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The Legalization and Control of Casino Gambling

Cover Page Footnote

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THE LEGALIZATION AND CONTROL OF CASINO GAMBLING

I. Nelson Rose*

I. Introduction

Legalized gambling is spreading once again across the United States.¹ It is, in fact, "one of the fastest growing industries in the world."² When the Final Report of the Commission on the Review of the National Policy Toward Gambling (National Gambling Commission)³ was completed in 1976, legalized gambling was avail-

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1. This is apparently the third wave of legalized gambling to sweep the nation, beginning in earnest in 1964 when New Hampshire became the first state in this century to authorize a lottery. The first wave lasted from colonial times to the Civil War and was characterized by the use of both publicly and privately sponsored lotteries. For example, during currency shortages individuals, unable to find buyers for real property or merchandise, resorted to lotteries as a means of raising money and disposing of their goods. Governmental entities sold lottery tickets to finance military operations and public works. Around the turn of the nineteenth century, many states banned private lotteries and by the Civil War anti-lottery forces had succeeded in abolishing lotteries in every state except Delaware, Kentucky and Missouri. D. WEINSTEIN & L. DEITCH, *THE IMPACT OF LEGALIZED GAMBLING* 8-9 (1974) [hereinafter cited as WEINSTEIN]. The financial predicament of many southern states brought about the second wave shortly after the Civil War. The most infamous lottery of this time was the "Louisiana Lottery" which was operated in New Orleans by a New York gambling syndicate and penetrated every state of the nation despite anti-lottery laws. Opponents of the Louisiana Lottery pressured Congress to eliminate lotteries. However, it was not until 1890 that their efforts succeeded. In that year, Congress passed legislation giving the Postmaster General the power to refuse delivery of lottery-related mail. Act of Sept. 19, 1890, ch. 908, §1, 26 Stat. 465. See Blakey & Kurland, *The Development of The Federal Law of Gambling*, 63 CORNELL L. REV. 923 (1978). See also H. CHAFETZ, *PLAY THE DEVIL* (1960); R. KING, *GAMBLING AND ORGANIZED CRIME* (1969) [hereinafter cited as KING]; COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING, *GAMBLING IN AMERICA* (1976) [hereinafter cited as *GAMBLING IN AMERICA*]; Fact Research Inc., *Gambling in Perspective: A Review of the Written History of Gambling and an Assessment of its Effect on Modern American Society in GAMBLING IN AMERICA*, *supra*, app. 1, at 1.

2. *Long Beach Woos Panel on Casinos*, N.Y. Times, Dec. 11, 1977, § 21 (Long Island Weekly), at 1, col. 4 (statement of Humberto Betancourt, official in charge of creating the commission to license and regulate all forms of gambling in Puerto Rico); see also *OTB Fails to Meet Revenue Goal and to Reduce Illegal Bookmaking*, N.Y. Times, Jan. 11, 1979, at A1, col. 2.

3. The Commission was created by Congress in the Organized Crime Control Act of 1970, Pub. L. No. 91-452, §§ 804-809, 84 Stat. 922.

able in various forms in thirty-two states.⁴ Furthermore, almost every sign points to a continued expansion of legal gambling. In a very short time state operated lotteries have become an accepted institution.⁵ By 1978, fourteen states had operating lotteries and ten more were considering legalization.⁶ Pari-mutuel on-site betting has been established for over forty years and has lost most of its opprobrious character.⁷ Currently, thirty states permit on-track betting at horseraces and at least seven others are considering it.⁸ The controversy surrounding the legalization of off-track betting, like that surrounding dog racing and jai alai, has revolved more around protecting the investments and special interests of the entrenched horse-race track industry rather than around any arguments of morality or corruption.⁹ As of 1976, two states had off-track betting and at least seven more were debating its implementation.¹⁰ Moreover, gambling reform is uniformly in the direction of legalization. It is extremely rare to find a state rescinding its decision to decriminalize gambling games.¹¹

In this context the support for legalizing casino gambling is not surprising.¹² The temptation to legalize casino gambling is great. In

4. Helsing, *Gambling—The Issues and Policy Decisions Involved in the Trend Toward Legalization—A Statement of the Current Anachronism of Benign Prohibition in GAMBLING IN AMERICA*, *supra* note 1, app. 1, at 775 [hereinafter cited as Helsing].

5. *Id.* at 775. See also A. SPOFFORD, *LOTTERIES IN AMERICAN HISTORY*, S. MISC. DOC. NO. 57, 52d Cong., 2d Sess. 174-75 (1893) (cited in Blakey & Kurland, *supra* note 1, at 927):

For many years after [the lottery] began to prevail it was not regarded at all as a kind of gambling; the most reputable citizens were engaged in these lotteries, either as selected managers or as liberal subscribers. It was looked upon as a kind of voluntary tax for paving streets, erecting wharves, buildings, etc., with a contingent profitable return for such subscribers as held the lucky numbers.

6. COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES*, 1978-79 at 73 (1978).

7. *GAMBLING IN AMERICA*, *supra* note 1, at 105.

8. Helsing, *supra* note 4, at 775.

9. *GAMBLING IN AMERICA*, *supra* note 1, at 134.

10. Helsing, *supra* note 4, at 775.

11. Apparently no state in this century has made illegal a gambling game once it has been decriminalized, other than a few short-lived experiments with slot machines and Nevada's on-again, off-again decriminalization of casinos between 1900 and eventual legalization in 1931. NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, UNITED STATES DEPARTMENT OF JUSTICE, *THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976* (1977) [hereinafter cited as *THE DEVELOPMENT OF THE LAW OF GAMBLING*].

12. *Summaries of Hearing Testimony Before the Commission on the Review of the National Policy Towards Gambling* in *GAMBLING IN AMERICA*, *supra* note 1, app. 3, at 65-127 [hereinafter cited as *Hearings*].

1978, Nevada received over \$80 million on casino taxable revenue of \$1.5 billion.¹³ Similarly, in New Jersey¹⁴ the Resorts International casino hotel in Atlantic City grossed \$220 million in its first year of operation.¹⁵ The average daily gross is about \$800,000; on one day the casino grossed a record \$1.25 million.¹⁶ Since Caesar's Boardwalk Regency Hotel opened on June 26, 1979, reported winnings averaged almost \$450,000 a day.¹⁷ New Jersey officials expect the state to realize \$45.6 million in fiscal year 1979-80¹⁸ from the casino gambling tax.¹⁹ Additionally, new hotel construction and renovation has

13. N.Y. Times, April 20, 1979, at A25, col. 1.

14. In 1976, the New Jersey State Legislature passed an amendment to the state constitution authorizing casino gambling in Atlantic City and pledging any revenues derived from the state tax to particular sources. N.J. CONST. art. 4, §7, ¶ 2 reads, in pertinent part:

It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries . . . of the city of Atlantic City, and to license and tax such operations and equipment used in connection therewith. . . . State revenues derived therefrom [are] to be applied solely for the purpose of providing reduction in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State, in accordance with such formulae as the Legislature shall by law provide. The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.

After New Jersey citizens approved the constitutional amendment, the legislature passed enabling legislation in 1977 which provided for extensive state regulation and control of casino gambling. N.J. STAT. ANN. tit. 5, ch. 12 (West Supp. 1979). For a discussion of New Jersey's control legislation, see pt. IV (B) *infra*.

15. N.Y. Times, July 12, 1979, at B1, col. 2. Resorts International opened the first Atlantic City casino in May, 1978. Ceasars World opened the Boardwalk Regency Hotel and Casino in June, 1979. The Bally Manufacturing Corporation has recently received an operating certificate to open a third casino, the Park Place, in Atlantic City. N.Y. Times, Dec. 20, 1979, at B2, col. 3. See note 260 *infra* and accompanying text.

16. N.Y. Times, July 27, 1979, at B1, col. 6.

17. Wall St. J., Dec. 7, 1979, at 34, col. 1.

18. N.Y. Times, March 14, 1979, at B2, col. 5. Experience teaches that official predictions of potential gambling revenue are overstated. For example, New York State lottery officials predicted that the state lottery would generate \$360 million for state schools in its first year of operation. However, the schools received only \$62.4 million. New Hampshire has been similarly disappointed with the proceeds of its lottery. See Rosen, *The Economics of State-Operated Lotteries* in GAMBLING IN AMERICA, *supra* note 1, app. 1, at 805, 808 [hereinafter cited as Rosen].

19. N.J. STAT. ANN. § 5:12-139 (West Supp. 1979). The New Jersey Legislature has recently passed legislation temporarily increasing the tax on gambling casino profits from eight percent to twelve percent when two or three casinos are licensed and in operation, ten percent when four or five casinos are licensed and in operation and eight percent when six or more

dramatically increased.²⁰

The success of the Atlantic City casino operation has intensified efforts to legalize casino gambling in neighboring states, especially in New York.²¹ Agencies charged with enforcing gambling codes, from the Gaming Control Board in Nevada to the Mayor's office in New York City, have devoted considerable attention to the potential economic and social impact of legalized casino gambling on their jurisdictions.²² This Article will discuss the reasons behind the spread and escalation of legalized gambling and will argue that this movement is inevitable, at least for the next few decades. The un-

casinos are licensed and in operation. Should the third casino not be operating by April 1, 1980, the tax rate for the two existing casinos will be fourteen percent until the third casino begins operation. 1979 N.J. Laws ch. 198.

20. Atlantic County officials estimated that current and planned development would surpass \$1 billion. "The talk is of an Atlantic City free of urban decay, free of recurring money shortages, free of welfare rolls, with a Las Vegas Strip along the Boardwalk providing the basis for an economy of full employment and municipal surpluses." N.Y. Times, Feb. 13, 1979, at B1, col. 3. Angelos C. Demetriou, the city planner hired to develop Atlantic City's master plan, sees the Atlantic City of the future as a "frontier of modernity," in which "masterful architecture, approved by an aesthetic review board, will provide an 'uplifted look, an uplifted feeling.'" *Id.* Resorts International, Inc., which opened the first legalized gambling casino in New Jersey in May, 1978, recently announced that it would spend more than \$120 million to build another larger Boardwalk casino and 1,000-room hotel. *Id.*, July 27, 1979, at B1, col. 6. On December 31, 1979 four major hotel companies announced plans to open a casino strip in an undeveloped wasteland seventeen blocks from the Boardwalk strip on which Resorts, Caesars World and Park Place are situated. *Four Concerns in Atlantic City Plan Major Casino Complex*, N.Y. Times, Jan. 1, 1980, at B2, col. 1.

21. The legalization of casino gambling in New York requires an amendment to art. 1, § 9, of the state constitution which presently prohibits most forms of gambling. Article 19, § 1, of the constitution details the procedure by which constitutional amendments may be initiated by the state legislature. A proposed amendment must be passed by a majority of the members of each house. If the proposal is passed in both houses, it is referred to the next regular legislative session convening after the succeeding general election of the Assembly. Once the proposed amendment is twice approved in two successive legislative sessions, it is submitted to the people for final approval. N.Y. CONST. art. 19. In 1978, the New York State Legislature passed three proposals for the legalization of casino gambling. N.Y.S. 10465-A, 10467-A, 10468-A, 201st Sess. (1978). However, the state legislature did not pass any of these bills in 1979. See N.Y. Times, Aug. 14, 1979, at B3, col. 1. Consequently, the amendment process must be repeated, delaying legalization until 1981 at the earliest.

