restrictions were in violation of the General Agreement on Trade in Services. However, it must be noted that despite the legal uncertainty in the United States about the status of online wagering, the industry has grown in exponential terms from its inception in the mid-1990s to projected industry-wide figures of over $4 billion in 2002. While efforts to block the transfer of funds may have scaled down projected growth figures, business analysts still expect it to be in the 20 per cent range for the immediate future. This is partly because there are many emerging forms of electronic payment that can circumvent restrictions on the transfer of funds to and from gambling sites.

The United States, as well as any other jurisdiction that wants to prohibit Internet gambling, is faced with the possibility that using legislative tools can, at best, limit its growth. Its gaming operators will be hampered if they cannot run sites on U.S territories. Moreover, even territorially-based and legal activities, such as Las Vegas casinos, now have to face competition from distant shores. Attempts by states to prohibit Internet betting only leads to the establishment of betting sites in jurisdictions that provide a safe-haven for investors and possibly players. States that try to ban Internet gambling may be left having to deal with a worst-case scenario for public officials vis à vis gambling. They will have a portion of their

54 United States General Accounting Office, Internet Gambling, p.25.
residents who have ready and easy access to various forms of betting, with the attendant social problems of addiction, youth gambling, family crises and individual indebtedness. At the same time, they will see tax revenues and possibly employment and investment leave for distant shores.

Internet gambling, then, seems to raise many of the challenges for states of governing in a more open global economy. They can choose to ignore that sovereignty and capacity are severely curtailed, and continue to act as if they could control outcomes. However, the case of the United States demonstrates that even a ban on Internet sites and attempts to curtail individual players has not stopped it from being the principal source of online governing revenues that are ending up with operators in other jurisdictions. Regulatory competition, in this case, does shape firms' and customers' behaviour.

*Gambling on Indian Reservations*

The economic development arguments, along with sovereignty claims, have been used in the creation and spread of casinos on Indian reservations in the United States. There were two legal decisions in the late 1980s that opened up the way for widespread expansion in the 1990s. The Supreme Court decision in 1987 in the *California v. Cabazon Band of Mission Indians* established the right for reservations to have casinos in those states that allowed gambling.\(^{55}\) The case was brought to the courts by the California government, which objected to the spread of high stake bingo games – offering prizes 200 times the state average – on Indian reservations. The Court ruled that since California did not prohibit gambling, but simply regulated it, then it had no jurisdiction in regulatory matters on Indian reservations. Congress followed up on the ruling in 1988 with the Indian Gaming Regulatory Act (IGRA). The Act’s aim was to provide a regulatory framework for gambling on Indian reservations to ensure economic development on reservations, a framework for negotiating with state governments and to prevent infiltration from organized crime.\(^{56}\) The Act provided a basis for states, which have no regulatory jurisdiction on reservations, to negotiate with the bands and tribes on issues such as types of games that could be played, enforcement mechanisms, and taxes to be levied by the tribe. By 2003, 201 tribal governments of the 562 federally-recognized tribes were engaged in some form of gambling sanctioned by the Act in 29 different states on the basis of 249 pacts between tribes and state governments. The 329 operations run by the various tribes produced total revenues of $12.8 billion in 2001, $14.4 billion in 2002, and $16.7 billion in 2003. The total employment generated by what is called "Indian

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\(^{56}\) Ibid., pp.62-63.
gaming” in the United States was over 300,000 jobs, with the vast majority (75%) going to non-Indians.\footnote{Information on gambling on Indian reservations in the United States may be found at the website of the National Indian Gaming Association: \url{www.indiangaming.org/library}; the National Indian Gaming Commission site, \url{www.nigc.gov}. The figure for 2003 is preliminary and was found in: “Tribal Revenues Top $16.7 Billion”, \url{AP Online}, 13 July 2004 at: \url{www.ap.org}.}

The space created by the Court decision and the 1988 Act contributed to extensive development of different forms of gambling on Indian reservations in the United States in the 1990s. These range from traditional games to bingo halls to full scale casinos that include card games, slots and horse and dog racing. In some cases, outside operators have run casinos, taking as much as 40 per cent of revenues. The casinos have generated a great degree of interest from gamblers, especially in those areas that are not close to riverboat casinos or Las Vegas or Atlantic City. For instance, in 1997, over $77 billion was handled at these reservations: an increase of 22 percent over the previous year.\footnote{Barker and Britz, \textit{Jokers Wild: Legalized Gambling in the Twenty-first Century}, p. 60.} The two Indian reservation casinos in Connecticut, Mohegan Sun and Foxwoods, are among the largest in the United States in terms of size, visitors and money handled, employing 10,000 and 13,000 people respectively in 2002.\footnote{National Indian Gaming Council, \url{www.nigc.gov}.}

7. Conclusion

The case of legalized gambling allows us to address the three questions raised in the introduction. First, it does make a difference that governments are increasingly looking to gambling as a form of direct taxation and other forms on indirect revenue. Unlike other forms of taxation, gambling is glorified and presented as entertainment. Governments in an age of global competitiveness and economic liberalization find it extremely hard to increase taxes, even for popular programs such as education and health care, but they have no trouble taking citizens’ money at the lottery wicket or blackjack table. Moreover, they are successful because they appeal to the values of individual choice and freedom upon which economic liberalization is based. Second, there is clearly a form of regulatory competition taking place that is driving the legalization process and is producing similar policies in a wide range of states across the globe. Generally, the state is shifting from prohibition to regulation largely because it faces pressures from not only its territorial neighbours, but also jurisdictions throughout the world. Governments that choose to ignore these pressures risk having diminished revenues but still...
having to deal with some of the social costs and public health consequences of gambling. There may be moral or political arguments against prohibition but the race towards the lowest common denominator seems to be in full force. This leads to the third question about the loss of state capacity. It might be argued that the legalization of gambling is a sign of the “enabling” of state activity: after all, it is now regulating a widespread activity and reaping the financial rewards. However, it is doing so in recognition that it does not have the capacity to do otherwise. It also signals that the state does not have the moral authority or the capacity to act in the name of the social. It can intervene in the case of gambling because it does so in the name of promoting individual choice, “entertainment” and freedom. Individuals willingly give their money to the state – they invariably always do – through games of chance because they are assuming their own risks and they no longer have faith in the state mechanism to assume risk collectively.

The case of legalized gambling is an illustration of the changing role for the state. It reflects a form of governing in which the state, as instrument for the pursuit of collective goals in the name of the social, is becoming an instrument for the guarantee of individual freedom and the enforcement of market relations and contracts. This is a development that is taking place across a variety of state forms and with different historical experiences. It suggests that the process of adaptation may provide marginal policy differences, but we essentially have an emerging form of governing based on the individualization of risk and its promotion by the state. It is manifest in other areas as well, such as the privatization of pensions. The question that it opens up is: what will be the basis of legitimacy for a state that promotes individual freedom through games of chance and the glorification of risk, but decreasingly governs through and in the name of the social?

02/2003. Fabbrini; Sergio, *How Can a Market be Built Without a State*.


PUBBLICAZIONE REGISTRATA PRESSO IL TRIBUNALE DI TRENTO
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