22. "'Once gambling is legalized,' said the official—Gordon Haesloop, deputy coordinator for criminal justice in the Mayor's [New York] office—with the state taking an interest in it, 'we'd have to reevaluate our law-enforcement policy regarding illegal casinos.'" N.Y. Times, March 27, 1979, at B1, col. 1. Nevada has a special interest in Atlantic City casinos not only for the economic reasons of potential competition, but also due to the statutory mandate to investigate "foreign" gaming by Nevada licensees. NEV. REV. STAT. §§ 463.680 to 463.720 (1977).

derlying theme of this Article is control; the control that must be exercised not only for legal casinos to fulfill any of their stated purposes, but also to prevent the creation of new problems more serious than those casinos are designed to solve. Four models of control for legal casinos will be studied: Nevada's free enterprise model, New Jersey's and Puerto Rico's tourist area revitalization model, England's strict social control model, and the model of complete or partial state ownership. The effectiveness of these different models in meeting the requirements of control will be analyzed both in their theoretical structures and as they operate in practice.

II. The Present System: "Benign Prohibition"²³

Many forms of gambling flourish within the typical East Coast state. Some forms are legal and actively promoted, while others are illegal but tolerated.²⁴ This jurisdiction has a state-operated lottery requiring constant advertising and legalized with the promise of diverting large sums of money from the illegal "numbers"²⁵ rackets into the state coffers. The numbers games, however, remains and the revenue from the lottery has been disappointing. An old established horseracing industry enables players to place parimutuel bets at the tracks. There have been occasional scandals, but the major discussion among horsemen has been the declining patronage and perceived competition from neighboring states, particularly a nearby state's off-track betting operation. There is considerable interest in instituting an off-track betting operation

23. This phrase was apparently coined by Patricia Helsing. See Helsing, *supra* note 4, at 773.

24. Much of this picture is drawn from conclusions of the National Gambling Commission. See generally GAMBLING IN AMERICA, *supra* note 1.

25. The "numbers" game has been described as follows:

In many New York neighborhoods, there are spots every block or two, in candy stores, tobacco stores, unadorned storefronts and first floor apartments where one can place a 25¢, 50¢ or \$1 bet on a number. Various kinds of bets may be placed on one to three digits. The winning number each day is determined by a complicated formula based on the amounts of money wagered and paid out at various racetracks. In essence, the numbers game is a lottery, with odds ranging from 10-1 to 1000-1, depending on whether one bets on one, two or three digits. The payoff ranges from 6-1 to 600-1, with the game's sponsors keeping forty percent of the amount bet to cover their operating expenses and profits.

COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY'S ANTI-CORRUPTION PROCEDURES, COMMISSION REPORT 78 (1972) [hereinafter cited as KNAPP COMMISSION REPORT]. See also KING, *supra* note 1, at 56.

within this jurisdiction, but the track owners want a guaranteed percentage from the state to cover any loss in attendance. In addition, the attention drawn to the Atlantic City experience has created pressure from the local tourist-dependent industry to legalize casinos. Some urban legislators see casinos as a unique tool for redeveloping the inner city.

Other legal forms of gambling abound, although generally not recognized as such. For example, bingo, or one of its variations, is sponsored for charity and a considerable industry has developed around regularly scheduled bingo games. Commercial contests and sweepstakes are accepted as ordinary business practices.

The piecemeal expansion of legalized gambling has been accompanied by a relaxed enforcement of those statutory prohibitions still in effect.²⁶ The few arrests that are made almost always result in dismissals, findings of not guilty, or the imposition of minor fines.²⁷ This is not a sign that illegal gambling has died out; on the contrary, it flourishes. Bookies do a large business in illegal bets on single sports events. Numbers, card and dice games flourish to a lesser extent. Additionally, it is claimed that about twenty percent of the population violates the law every year even though limiting their gambling to social bets between friends.²⁸ The imposition of minimal legal sanctions on the operation of illegal games has been labeled "benign prohibition."²⁹ Benign prohibition is an unofficial policy adopted in jurisdictions where law enforcement agencies lack the resources to conduct thorough investigations of low-priority crimes. Gambling-related police corruption is frequently a part of

26. GAMBLING IN AMERICA, *supra* note 1, at 35. See also *Hidden Casinos Run Nightly in New York*, N.Y. Times, March 26, 1979, at A1, col. 1; Reuter, *Enforceability of Gambling Laws* in GAMBLING IN AMERICA, *supra* note 1, app. 1, at 557 [hereinafter cited as Reuter]. For a discussion of the changing laws on social gambling see Seitzinger, *Gambling*, 28 MAINE L. REV. 37, 44 (1976). "The laws against social gambling in private are primarily a symbolic gesture on the part of the legislators; they are neither enforced nor enforceable in any reasonable sense of the word." F. FOWLER, T. MANGIONE & F. PRATTER, *GAMBLING LAW ENFORCEMENT IN MAJOR AMERICAN CITIES: EXECUTIVE SUMMARY* iv (1978) (study for the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice) [hereinafter cited as *GAMBLING LAW ENFORCEMENT IN MAJOR AMERICAN CITIES*].

27. Riedel & Thornberry, *The Effect of Increased Enforcement of Gambling Laws* in GAMBLING IN AMERICA, *supra* note 1, app. 1, at 494 [hereinafter cited as Reidel].

28. Kallick, Suits, Dielman & Hybels, *Survey of American Gambling Attitudes and Behavior* in GAMBLING IN AMERICA, *supra* note 1, app. 2, at 12-15 [hereinafter cited as Kallick].

29. Helsing, *supra* note 4.

this system and contributes to the widely held belief that gambling laws are unenforceable. Consequently, violations of gambling laws are often ignored, gambling convictions are rare and penalties light. Thus, the typical eastern state contains two parallel, marginally competitive gambling markets: an area of expanding legal gambling enterprises and a flourishing illegal gambling trade that law enforcement officials, prosecutors, judges and the public are either unable or unwilling to eradicate.³⁰

The effects of benign prohibition, particularly corruption, result from the uncontrolled discretion given police and prosecutors.³¹ Officially the officers are supposed to enforce the law against all those who break it. Yet an officer doing exactly that would not receive support from the department, the public or the judicial system.³² A patrolman will not make gambling arrests if not pressured to do so. The arrests require great efforts to meet evidentiary requirements while observing constitutional rights.³³ One result is that officers realize that gambling arrests are considered unimportant.³⁴ Thus, the value of the statutory scheme becomes less sacrosanct. The police, however, do not want to gain a reputation of being indifferent to law-breakers. Often a compromise of selec-

30. *Id.* at 777-78.

31. "A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction." K. DAVIS, *DISCRETIONARY JUSTICE IN EUROPE AND AMERICA: A PRELIMINARY INQUIRY* 4 (1976). This definition includes the options by the officer of committing illegal acts or ignoring the illegal acts of others. For a general discussion of the problems of discretion in the criminal justice field see Vorenberg, *Narrowing the Discretion of Criminal Justice Officials*, 1976 *DUKE L. J.* 651.

32. *GAMBLING IN AMERICA*, *supra* note 1, at 35.

33. The difficulty of gambling law enforcement is well known to law enforcement officers but is less commonly appreciated by the general public. Most citizens believe that illegal gambling is associated with police corruption. They are generally unaware of the legal technicalities and investigative difficulties which constrain gambling law enforcement. In many cities, public social gambling is prevalent enough to make enforcement against it an endless task. The arrest of bookmakers and numbers operators, on the other hand, requires lengthy investigations which often include extensive physical surveillance—still the most common investigative procedure used in gambling law enforcement. Unless considerable care is taken when gathering evidence against a commercial operator, the arrest will be fruitless because the case will not hold up in court. The majority of all police officers recognize this fact; 73 percent agreed that it is often impossible to make a good case against a known street-level operator. *GAMBLING LAW ENFORCEMENT IN MAJOR AMERICAN CITIES*, *supra* note 26, at 27.

34. *GAMBLING IN AMERICA*, *supra* note 1, at 48. The low priority given to gambling offenses

tive enforcement and quotas is worked out.³⁵ It is easy for an officer in this situation to fall into venality and corruption.³⁶ Gambling operators are dependent on the police for the continued survival of their enterprise and will take advantage of every opportunity to ensure noninterference.³⁷ The effects of benign prohibition on the general public are equally deleterious. Because the law has been voided through the enforcement process rather than changed through legislation, public confidence in law enforcement officials has eroded.³⁸

reflects the low priority given to such offenses by the public. Table 1 below shows the relative ranking by police departments of public support for arrests and investigations for various types of offenses.

TABLE 1

Average Rating of Citizen Support for Enforcement
(1=poor, 2=fair, 3=good, 4=very good, 5=excellent)

Robbery	3.9
Narcotics sale/distribution	3.7
After hours liquor sale	2.4
Organized card and dice games	2.1
Bookmaking operation	2.0
Numbers, policy operation	1.8

Pratter & Fowler, *Police Perceptions about Gambling Enforcement: A National Survey of Law Enforcement Agencies in GAMBLING IN AMERICA*, *supra* note 1, app. 1, at 461, 480. See also Mangione, Fowler, Pratter & Martin, *Citizen Views of Gambling Enforcement in GAMBLING IN AMERICA*, *supra* note 1, app. 1, at 240, 242.

35. Rubinstein, *Gambling Enforcement and Police Corruption in GAMBLING IN AMERICA*, *supra* note 1, app. 1 at 600, 611 [hereinafter cited as Rubinstein].

36. Money is the main incentive for venality. It is unclear exactly how much money is bet illegally each year, how much is siphoned off into organized crime and how much finds its way into the hands of officials in the form of bribes. *GAMBLING IN AMERICA*, *supra* note 1, at 63-65. The low range estimates are in the hundreds of millions of dollars per year. Kretz & Duncan, *Police Attitudes Toward Gambling in GAMBLING IN AMERICA*, *supra* note 1, app. 1, at 574. Whatever the total, the amount given to an officer can be substantial. The Knapp Commission found that "[p]articipation in organized payoffs—a pad—netted individual officers monthly amounts ranging from \$300 to \$1500. In return for protection from enforcement (except for occasional token arrests) gambling establishments paid as much as \$3,500 a month." *GAMBLING IN AMERICA*, *supra* note 1, at 40. See also Reuter, *supra* note 26 at 551; Duncan, *Gambling—Related Corruption in GAMBLING IN AMERICA*, app. 1, at 574 [hereinafter cited as Duncan]; Rubenstein, *supra* note 35, at 600.

37. Rubinstein, *supra* note 35, at 611. "A successful illegal gambling enterprise, unlike any other criminal business, requires a freedom to operate in a routinized, scheduled fashion." *Id.* at 600.

38. Duncan, *supra* note 36, at 587. The public also plays an important role in creating the moral context in which the laws are to be enforced. It has been noted that a double

One solution to the problem of uncontrolled discretion and resulting corruption was offered by the Knapp Commission:³⁹ patrol officers were not to enforce the laws against gambling, thereby taking discretion entirely out of the hands of the police and court system.⁴⁰ Such a policy, however, would only contribute to the proliferation of illegal gambling. Eventually, the public would not tolerate wide-open gambling, thus forcing the reimposition of controls.⁴¹ Another possible solution includes focusing on police or prosecutorial discretion through greater accountability, improved articulation of policies and practices, increased salary and incentives, better recruitment, better training and more vigorous investigations and prosecutions. A third solution calls for the legalization of gambling.⁴²

III. The Problems of Legalized Gambling

Arguments on both sides of the legalized gambling question tend to be more anecdotal than logical. Proponents claim almost instantaneous cures for many of society's problems while opponents predict society's downfall, usually in moralistic terms.⁴³

standard of morality exists in dealing with gambling, prostitution, liquor and similar matters: there is a desire to outlaw in the abstract but not to enforce strictly. See Peterson, *Obstacles to Enforcement of Gambling Laws*, 259 ANNALS 10,19 (1950); Bloch, *Gambling Business: An American Paradox*, 8 CRIM. & DELIQUENCY 355 (1962). Gunnar Myrdal has described the effects of individual morality on enforcement of the laws in America. A person feels free to violate the law if the law has become disputable on moral grounds and the particular act involved does not violate the individual's concept of morality. This attitude would naturally strengthen the rule of law when a statute prohibits conduct which is generally regarded as immoral, but breeds disrespect when the act forbidden is not considered a violation of the inner moral code. G. MYRDAL, *AN AMERICAN DILEMMA* 15 (1944).

39. The Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures (commonly referred to as the Knapp Commission) was established in May, 1970 by Executive Order of Mayor Lindsay. The Knapp Commission was given the "basic tasks of determining the extent and nature of police corruption in the City, examining existing procedures for dealing with corruption, and recommending changes and improvements in those procedures." *Preface to KNAPP COMMISSION REPORT*, *supra* note 25, at I (1972).

40. The criminal laws against gambling should be repealed. To the extent that the legislature deems that some control over gambling is appropriate, such regulation should be a civil rather than criminal process. The police should in any event be relieved from any responsibility for the enforcement of gambling laws or regulations. *KNAPP COMMISSION REPORT*, *supra* note 25, at 18.

41. Rubinstein, *supra* note 35, at 627.

42. Duncan, *supra* note 36, at 588.

43. Typical of those comments made by opponents of legalized gambling is one by State Representative John Monks of Oklahoma: "In every country the Communists have taken

Foremost among the arguments offered by proponents of legalized gambling is that the prohibition of gambling is unenforceable.⁴⁴ Several reasons are offered to explain the unenforceability of gambling laws. These include the high cost of enforcement and the difficulty in fulfilling evidentiary requirements, the public's general acceptance of gambling, organized crime's power within the political and judicial system, the inability to deter operators and bettors by the threat of severe punishment, and, as a consequence of all of these factors, the low priority given to enforcement by police officials.⁴⁵ These arguments, however, tend to assume a conclusion. "As laws against certain kinds of offenses are no longer enforced, there is an increasing tendency to act as though those laws are unenforceable."⁴⁶

An experiment conducted by Chief Justice Weintraub of the New Jersey Supreme Court has shown that gambling laws can be enforced. Beginning in 1960, with *State v. Ivan*,⁴⁷ Chief Justice Weintraub took a number of steps to encourage the stringent enforcement of the gambling laws in New Jersey through changes at the judicial level. The hope was that gambling cases would become "good" arrests and "good" convictions on the records of police officers and prosecutors. In *Ivan*, the court sustained a relatively severe prison sentence for a bookmaking conviction.⁴⁸ This was followed by a

over, the first thing they do is outlaw cockfighting." Boston Globe, Nov. 19, 1978. Former State Senator Alexander Wiley of Wisconsin has argued that for every dollar raised in gambling revenue five dollars has to be spent "in higher police costs, higher court costs, higher penitentiary costs and higher relief costs . . . to say nothing of the tragedy of broken lives and homes. . . . How can one establish great morality by condoning immorality." 75 CHRISTIAN CENTURY 895 (1958).

44. Reuter, *supra* note 26, at 551. See also Riedel, *supra* note 27, at 495.

45. Reuter, *supra* note 26, at 553.

46. *Id.* at 560.

47. 33 N.J. 197, 162 A.2d 851 (1960).

48. In *Ivan*, the defendant was convicted of bookmaking in violation of N.J. STAT. ANN. § 2A:112-3 (West 1969) (*repealed*, 1978 N.J. Laws ch. 95 § 2C:98-2, *substance reenacted*, 1978 N.J. Laws ch. 95 §§ 2C:37-1, -2, -4). The trial court found that the defendant was engaged in a conspiracy. The defendant refused to name his superiors. The judge sentenced the defendant to one to two years in prison and imposed a \$5,000 fine pursuant to a statute which provided for a fine not less than \$1,000 nor more than \$5,000, or imprisonment for not less than one year nor more than five years, or both. *Id.* The defendant appealed on the grounds that the sentence was too severe in light of the fact that he had no prior conviction, that he was a good family man and that he had a record of regular employment. The New Jersey Supreme Court, in an opinion delivered by Chief Justice Weintraub, sustained the sentence. The court justified the sentence as a proper response to gambling offenses which involve

directive to assignment judges that mandated one judge in each county be assigned to sentence all gambling cases.⁴⁹

The National Gambling Commission undertook a study of the results of the Chief Justice's policies. It concluded:

[T]he major finding of this study [is that] the Weintraub policy was implemented in Newark, and the Newark criminal justice system provided more consistent and stringent enforcement of the gambling codes than either of the two control cities. . . . [T]he argument that favors the decriminalization of gambling laws because they are unenforceable is wrong.⁵⁰

organized crime:

Here we are dealing with organized crime. . . . He [the defendant] is part and parcel of an enterprise. The gambling racket is an ancient foe of society. It bilks the weak. It wrecks homes and destroys men. It spawns embezzlement, larceny and crimes of violence. It corrupts officialdom. It is reputed to be allied with other illicit traffic. The "easy" money it yields doubtless finds its way under cover into legitimate fields, there to continue its polluting course.

Such is the scene a judge should see in dealing with an offense of this kind. . . .

[A] fine would be a license fee for operators—a minor experience [*sic* expense] in a lucrative venture.

33 N.J. at 202-03, 162 A.2d at 854.

49. The *Ivan* decision set forth a judicial policy that gambling offenses be treated as serious crimes and that offenders be punished accordingly. The New Jersey Supreme Court translated this policy into an administrative directive which required the "Assignment Judge in each county to either personally handle all sentencing in gambling cases or designate a particular judge to impose the sentence in all such cases, even though the case may have been tried or the plea taken before another judge." *State v. DeStasio*, 49 N.J. 247, 249, 229 A.2d 636, 639 (1967). In complying with this directive, harsh sentences and heavy fines were imposed in numerous gambling cases. In *DeStasio*, the defendant was convicted of bookmaking and sentenced to a term of one to two years and fined \$1,000. Relying on *Ivan*, the New Jersey Supreme Court sustained the sentence. In *State v. Souss*, 65 N.J. 453, 323 A.2d 484 (1974), defendant pleaded guilty to charges of bookmaking and unlawful possession of lottery slips. The sentencing judge imposed a one to two year prison term and a fine of \$1,000 on the bookmaking charge and a concurrent one to two year prison term on the unlawful possession charge. The New Jersey Supreme Court affirmed the sentence notwithstanding the fact that defendant had no prior criminal record, was sixty years old at time of sentencing, had been steadily employed for thirty two years and his wife suffered from arteriosclerosis. See also *State v. Travis*, 133 N.J. Super. 326, 336 A.2d 489 (Super. Ct. App. Div. 1975); *State v. Gattling*, 95 N.J. Super. 103, 230 A.2d 157 (Super. Ct. App. Div. 1967); *State v. Goldman*, 95 N.J. Super. 50, 229 A.2d 818 (Super. Ct. App. Div. 1967). In *Kugler v. Helfant*, 421 U.S. 117 (1975), the Supreme Court upheld the power of the New Jersey Supreme Court to set such standards. *Id.* at 126.

50. Reidel, *supra* note 27, at 548. The study also concluded:

Moreover, the cost for this enforcement seemed minimal. . . . The conviction rate is significantly higher in Newark. . . . The vast majority of Newark cases received prison sentences, while in Washington the most common outcomes were fines or sus-

Two further arguments are frequently made by proponents of legalized gambling: organized crime will be hurt and the state will be helped financially.⁵¹ These two arguments rest upon the proposition that money that would otherwise go to criminals will be diverted to state coffers through taxation of legal enterprises. This proposition is subject to a number of criticisms. First, for money to be diverted from the illegal market the legal game must be competitive. To be competitive the legal game must duplicate a number of factors peculiar to each illegal game.⁵² The illegal operators can offer credit, free liquor and other services, including prostitution, that the government would find difficult to match, although Nevada casinos are often competitive in these aspects.⁵³ Second, all games are not

pending sentences. . . . It took cases approximately four times as long to move from arrest to disposition in Newark as compared to Washington. This cost notwithstanding, the central finding of this study is that gambling codes can be enforced and high conviction rates can be obtained, especially if prosecutors are willing to bring cases to trial. . . .

Id. at 548-49.

For a critique of Chief Justice Weintraub's sentencing policy, see Palmer, *A Model of Criminal Dispositions: An Alternative to Official Discretion in Sentencing*, 62 *Geo. L. J.* 1, 18 (1973-1974).

51. Helsing, *supra* note 4, at 774-77. Many cities and states feel themselves under severe economic pressure. Even those locales that are not desperate for funding would like to have more revenue without incurring the resentment of the citizenry. Gambling revenue appears to be both painless and voluntary. The revenue-raising argument was made by Bernard Rome, former President of New York City's Off-Track Betting Corporation:

I've thought about the morality question, but people are going to bet anyway, and why shouldn't the government profit? With a Proposition 13 mentality growing, it's getting harder and harder to raise taxes. Wagering is the fastest growing industry in the country, and OTB could be making a lot more money for the city and state if we weren't being held back by the political clout that the race-track establishment has with the Legislature.

OTB Fails to Meet Revenue Goal and to Reduce Illegal Bookmaking, *N.Y. Times*, Jan. 11, 1979, at B6, col. 1.

For many states the economic argument contains an element of self-defense, *i.e.*, a state without legal gambling may consider legalization as the only way to prevent its residents from spending their discretionary income in a neighboring jurisdiction. For example, in the first year of operation 80% of New Hampshire's lottery tickets were purchased by residents of Massachusetts, New York and Connecticut. The recommendation of the New York Casino Gambling Study Panel that casino gambling be legalized was based, in part, upon this argument. CASINO GAMBLING STUDY PANEL OF NEW YORK STATE, FINAL REPORT 2 (August 1979) [hereinafter cited as FINAL REPORT]. See also Rosen, *supra* note 18, at 808. Thus, a cycle of escalation and retaliation is inevitable.

52. WEINSTEIN, *supra* note 1, at 145-66.

53. TASK FORCE ON LEGALIZED GAMBLING, EASY MONEY 1 (1974) [hereinafter cited as EASY MONEY].

necessarily interchangeable. Lotteries do not necessarily attract the horse bettor or the numbers bettor under the price and payout structure most prevalent among lotteries today.⁵⁴ Third, illegal gambling, particularly the numbers operation, has been described as a social structure as well as a commercial enterprise.⁵⁵ A legally run substitute could only match the existing social network by licensing the present operators who are professional criminals. Another factor, especially important to big bettors, is secrecy. Here, the illegal operators have a distinct advantage that can hardly be matched by publicly run operations. Illegal operators are free from legal accountability and financial regulations allowing them to operate in a fluid and convenient manner.⁵⁶

The government-approved operation does have a competitive advantage in some important aspects. Legal betting is not subject to the possibilities of blackmail. Illegal operators have a reputation for using violence to collect big losses and for occasionally not paying off big winnings. The legal operation is more reliable and less hazardous. In addition, many players would presumably switch to a legal operation simply because they would rather obey the law than violate it. However, notwithstanding the legal game's beneficial aspects, they do not appear great enough to divert a large amount of business from the illegal operations.⁵⁷

54. *Numbers Game is Still Thriving Despite the OTB*, N.Y. Times, April 25, 1978, at 39, col. 1. See also *OTB Fails to Meet Revenue Goal and to Reduce Illegal Bookmaking*, N.Y. Times, Jan. 11, 1979, at B6, col. 1.

55. S.C. DRAKE & H. CAYTON, *BLACK METROPOLIS* ch. 17 (1945).

56. See generally *EASY MONEY*, *supra* note 53. See also A. KORNBLUM, *THE MORAL HAZARDS* 16 (1976). Illegal gambling is not completely free of legal accountability. Casino operators and players must report gambling earnings in their income tax returns. Section 61 of the Internal Revenue Code provides for the taxation of all income from any source. Judicial interpretation of this section has ruled that gambling winnings are to be included in gross income. *United States v. Johnson*, 319 U.S. 503 (1943). It is clear, however, that few individuals comply with this requirement. The Internal Revenue Service has recognized the difficulty in enforcing the statute and does not devote any specific resources to its enforcement. *GAMBLING IN AMERICA*, *supra* note 1, at 14.

57. *EASY MONEY*, *supra* note 53, at 24. See notes 52-56 *supra* and accompanying text. It has been suggested, moreover, that the legalization of one form of gambling leads to an increase in all forms of gambling, legal and illegal. "A climate has been created to gamble. Because it now is possible to bet legally on horses, thousands of people who never in the world would have thought of betting on football or basketball or baseball are now betting with the bookies." U. S. NEWS AND WORLD REP., April 1, 1974, at 68. The National Gambling Commission study showed no increase in illegal gambling. Kallick, *supra* note 28, at 174. A Congress-

Furthermore, legalization does not diminish the influence of organized crime but merely allows changes in the forms it takes.⁵⁸ The history of casino gambling is replete with evidence of links with illegal enterprises.⁵⁹ Recently, new allegations of links between Nevada and New Jersey casinos and organized crime have been made.⁶⁰ One factor contributing to this development is the large amount of cash casinos constantly handle.⁶¹ Many opportunities inevitably exist for theft. A second factor is the traditional source of investment in the casino industry. Conventional lenders have shunned casinos, viewing them as a "pariah" industry.⁶² As a result, entrepreneurs have frequently turned to tainted sources⁶³ and other

sional study, however, questioned the accuracy of this report. Melnick & Crocker, *A Review of Two Studies on Gambling in the United States* in *GAMBLING IN AMERICA*, *supra* note 1, app. 2.

58. Duncan, *supra* note 36, at 592.

59. Illegal enterprises have been associated with various forms of illegal gambling since the 1920's. In fact, illegal gambling enterprises have proved to be "an activity well suited for [illegal enterprises] to take over and develop." KING, *supra* note 1, at 24. Nevada casinos have been linked with various crime figures numerous times since legalization occurred in that state. Peterson, *Gambling—Should it be Legalized?*, 40 J. OF CRIM. L. & CRIMINOLOGY 259, 325 (1949) [hereinafter cited as Peterson]. See also PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *CRIME AND ITS IMPACT—AN ASSESSMENT* 52 (1967); THE DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 11; Cook, *Gambling Inc.*, THE NATION, Oct. 22, 1960, at 257.

60. The Wall Street Journal recently reported that officials of the Stardust Casino in Nevada are the target of a federal investigation into hidden ownership by organized crime in the Nevada gaming industry. In addition, federal officials discovered a bundle of hundred dollar bills in a Stardust casino money wrapper on a suspected dope-smuggling plane in Florida in October, 1979. Wall St. J., Dec. 27, 1979, at 6, col. 1. The Journal also recently reported that a manager of a Resorts International Casino in the Bahamas loaned \$4,200 of casino money to the Secretary of the Bahamian government gambling board. The loan was repaid after a gambling inspector learned of the existence of the loan. Wall St. J., Dec. 5, 1979, at 48, col. 1.

61. I sat on a ladder overlooking the dice table, paper and pencil in hand, and kept track of all wagers for five hours. During that period \$3 million went back and forth across the table from players to dealers and dealers to players. This was the gross betting handled, and yet only \$40,000 actually changed hands by the end of the five hour period.

J. SCARNE, *SCARNE'S COMPLETE GUIDE TO GAMBLING* 205 (1961).

62. J. SKOLNICK, *HOUSE OF CARDS: THE LEGALIZATION AND CONTROL OF CASINO GAMBLING* 141 (1978) [hereinafter cited as SKOLNICK].

63. *Id.* The Teamsters Central States Pension Fund has been a great source of investment capital for Nevada casinos. "According to figures released by the fund's director at the close of 1976, a total of \$269 million was invested in Nevada casinos out of \$1.4 billion in total fund assets." *Id.*

interests associated with elements of organized crime⁶⁴ to finance construction and expansion of hotels and casinos. Moreover, the pressure to raise revenue may cause state officials to relax the enforcement of rules designed to prevent corruption.⁶⁵

Assuming the validity of the proposition that legal gambling would divert business from the illegal to the legal arena, it is questionable whether the promised economic benefits will materialize. The revenues promised by proponents represent large amounts of money in absolute terms. However, the amount of money raised by gambling revenue is far less than might be expected.⁶⁶ "[G]ambling profits represent on the average of two or three percent of the annual state-level revenue in States where one or more forms of gambling are legal."⁶⁷ In addition, the typical legalized gambling game shows a period of slow growth in revenue for the state followed by a rapid decline. Over time the revenue curve resembles a letter "J" on its side.⁶⁸ The shape of the curve is the result of the initial interest in the new game followed by a satiated market and a rapid drop in player interest.⁶⁹ Gambling as a business requires constant promotion.⁷⁰ Although it is unclear exactly how long the players will remain interested in a game without additional

64. See E. REID & O. DEMARIS, *GREEN FELT JUNGLE* (1963). Investment in the casino industry is particularly risky because casinos operate at the whim of the legislature. A casino license is a revocable privilege and no holder acquires any vested right therein. *NEV. REV. STAT.* § 463.170(1) (1977). See also *N.J. STAT. ANN.* § 5:12-1(8) (West Supp. 1979-1980); *P.R. LAWS ANN.* tit. 15, §§ 75, 77 (1972). Political and economic considerations obviously dictate against revoking casino licenses once a casino opens. See note 148 *infra*.

65. Temporary licenses were granted to Bally Manufacturing Corporation and Resorts International notwithstanding that neither company had complied with several statutory requirements. See notes 230-32 *infra* and accompanying text. The New York Times criticized the hasty manner in which these temporary licenses were granted and called for the maintenance, "or, more accurately," the revival, of statutory requirements. *Acrobatics in Atlantic City*, *N.Y. Times*, Dec. 14, 1979, at A30, col. 1. Similarly, one of Nevada's top gambling regulators recently resigned, partly in protest over the speed with which several gambling licenses were granted. *Wall St. J.*, Dec. 27, 1979, at 6, col. 1.

66. Helsing, *supra* note 4, at 777.

67. *Id.* See also B. ROME, *The Harsh Realities of Casino Gambling* 2 (May 16, 1979) (newsletter published by People Against Casinos, Inc.)

68. Vrooman, *An Economic Analysis of the New York State Lottery*, 29 *NAT'L TAX. J.* 482 (1976) [hereinafter cited as Vrooman]. See also Rosen, *supra* note 51, at 805.

69. "OTB has saturated the market. It may very well have no where to go but down." *OTB Fails to Meet Revenue Goal and to Reduce Illegal Bookmaking*, *N.Y. Times*, Jan. 11, 1979, at B6, col. 1 (quoting James Heffernan, President of the N.Y. Racing Association).

70. *EASY MONEY*, *supra* note 53, at 17; see also Vrooman, *supra* note 68.

promotion,⁷¹ it appears that a state can expect a new game to bring in gradually more money for about the first eighteen months before there is a sudden decrease in revenue.⁷² This time period is sufficient for the state to enjoy the fruits of the new game, spend the money so generated and prepare the state budget with the expectation that at least an equal amount of gambling revenue will appear during the next fiscal year. With a sudden drop in revenue, the state is forced to take counter measures, such as advertising and creating new variations to increase player interest. Soon the state finds itself in the gambling business, actively promoting the game and trying to attract new players.⁷³

Moreover, a tax on gambling revenue is costly and regressive. It costs one and a half to two cents to collect a regular tax dollar but approximately thirty-seven cents to collect a net lottery dollar.⁷⁴ Only legal casino gambling is not regressive and even this progressivism is reversed when the playing sample is limited to local residents.⁷⁵ For example, casino gambling in Nevada is, on the whole, progressive in its economic impact on casino patrons, approximately twice as progressive as the federal income tax.⁷⁶ This follows from

71. Vrooman, *supra* note 68, at 482.

72. *Id.* at 485.

73. Even though the revenue raised is small relative to the total budget demands of the state, the additional one to three percent gained can establish groups interested in its preservation, such as the bureaucracy that runs the program, recipients targeted for expenditures of gambling-raised revenue and incumbent office holders who would be forced to turn to other sources if this funding disappeared. Rosen, *supra* note 51, at 809-10.

74. *Id.* at 812.

75. GAMBLING IN AMERICA, *supra* note 1, at 61, 98. See FINAL REPORT, *supra* note 51, at 56.

76. GAMBLING IN AMERICA, *supra* note 1, at 61.

TABLE 2
REGRESSIVITY OR PROGRESSIVITY BY
TYPES OF GAMBLING

Game	Index of progressivity (P) or regressivity (R)	
	U.S. as a whole	Nevada residents only
Numbers	.44 (R)	—
Sports cards	.40 (R)	†
Lottery	.31 (R)	—

the fact that many casino patrons are tourists who can afford to travel to Nevada and stay several nights at resort hotels.⁷⁷ However, the economic picture changes considerably when only Nevada residents are surveyed. Gambling attracts low-income residents more readily than wealthier members of the community.⁷⁸ In addition, compared to wealthy residents, low-income residents gamble a higher percentage of their income.⁷⁹ As a result, legal gambling is three to four times as regressive as sales and excise taxes in its impact on Nevada's local population.⁸⁰ This means that casino gambling hurts most those who can least afford to gamble.

Legal casino gambling also has adverse financial consequences on those in direct competition for the gambling dollar. While legal casinos do not impair the operation of illegal gambling enterprises,⁸¹ they may siphon business from established legal gambling operations. Existing legal operations must compete for the players' discretionary spending under legal and practical restraints that put them at a distinct disadvantage vis-à-vis casinos.⁸² The result is

Game	U.S. as a whole	Nevada residents only
Bingo	.30 (R)	.58 (R)
Horse books	.27 (R)	†
Horse tracks	.17 (R)	†
Off-track horse betting parlors	.07 (R) *	.56 (R)
Slot machines		.41 (R)
Keno	.26 (P)	N/A
Casino tables		.46 (R)
Legal sports-betting parlors	—	.36 (R)
Illegal sports books	.29 (P)	†
All types combined	.17 (R)	.42 (R)
For comparison: all sales and excise taxes	.15 (R)	N/A
Federal income tax	.15 (P)	N/A

*New York OTB only.

†Sample too small to permit reliable estimate.

Id. See FINAL REPORT, *supra* note 51, at 56.

77. GAMBLING IN AMERICA, *supra* note 1, at 98.

78. *Id.*

79. *Id.*

80. *Id.*

81. See notes 52-56 *supra* and accompanying text.

82. As an example, horseracing has to pay a set amount to the track operators in the state; it cannot change the odds or its methods of operation the way illegal operators can. Also, gambling at horseracing is slow by comparison to casinos and bets are few; horseraces tend to flourish in locals that do not have wide-open casinos. EASY MONEY, *supra* note 53, at 50.

odd. Operators of existing legal gambling enterprises openly lobby against casino gambling, often arguing on moral grounds. For example, Bernard Rome, former chairman of the New York Off-Track Betting Corporation, formed the People's Campaign Against Casinos to oppose the legalization of casinos in New York. He has described casino gambling as the "most immoral" sort of betting:

They have music, noise, free liquor, chips to help you pretend you're not losing your money. They're the most dangerous form of gambling . . . New York is a great city. . . . I don't want to see Mayor Ed Koch turn it into a second-rate gambling town. Is that a renaissance?⁸³

Like all forms of major social legislation, the legalization of casino gambling would redistribute wealth in society to some extent. Those who would benefit the most are the successful casino entrepreneurs, usually large corporations and wealthy individuals.⁸⁴ Other beneficiaries include casino employees, shareholders, contractors and others directly tied to the development and operation of casino hotels. Indirect beneficiaries of legal casinos are landowners and businesses fortuitously located in the path of casino expansion,⁸⁵ the targeted recipients of the casino tax revenue and the host city. The host city would experience a general growth in business and income made possible by increased tourism.⁸⁶

The most important problem with the argument that legalized gambling will raise revenue and fight crime is that these two goals are incompatible.⁸⁷ To fight crime the legal game must be competitive and must offer the player a better proposition and payout than can the illegal operator. To do so, however, especially within the structure of a state bureaucracy, requires foregoing the extra profits such an enterprise can generate. Moreover, to strive for increased

83. *OTB Chief Terms Koch "Arrogant" and Condemns Backing of Casinos*, N.Y. Times, March 16, 1979, at A1, col. 5.

84. The licensing investigations create high cost entry barriers. For example, the initial investment for Atlantic City's first hotel casino was approximately ninety million dollars. FINAL REPORT, *supra* note 51, at 33.

85. A few local people in Atlantic City who owned strategically located property sold to developers at inflated prices. "Most of the owners quickly agreed to sell their homes for one hundred to one hundred and fifty thousand dollars each. Only a year before, the structures had been assessed at \$15,000 to \$20,000." N.Y. Times, Sept. 29, 1979, at 22, col. 3.

86. See note 20 *supra* and accompanying text. See also FINAL REPORT, *supra* note 51, at 54, 89-93.

87. EASY MONEY, *supra* note 53, at 8; GAMBLING IN AMERICA, *supra* note 1, at 1.

revenues requires the state to actively promote gambling which will attract people who have never played the illegal games. In sum, controlling crime and corruption requires limiting the number of licenses and other outlets; increasing revenue requires increasing the availability of licenses and outlets.⁸⁸

A third argument offered by proponents of legalized gambling is that gambling is merely another form of entertainment and will flourish despite prohibitive laws.⁸⁹ This reasoning leads to the "Prohibition" analogy, *i.e.*, because people will gamble the imposition of paternalistic laws invites widespread violations and erosion of respect for the legal system. While there are enough devoted gamblers to maintain a profitable market for illegal operators even if all forms of gambling were outlawed, most people can be deterred from betting by imposing barriers of cost and inconvenience.⁹⁰ Furthermore, a state may legitimately enact legislation to protect its citizens from harmful vices.⁹¹ The "Prohibition" analogy ignores the statistically proven correlation between the availability of gambling and the rate at which people will bet.⁹²

Gambling can create problems not only for players and their families, but for the surrounding community as well. Pauperization and gambling addiction, loan sharking and robbery, prostitution and suicide, are all endemic to areas of wide-open gambling.⁹³ A state, despite its need for additional revenue, must face the moral dilemma: to what extent should the state promote an activity that can cause harm to many of its citizens and communities?⁹⁴

88. EASY MONEY, *supra* note 53, at 8.

89. Bahmueller, *State Policy and the Ethics of Gambling* in GAMBLING IN AMERICA, *supra* note 1, app. 1, at 754.

90. See note 57 *supra*.

91. *People v. Lavin*, 179 N.Y. 164, 71 N.E. 753 (1904). "[T]he prohibition and regulation of gambling in all forms and lotteries of every kind are unquestionably valid exercises of legislative power." *Id.* at 168, 71 N.E. at 754.

92. GAMBLING IN AMERICA, *supra* note 1, at 98. Seventy-eight percent of those questioned in Nevada bet on something in 1974, compared to sixty-one percent of the national population. The incidence of betting is approximately ten to twenty percent higher in Nevada among all demographic groups. *Id.* See also Kallick, *supra* note 28, at 174-75.

93. A correlation has been shown between the availability of gambling and severe personality disorders. In Nevada, for example, the percentage of compulsive gamblers, suicides and alcoholics is highest in the United States. GAMBLING IN AMERICA, *supra* note 1, at 74; see Joyce, *Social Aspects of Gambling* in GAMBLING IN AMERICA, *supra* note 1, app. 1, at 337; FINAL REPORT, *supra* note 5, at 58-62.

94. The issue seems to be whether the state should try to protect its citizens from them-

Another new problem for casinos is the state role vis-à-vis the players. Pari-mutuel betting and lotteries involve the state acting as the stakeholder, facilitating the betting and allowing it to continue unmolested, in exchange for a percentage of the total stake. Casino games usually involve the bettor playing against the house. If the house is viewed as an arm of the state, an image of government as the adversary can be created. This is especially true if the casino can extend credit and is forced to participate in the collection of gambling debts.⁹⁵

Finally, an old problem can become an enlarged new one if the state becomes an active promoter of casino gambling or allows private casinos to actively advertise.⁹⁶ Horseracing has traditionally used the excuse of "improving the breed" to justify its existence; betting was only secondary.⁹⁷ Casinos have only the image of gambling as entertainment. Active promotion of casinos among the state's citizens could be construed as the strongest moral approval of all forms of gambling. The individual would see nothing wrong with any form of bet. Yet society may still wish to proscribe some forms of gambling, such as betting on professional sports

selves, make gambling available while controlling the negative side effects, or encourage an activity that may be detrimental to some but good for the society as a whole. Proponents have implicitly adopted the third view since almost all legal gambling in the United States is promoted actively. Opponents have taken the first view.

95. The Final Report of the Casino Gambling Study Panel recognized the problems inherent in state ownership and operation of gambling facilities. "[I]f [legalized gambling] is a socially-accepted activity with some potentially destructive and addictive qualities it must be properly controlled by the State and not exploited by it. The public perception of the State as the vigilant regulator of casinos should be clearly distinguishable from the actual operation casinos." FINAL REPORT, *supra* note 51, at 34.

96. This problem was recently addressed in a New York Times editorial. The Times of derided the recent aggressive advertising campaign by New York's Off-Track Betting Corporation. The Times complained that "to urge betting on those not normally interested in horses when they can least afford it . . . is a nasty business for government. We vote for the old hucksters who had the good sense to make OTB seem tolerably benign: 'Bet With Your Head, Not Over It.'" N.Y. Times, Nov. 16, 1979, at A30, col. 1.

97. The original justification for racing, "improving the breed," has long since gone by the board. From a strictly utilitarian standpoint, the horse is practically out of business, superseded by the automobile, the airplane, the tractor, motor-driven farm implements and even the bicycle and motorcycle Despite that undeniable fact, racing's prosperity increases every year, with more tracks, greater attendance and larger pari-mutuel handles.

C. McQUAID, GAMBLER'S DIGEST 165 (1971).

teams, amateur high school sports events or election results.⁹⁸

Despite the weaknesses of the arguments in favor of legal gambling, the trend presses in the direction of wider legalization. This inevitable spread of legalized gambling in the United States may be explained by the confluence of several moral, economic and political factors. Due to the legalization of gambling in several states⁹⁹ the moral arguments against legal gambling have lost much of their

98. See, e.g., *Hearings, supra* note 12, at 67.

99.

TABLE 3
LEGALIZED GAMING IN THE STATES
(As of October 1977)

State	Sports						Card			Other
	Lotteries	Numbers	Off-track betting	Horse betting	Horse racing	Dog racing	Jai alai	Casinos	rooms	
Alabama	*
Alaska	*
Arizona	*	*	*
Arkansas	*	*
California	*	*	*
Colorado	*	*	*
Connecticut	*	*	...	*	•	*	*	*
Delaware	*	...	•	...	*	•	*
Florida	*	*	*	*
Georgia	*
Hawaii
Idaho	*
Illinois	*	*	*
Indiana	•
Iowa	*	*
Kansas	*
Kentucky	*
Louisiana	*	*
Maine	*	*	*
Maryland	*	*	*	*
Massachusetts	*	*	*	*	*
Michigan	*	*	*	*
Minnesota	*
Mississippi
Missouri

* Legalized and operative.

• Legalized but not now operative.

(a) Operated by bookmakers licensed by state.

(b) Keno.

(c) Operative as of 1978.

force and appeal. The fiscal plight of many states and municipali-

TABLE 3 (Continued)
LEGALIZED GAMING IN THE STATES
(As of October 1977)

State	Lotteries	Numbers	Sports betting	Off-track betting	Horse racing	Dog racing	Jai alai	Casinos	Card rooms	Bingo	Other
Montana			*		*				*	*	
Nebraska					*					*	
Nevada			*(a)	*(a)	*	*	*	*		*	*(b)
New Hampshire	*	*			*	*				*	
New Jersey	*	*			*			•(c)		*	
New Mexico					*					*	
New York	*			*	*					*	
North Carolina										*	
North Dakota										*	
Ohio	*				*					*	
Oklahoma										*	
Oregon					*	*			*	*	
Pennsylvania	*	*			*						
Rhode Island	*	*			*	*				*	
South Carolina										*	
South Dakota					*	*				*	
Tennessee										*	
Texas											
Utah											
Vermont	•				*					*	
Virginia										*	
Washington					*				*	*	
West Virginia					*					*	
Wisconsin										*	
Wyoming					*					*	

* Legalized and operative.

• Legalized but not now operative.

(a) Operated by bookmakers licensed by state.

(b) Keno.

(c) Operative as of '978.

THE COUNCIL OF STATE GOVERNMENTS, RESEARCH BRIEF, LEGALIZED GAMBLING 6 (1978). See also notes 1-10 *supra* and accompanying text.

ties encourages the search for "easy money."¹⁰⁰ Furthermore, the process of legalization, once set in motion, is catalyzed by the competition among the states for the gambling dollar.¹⁰¹ And, finally, the creation of special interest groups dependent upon the gambling enterprise and the need to secure profitable public participation in the legal games assure the continued, active state promotion of gambling both as an industry and as an acceptable pastime.¹⁰²

IV. Models of Casino Control

There are four primary models of casino control from which a state may choose. Those are: 1) Nevada's "free enterprise" model which emphasizes control through licensing, regular audits and investigations; 2) New Jersey's and Puerto Rico's "tourist area revitalization" model which ties control to licenses and large scale development investments; 3) England's "strict social control" model which limits casino play and availability by paternalistic judgments of the authorities; and 4) "state ownership," either total or partial, with leasing arrangements to private entrepreneurs for restricted casino games.

The concept of legal casino gambling is such a radical departure from the present legal system that the actual means chosen of implementing control does not appear to be a decisive factor in the decision to legalize.¹⁰³ Thus, the state legislature has wide discretion in its decision of which control model to choose. While differing in their main objectives, all four models can be tested to see to what extent they address the issues demanding control: preventing corruption in all its forms, assuring the competence of key casino operatives, maintaining the flow of tax dollars and encouraging other

100. See note 51 *supra*.

101. *Id.*

102. See notes 70-73 *supra* and accompanying text.

103. For example, the discussion in New York State of where to legalize casino gambling is only peripherally concerned with the issue of control. See N.Y. Times, Dec. 11, 1977, § 21 (Long Island Weekly), at 1, col. 4; *id.*, May 2, 1977, at 56. This issue, however, has not been completely ignored. The Casino Gambling Study Panel recently confronted the issue of control and concluded that "should the people vote for casinos in New York, the proper and most significant role of government is to assure that the 'house' perform all of its functions in accordance with the law and its license requirements, and not to seek a device whereby the state can become the 'house.'" FINAL REPORT, *supra* note 51, at 37-38.

revenue raising and economic growth while limiting adverse side effects and expanding the options available to citizens in a free society.

A. Nevada: The Free Enterprise Model

The Nevada Gaming Control Act¹⁰⁴ explicitly declares that it is the public policy of the state that the economy of Nevada and the general welfare of the state's inhabitants depend on the gambling industry.¹⁰⁵ To ensure public confidence in the gaming industry Nevada relies on a system of strict regulation of licensed activities and regular audits.¹⁰⁶ Nevada thus openly declares itself beholden

104. NEV. REV. STAT. §§ 463.010 to .720 (1973-1977).

105. *Id.* § 463.130(1)(a). It is interesting to note that state officials have not always felt that casino gambling could serve the public interest. New York Governor Thomas Dewey asserted that:

It is fundamentally immoral to encourage the belief by the people as a whole in gambling as a source of family income. It would be immoral for government to make available to all of its people a state-wide gambling apparatus with the implied assumption that the gains of chance were a fair substitute for or supplement to the honorable business of producing the goods and services by which the people of the nation live.

It would be an indecent thing for government to finance itself so largely out of the weaknesses of the people which it had deliberately encouraged

Obviously if the state puts the imprimatur of approval on the morals and decency of wholesale, universal betting on sports events of every kind, then there would be no logic whatever in refusing also to legalize lotteries, betting pools, dice games, slot machine and public gambling halls with all their attendant evils with which the American people are thoroughly familiar. There is no logical place at which the line could be drawn and law enforcement would then break down completely.

269 ANNALS 36 (1950).

106. *Id.* § 463.130(1)(b)-(d). The complete statute reads:

1. The legislature hereby finds, and declares to be the public policy of this state, that:

(a) The gaming industry is vitally important to the economy of the state and the general welfare of the inhabitants.

(b) The continued growth and success of the gaming industry is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively and that the gaming industry is free from criminal and corruptive elements.

(c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment.

(d) All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment in the state shall therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of

to the gambling entrepreneurs and places its trust in the licensing procedure to secure control.¹⁰⁷

The Nevada regulatory scheme consists of three agencies: the Gaming Policy Commission, the Nevada Gaming Commission (the Commission) and the State Gaming Control Board (the Board). The Gaming Policy Commission is comprised of eight part-time members with the Governor acting as chairman.¹⁰⁸ The Governor is authorized to call meetings of the gaming policy committee for the exclusive purpose of discussing matters of gaming policy.¹⁰⁹ Recommendations made by the Gaming Policy Commission are only advisory and do not bind the Board or the Commission.¹¹⁰

The Commission¹¹¹ consists of five full-time members¹¹² appointed by the Governor.¹¹³ No commissioner may be actively engaged in gaming activities or have a direct pecuniary interest in any gaming activity.¹¹⁴ The Commission has the final authority to require, issue, deny, suspend or revoke a gambling license.¹¹⁵ Additionally, the Commission has the power to adopt gaming regulations¹¹⁶ and invoke disciplinary action.¹¹⁷

the state and to preserve the competitive economy and policies of free competition of the State of Nevada.

Id. § 463.130.

107. GAMBLING IN AMERICA, *supra* note 1, at 83.

108. NEV. REV. STAT. § 463.021 (1977). The committee consists of one member of the Commission, one member of the Board, one member of the state senate, one member of the state assembly, two representatives of the general public and two representatives of gaming licensees. *Id.*

109. *Id.* § 463.021(6).

110. *Id.*

111. *Id.* § 463.022.

112. *Id.* § 463.023. The Commission members must be citizens of the United States and residents of the State of Nevada. No member may hold an elective office in state government nor may a member be an officer or official in any political party. "It is the intention of the legislature that the commission shall be composed of the most qualified persons available, preferably no two of whom shall be of the same profession or major field of industry; but no person actively engaged or having a direct pecuniary interest in gaming activities shall be a member of the commission." *Id.* § 463.023(3).

113. *Id.* § 463.024(1). The Governor may remove any commissioner "if, in his opinion, such commissioner is guilty of malfeasance in office or neglect of duty [or] at any time without stated cause with the concurrence of a majority of the legislative commission." *Id.* § 463.024(5).

114. *Id.* § 463.023(3).

115. *Id.* §§ 463.140(2), 463.310(4).

116. *Id.* § 463.145.

117. *Id.* § 463.140(2).

The Board¹¹⁸ is composed of three full-time members¹¹⁹ appointed by the Governor.¹²⁰ The Board is organized into three separate divisions: administrative, fiscal and surveillance.¹²¹ The administrative division performs all general administrative and clerical functions of the Board and the Commission.¹²² The fiscal division conducts economic research, collects taxes and performs auditing functions.¹²³ The surveillance division performs all enforcement and investigative functions of the Board.¹²⁴

The Commission has wide discretion in deciding who must apply for a license. In addition to those which the statute requires to be licensed,¹²⁵ a license is required for whomever, "in the opinion of the Commission, has the power to exercise a significant influence over the licensee's operation of a gaming establishment"¹²⁶ To obtain a license an applicant must be investigated by the Board. The Board must be satisfied that the applicant is of "good character, honesty and integrity,"¹²⁷ has no criminal record or reputation¹²⁸ and "in all other respects [is] qualified to be licensed or [is] found suitable consistently with the declared policy of the State."¹²⁹ Addi-

118. *Id.* § 463.030.

119. *Id.* § 463.060. Board members may not be a member of a political organization or engaged in any party activity. *Id.* § 463.060(2). Additionally, "a member shall not be pecuniarily interested in any business or organization holding a gaming license under this chapter or doing business with any person or organization licensed under this chapter." *Id.* § 463.060(3).

120. *Id.* § 463.050(2).

121. *Id.* § 463.075(1).

122. *Id.* § 463.075(2).

123. *Id.* § 463.075(3).

124. *Id.* § 463.075(4).

125. An owner of a gambling operation must be licensed. *Id.* § 463.160(1). Key employees must be licensed. *Id.* § 463.165(1). Other employees of a gambling operation must hold a valid work permit. *Id.* § 463.335(3). A corporation, partnership or any other form of business association must be licensed. *Id.* §§ 463.160(1), (463.0124). All officers, directors and other key personnel of business associations must be licensed individually if, "in the judgment of the commission, the public interest will be served." *Id.* § 463.530. A manufacturer, seller or distributor of gambling equipment or material must be licensed. *Id.* § 463.650(1).

126. *Id.* § 463.650(1). Section 463.165 gives the Commission discretionary authority to require a license from any other person. These statutes were upheld in connection with the Federal Travel Act, 18 U.S.C. § 1952 (1976), in *United States v. Polizzi*, 500 F.2d 856 (9th Cir. 1974). See also *United States v. Goldfarb*, 464 F. Supp. 565 (D.C. Mich. 1979).

127. NEV. REV. STAT. § 463.170(2)(a) (1977).

128. *Id.* § 463.170(2)(b).

129. *Id.* § 463.170(2)(c).

tionally, a license to operate a casino will not be granted unless the applicant has adequate business experience in gambling¹³⁰ and the proposed financing of the entire operation is "adequate for the nature of the proposed operation; and from a suitable source."¹³¹ The burden is upon the applicant to prove his qualifications.¹³² "A claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial."¹³³ The Board has the full and absolute power to recommend the denial of an application for a license.¹³⁴ Should the Board recommend approval, its recommendation is presented to the Commission.¹³⁵ The Commission may approve or disapprove the application.¹³⁶ In practice however, the Board's decision is usually followed.¹³⁷

The Board and the Commission have authority to continuously supervise a licensee's operation.¹³⁸ The authorities may inspect gaming premises¹³⁹ and gambling equipment.¹⁴⁰ In addition, the au-

130. *Id.* § 463.170(3)(a).

131. *Id.* § 463.170(3)(b).

132. *Id.* § 463.170(1). The statute explicitly states that "[N]o applicant for a license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter . . . is a revocable privilege, and no holder acquires any vested right therein or thereunder." *Id.* § 463.130(2).

133. [1959] Nev. Gaming Comm'n Reg. 4.020.

134. NEV. REV. STAT. §§ 463.140(2), 463.210(3) (1977). A recommendation of denial of an application "shall be without prejudice to a new and different application if made in conformity to regulations applicable to such situations." *Id.* § 463.210(4) (1975). The gaming authorities' power is more limited with present license holders. See *Nevada v. Rosenthal*, 93 Nev. 36, 559 P.2d 830 (dictum), *appeal dismissed*, 434 U.S. 803 (1977).

135. NEV. REV. STAT. § 463.220(1) (1975).

136. *Id.* § 463.220(2)-(4). A recommendation by the Board for denial can only be overruled by a unanimous vote of the Commission. SKOLNICK, *supra* note 62, at 234.

137. GAMBLING IN AMERICA, *supra* note 1, at 84. The entire approval procedure is estimated to cost an applicant \$100,000. *Id.* In addition to the procedure outlined above, an applicant who receives state approval for a license must also receive a license from the sheriff of the county wherein it is proposed that a gaming operation is to be conducted. NEV. REV. STAT. § 463.230 (1975).

Judicial review of a final decision by the Commission is available. A review is conducted by a district court in the county in which the petitioner resides or has his or its principal place of business. Such review is conducted by the court without a jury and "shall not be a trial de novo but shall be confined to the record on review." *Id.* § 463.315. See *M & R Inv. Co. v. Nevada Gaming Comm'n*, 93 Nev. 35, 559 P.2d 829 (1977).

138. NEV. REV. STAT. § 463.140(2) (1977).

139. *Id.* § 463.140(3)(a).

140. *Id.* § 463.140(3)(b).

thorities may demand access to all papers, books and records.¹⁴¹ No unqualified person may be involved in any facet of a gambling enterprise¹⁴² and a transfer of ownership of a gaming operation is strictly prohibited.¹⁴³

The statutory scheme concerning financial practices is as strict as that concerning licensing. The Commission is directed to prescribe minimum procedures for internal audits with which licensees must comply.¹⁴⁴ Periodic financial reports must be made to the Commission¹⁴⁵ and licensees must open their books to independent auditors.¹⁴⁶

141. *Id.* § 463.140(3)(d).

142. *Id.* § 463.140(2).

143. "It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to or with any licensee in connection with any gaming operation, except in accordance with the regulations of the commission." *Id.* § 463.300. *See also id.* § 463.510(1).

144. *Id.* § 463.157 states:

The commission shall by regulation:

1. Prescribe minimum procedures for adoption by each nonrestricted licensee to exercise effective control over its internal fiscal affairs, which shall include but are not limited to provisions for:

- (a) The safeguarding of its assets and revenues, especially the recording of cash and evidences of indebtedness; and
- (b) The provision of reliable records, accounts and reports of transactions, operations and events, including reports to the board and the commission.

2. Provide for the adoption and use of internal audits, whether by qualified internal auditors or by accountants holding a permit to practice public accounting. . . .

145. *Id.* § 463.158 provides:

The commission shall by regulation require periodic financial reports from each nonrestricted licensee, and:

1. Specify standard forms for reporting financial condition, results of operations and other relevant financial information.
2. Formulate a uniform code of accounts and accounting classifications to assure consistency, comparability and effective disclosure of financial information.
3. Prescribe the intervals at which such information shall be furnished. . . .

146. *Id.* § 463.159 provides:

1. The commission shall by regulation require audits of the financial statements of all nonrestricted licensees with an annual gross revenue of \$1,000,000 or more. Such audits shall be made not less frequently than once a year and whenever the ownership of such a nonrestricted licensee changes.

2. The commission may require audits of the financial statements of nonrestricted licensees with an annual gross revenue of less than \$1,000,000 and whenever the ownership of such a nonrestricted licensee changes.

3. The audits provided for in subsections 1 and 2 shall be made by independent accountants holding permits to practice public accounting in the State of Nevada.

4. Regulations for such audits shall require, among other things, that:

In sum, the gaming authorities have almost unlimited discretion in granting, withholding or revoking a license. By statute the gaming authorities are exempt from Nevada's Administrative Procedure Act,¹⁴⁷ and, by ruling of the Nevada Supreme Court, they are exempt from the requirements of the United States Constitution.¹⁴⁸

(a) The independent accountants shall submit an audit report which shall express an unqualified or qualified opinion or, if appropriate, disclaim an opinion on the statements taken as a whole in accordance with standards for the accounting profession established by rules and regulations of the Nevada state board of public accountants, but the preparation of statements without audit does not constitute compliance.

(b) The examination and audit shall disclose whether the accounts, records and control procedures maintained by the licensee are as required by the regulations published by the commission pursuant to NRS 463.156 to 463.1592, inclusive.

147. NEV. REV. STAT. § 233B.039(1)(e), .039(f) (1977).

148. *State v. Rosenthal*, 93 Nev. 36, 559 P.2d 830, *appeal dismissed*, 434 U.S. 803 (1977). In *Rosenthal*, the defendant appealed from a decision of the Nevada Gaming Commission which denied his application for a gaming license. The defendant alleged that the decision was arbitrary and capricious and unsupported by any evidence. The district court held that the licensing provisions of the Nevada Gaming Control Act were unconstitutional for want of standards, although this issue was not raised by the defendant on appeal. The Supreme Court of Nevada reversed, reinstating the decision of the Nevada Gaming Commission. In doing so the court held:

We view gambling as a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution. Within this context we find no room for federally protected constitutional rights. This distinctively state problem is to be governed, controlled and regulated by the state legislature and . . . by the Nevada Constitution. It is apparent that if we were to recognize federal protections of this wholly privileged state enterprise, necessary state control would be substantially diminished and federal intrusion invited.

93 Nev. at 44-45, 559 P.2d at 836.

However, the debate over states' rights is not completely dead. On August 6, 1979, the casino in the Aladdin Hotel in Las Vegas was ordered closed by the unanimous vote of the Nevada Gaming Commission, the first major Las Vegas casino closure in history. The closure was ordered after the corporation and four individuals were found guilty by a jury of allowing hidden control of the casino by criminal interest. A few hours after the casino had been closed, it was ordered reopened by a federal judge. *Variety*, August 8, 1979, at 62, col. 1. The order of the district court has been appealed to the Ninth Circuit on the grounds, *inter alia*, that the federal court had no jurisdiction to intervene into state control of legalized gambling.

The National Gambling Commission has sided with the State of Nevada in proclaiming that the regulation of gambling, legal and illegal, is a matter properly within the scope of state sovereign immunity:

The Commission has concluded that States should have the primary responsibility for determining what forms of gambling may legally take place within their borders. It believes that the only role of the Federal Government should be to prevent interference from one State with the gambling policies of another and to protect identifiable national interests with regard to gambling issues. In line with these conclusions, the Commission recommends: that Congress consider enacting a statute that would insure the State's continued power to regulate gambling [and] that the Federal Government,

Clearly, legalized casino gambling in Nevada has been successful in raising revenue. In 1978, the State of Nevada received over \$80 million from casino activity.¹⁴⁹ In addition, Nevada is consistently among the fastest growing states in the union with the least tax burden on its citizens and the most recession-resistant industrial base.¹⁵⁰ These facts do not prove that any state can be as successful as Nevada. Much of this economic strength derives from the expendable income of visitors from other states. In effect, Nevada has grown by siphoning money from its neighbors.¹⁵¹ Thus, such economic growth could not be duplicated on a nationwide basis unless the country as a whole could bring in gambling revenue from neighboring nations. Moreover, because Nevada was a small state economically when it legalized gambling in March, 1931 the advent of legalized gambling did not adversely affect existing special interests.¹⁵²

The success of the Nevada statute in preventing corruption has been mixed. The National Gambling Commission found that, compared with fifteen years ago, the presence of organized crime was negligible.¹⁵³ Skimming¹⁵⁴ was generally prevented, although theft by employees was more frequent.¹⁵⁵ These findings, however, can be disputed by recent well publicized court cases and investigations by government agents that revealed hidden crime ties and massive skimming operations within Nevada's casinos.¹⁵⁶

in the exercise of its regulatory and tax powers, take care not to hinder State efforts to compete with illegal gambling operations.

GAMBLING IN AMERICA, *supra* note 1, at 2.

For a discussion of the federal role in fighting illegal gambling see Rose, *What me Gamble? Slot Machine Operators vs. the Law*, GAMBLING Q., Jan. 1977, at 37. (The Gambling Quarterly was subsequently published under the name "Winning"). For a discussion of possible Congressional responses to the Commission's conclusion see Blakey & Kurland, *The Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923 (1977-1978).

149. See note 13 *supra* and accompanying text.

150. GAMBLING IN AMERICA, *supra* note 1, at 80.

151. *Id.*

152. SKOLNICK, *supra* note 62, at 108-18.

153. GAMBLING IN AMERICA, *supra* note 1, at 78.

154. "Skimming" is the process "whereby a portion of the casino revenue disappears from the official count." *Id.* at 86. See also SKOLNICK, *supra* note 62, at 47-48.

155. GAMBLING IN AMERICA, *supra* note 1, at 78.

156. See note 60 *supra* and accompanying text. See also L. A. TIMES, Dec. 28, 1977, at 1, col. 1; *State Gaming Officials Say Millions Vanished From Agent's Slots*, WALL ST. J., Sept. 10, 1979, at 1, col. 1.

The state has been more successful in ensuring competence on the part of the applicant and all key employees by requiring all persons associated with licensed corporations to be licensed.¹⁵⁷ This has brought about the rise of a professional management class for its legal casinos. Individual casinos have folded through bankruptcy, but the continued growth of the industry through periods of recession and inflation¹⁵⁸ and the development of college level courses in management illustrate the achievement of a high industry-wide level of competence.¹⁵⁹ The implications on corruption have been mostly positive; it has become more difficult for thieves to steal from the casino either internally or through raids from the outside.

Jerome H. Skolnick's detailed study of Nevada casinos¹⁶⁰ revealed a number of weaknesses in the licensing control scheme including the vagueness of the gaming control statutes,¹⁶¹ the mixture of investigatory and adjudicatory functions delegated to authorities, the casual disregard by officials of Nevada's Open Meeting Law¹⁶² and principles of due process.¹⁶³ These criticisms seem unduly harsh and legalistic given the attraction of legal gambling for sophisticated criminal organizations. It is relatively easy for such an organization to find or create a front man with a spotless record and to hide the criminal control through layers of corporate structures and machinations.¹⁶⁴ It is inherent in the nature of legalized gambling, then, that the control of individuals can be obtained only through prohibitively expensive investigations or through the use of subjective standards. The Nevada authorities have opted for the latter while attempting to perform investigative functions within their limited resources. Given these restrictions and Nevada's open policy in favor of expanding the casino industry, the gaming authorities ap-

157. See notes 125-26 *supra* and accompanying text.

158. THE DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 11, at 459.

159. A special session dealing with problems in casino management was held at the Fourth Conference on Gambling, sponsored by the University of Nevada-Reno, held on Dec. 17-19, 1978. Experts presented papers on casino management, marketing and economics, as well as special symposia on state lotteries, the compulsive gambler, mathematics and gambling behavior. For a review of papers presented, see ROUGE ET NOIR, Jan.-Feb., 1979, at 7.

160. See SKOLNICK, *supra* note 62, at 239-330.

161. *Id.* at 229.

162. NEV. REV. STAT. § 241 (1960).

163. SKOLNICK, *supra* note 62, at 234.

164. *Id.* at 321.

pear to have performed well with relatively minor infringements of individual rights.¹⁶⁵

A more fundamental weakness is the system's complete disregard for potential side effects. Nevada puts only minimum restrictions on the construction and operation of casinos once the applicant has proven his worth morally and financially. The wide-open availability of "restricted" gambling licenses has resulted in the installment of slot machines in restaurants, grocery stores and even the state prison.¹⁶⁶ No provisions are made for setting odds, rates of payout, minimum and maximum betting limits, hours of casino operation and other factors directly related to the impact a casino will have on the people it is designed to attract.¹⁶⁷ The Nevada gaming authorities believe that the competition created by the free enterprise system ensures that the public will be treated fairly. However, this has not proved to be the case. In Nevada the percentage of compulsive gamblers, suicides and alcoholics is the highest in the United States.¹⁶⁸

The Nevada model has been partially successful in expanding the range of choices available to its citizens. Not everyone can gamble in Nevada legally, but the most common restrictions of age and economic access are identical to those placed on other controlled activities nationwide, such as drinking.¹⁶⁹ The Gaming Commission has the power to exclude individuals from gambling;¹⁷⁰ this power,

165. See *THE DEVELOPMENT OF THE LAW OF GAMBLING*, *supra* note 11, at 446-53 and accompanying footnotes for a discussion of all of Nevada's gambling related cases arising since 1949.

166. NEV. REV. STAT. § 463.373(1) (1975). Restricted licensees can have up to 15 slot machines. Casino authorities have refused an application to place slot machines in a home for the aged. SKOLNICK, *supra* note 71, at 266. [1959] Nev. Gaming Comm'n Reg. 3.010 specifies other locations, such as children's public playgrounds, that the board *may* recommend as being unsuitable for gaming licenses. In one interesting development, Nevada's policy came into direct conflict with its neighboring State of California over the effects on the environment of Lake Tahoe of continued casino expansion. 9 CAL. J. 77 (March 1978).

167. *GAMBLING IN AMERICA*, *supra* note 1, at 103.

168. See note 93 *supra*.

169. Bahmueller, *supra* note 89, at 767.

170. NEV. REV. STAT. § 463.151 (1977). This section specifically provides that the Commission may exclude from a casino game an individual:

- (a) Who is of notorious or unsavory reputation;
- (b) Who has been convicted of a crime which is a felony in the State of Nevada or under the laws of the United States, a crime involving moral turpitude or a violation of this chapter; or
- (c) Whose presence in a licensed gaming establishment would, in the opinion of the

however, has been exercised to a limited extent.¹⁷¹ Although the state has, for the most part, amply fulfilled its duty in allowing its citizens the right and opportunity to gamble if they so wish, the same cannot be said of the opportunity to own a casino. The main barrier is an economic one: obtaining a license through a comprehensive background check and meeting the requirements of financial security¹⁷² are simply beyond the means of all but a handful of

board and commission, be inimical to the interests of the State of Nevada, or of licensed gambling, or both.

171. "Crime figure Anthony (Tony the Ant) Spilotro was unanimously voted into the state's list of excluded persons by the Nevada Gaming Commission. Spilotro . . . becomes the ninth name in the 'Black Book' which prohibits him from entering any casino in Nevada. Spilotro's attorney, Oscar Goodman, said the Nevada Gaming Commission action was 'unAmerican in the truest sense of the word.'" *L.V. Faces Test of "Black Book", An "Exclusive List of Mobsters,"* Variety, Dec. 6, 1978, at 85.

The issue of whether a citizen has a "right" to gamble in a legal casino is presently being fought in the courts of Nevada and New Jersey, not by "mobsters," but rather, by expert card counters. Expert counters, by keeping track of which cards have already been played and by making rapid mathematical calculations, can vary their play and achieve a statistical advantage over the casino. E. THORP, *BEAT THE DEALER* (1966). The casinos have sought to exclude card counters because these players represent a great economic threat. The first suit brought by a card counter to prevent this exclusionary policy was *Estes v. Nevada*, No. 10420 (Nev. Sup. Ct. 1978). *Estes* was evicted from the Las Vegas Hilton casino under a casino policy that excluded all card counters. Plaintiff sued the hotel, the state, and the Las Vegas Metropolitan Police Department alleging violations of various state and federal laws and seeking an injunction. His federal challenges were under the fourteenth amendment and 42 U.S.C. § 1983:

The exclusion policy is violative of the Due Process Clause of the Fourteenth Amendment because it subjects persons to loss without prior notice and the opportunity to be heard . . . also . . . because it is arbitrary and capricious. Additionally, the exclusion policy is violative of the Equal Protection Clause of the Fourteenth Amendment because (1) card counters are the only legitimate players who are systematically excluded from playing blackjack at the Hilton and (2) persons blacklisted pursuant to NRS 463.151 are entitled to a hearing under that statute but card counters are not, thereby discriminating impermissibly between card counters and persons otherwise similarly situated.

Brief for Appellant at 25, *Estes v. Nevada*, No. 10420 (Sup. Ct. Nev. 1978).

Unlike the situation in *Nevada v. Rosenthal*, 93 Nev. 36, 559 P.2d 830, *appeal dismissed* 434 U.S. 803 (1977) (*see note 148 supra*), the issue presented in these cases is the extent to which the federal rights of gamblers may be infringed. Arguably, the state's interest in protecting the integrity of the gaming industry is less compelling in this instance to allow state control boards to ignore federally protected rights. *See also* N.Y. Times, Oct. 23, 1979, at B3, col. 6 (New Jersey's casino control commission ordered Atlantic City's two casinos to permit card counters to play blackjack, but modified the rules to make it harder for them to beat the odds).

172. *See notes 130-31 supra.*

individuals. A successful small corporation or other business could meet the expense only if it could afford the risk of license denial and loss of sunk costs. This is not to say that the system is therefore inherently unfair. Obtaining a commercial television license from the Federal Communications Commission is just as far beyond the reach of the average individual, and the justification for background checks and controls is more evident and supportable in the case of casino licenses. However, the point of acknowledging that this limitation does exist is to refute the free enterprise, entrepreneurial ideal that casino licensing advocates sometimes promote.¹⁷³ The truth is that even in Nevada casino ownership is not available to the rugged individualist and, as will be seen, reality is even further from the ideal in the New Jersey and Puerto Rico models.

B. New Jersey and Puerto Rico: The Tourist Model

The State of New Jersey and the Commonwealth of Puerto Rico have taken Nevada's system of licenses and audits and added another layer of control by tying licenses to the growth of targeted tourist areas. This last means of control is designed to effectuate the policy of restoring and maintaining the state's resort industry.¹⁷⁴ In New Jersey, casinos are limited to Atlantic City¹⁷⁵ and must be connected to an approved hotel of at least 500 sleeping units.¹⁷⁶ Puerto Rico regulations are even more specific. The island is divided into zones, each with a specified minimum tourist facility requirement.¹⁷⁷

The regulatory scheme in New Jersey is comprised of two govern-

173. NEV. REV. STAT. § 463.130(4) (1977); [1959] Nev. Gaming Comm'n Reg. 4.010.

174. New Jersey's public purpose declaration is surprisingly candid about the bleak future facing Atlantic City without a revitalization of its resort facilities. See N.J. STAT. ANN. § 5:12-1(3) (West Supp. 1979-1980). That declaration states that the general welfare, health and prosperity of the state and its inhabitants require a properly developed tourist resort and convention industry. Legalized casino gambling is seen "as a unique tool of urban redevelopment for Atlantic City." *Id.* § 5:12-1(4). The Commonwealth of Puerto Rico declares that legalized gambling is intended to "contribute toward the development of tourism by authorizing certain games of chance customary in recreation resorts in famous tourist centers throughout the world . . . and at the same time affording the Secretary of the Treasury of Puerto Rico an additional source of revenue." Act of May 15, 1948, No. 221, § 221 as amended by Act of June 23, 1956, No. 90, § 2 (appended to P.R. LAWS ANN. tit. 15, §71 (1972)).

175. N.J. STAT. ANN. §§ 5:12-1(5), -27 (West Supp. 1979-1980).

176. *Id.* §§ 5:12-82, -83.

177. P.R. LAWS ANN. tit. 15, § 76 (Supp. 1978).

ment agencies: the Casino Control Commission (the Commission)¹⁷⁸ and the Division of Gaming Enforcement (the Division).¹⁷⁹ The Commission is authorized to hear and decide applications for licenses, to conduct hearings pertaining to civil violations of the act, to collect all license fees and taxes and to police the operation of casinos.¹⁸⁰ The Division is authorized to investigate applicants for licenses, conduct continuing reviews of casino operations through on-site observation¹⁸¹ and conduct audits of casino operations.¹⁸²

The regulatory scheme in Puerto Rico is less detailed.¹⁸³ The Secretary of the Treasury (the Secretary) and the Puerto Rico Tourist Development Company (the Company)¹⁸⁴ share authority for grant-

178. N.J. STAT. ANN. § 5:12-50 (West Supp. 1979-1980). The Commission consists of five members. Each member must be a citizen of the United States and a resident of New Jersey. No member may hold an elective or appointive office in federal, state or local government and no more than three members of the Commission may be of the same political affiliation. *Id.* §§ 5:12-50, -51.

179. *Id.* § 5:12-55. The Division is actually an agency of the Office of the Attorney General and the director of the division is an Assistant Attorney General. To prevent conflicts of interest and abuse by officials in the exercise of their discretionary authority, the statute sets forth specific requirements concerning qualifications of commission members and officers of the Division. *Id.* § 5:12-52. A person affiliated with a casino operation may not be a member of the Commission or the Division until such affiliation has been terminated for at least three years. *Id.* § 5:12-58. Additionally, no member of the Commission may hold any "direct or indirect interest in, or be employed by, any applicant or by any person licensed by or registered with the Commission for a period of four years commencing on the date his membership on the Commission terminates." *Id.* § 5:12-60.

180. *Id.* § 5:12-63.

181. *Id.* § 5:12-76(6).

182. *Id.* § 5:12-76(7).

183. Puerto Rico's gaming control statute consists of a meager thirteen sections and is compiled in fourteen pages. P.R. LAWS ANN. tit. 15 §§ 71-74 (1972 & Supp. 1978). In 1974 and 1976, amendments were added authorizing slot machines. See P.R. LAWS ANN. § 71 (Supp. 1978). Many of the details codified in New Jersey and Nevada do not exist in Puerto Rico's statute; instead, much of this detail is left to the Company's regulations. *Id.* §§ 72, 76, 77.

184. The powers and duties of the Economic Development Administration, which had previously exercised regulatory authority under Puerto Rico's casino control act, was transferred to the Company in 1970. *Id.* tit. 23, § 671p (Cum. Supp. 1978). The powers of the Company are exercised by a five member Board appointed by the Governor of Puerto Rico with the advice and consent of the Senate. There are no comparable provisions to New Jersey's conflict of interest and membership qualification requirements. In fact, "the officers and employees of any agency or dependency of the Commonwealth of Puerto Rico may be appointed by the Company without need of examination." *Id.* § 671f(b). Rather, the Public Service Personnel Act governs. *Id.* tit. 3, §§ 1301-1351 (Cum. Supp. 1977 & Supp. 1978). The act provides that all public employees are covered by a single personnel system. *Id.* § 1311.

ing licenses¹⁸⁵ and collecting license fees.¹⁸⁶ In contrast to New Jersey's law,¹⁸⁷ the statute does not describe explicitly the procedures for issuing gambling licenses.¹⁸⁸ The Company is directed to divide the island into license zones¹⁸⁹ and is responsible for supervising the operation of gambling casinos.¹⁹⁰

New Jersey requires that owners,¹⁹¹ employees,¹⁹² corporations,¹⁹³

185. *Id.*, tit. 15, § 73 (Supp. 1978). Real control is apparently vested in the Company. No license may be granted without its approval. Furthermore, the Company is required to consider, in addition to those requirements set forth in section 72, economic factors designed to preserve and protect Puerto Rico's tourist industry. *Id.* See note 212 *infra* and accompanying text.

186. *Id.* §§ 74, 76(2).

187. See N.J. STAT. ANN. §§ 5:12-64, -65, -66, -67 (West Supp. 1979-1980).

188. See notes 208-16 *infra* and accompanying text.

189. P.R. LAWS ANN. § 76(1) (Supp. 1978).

190. *Id.* § 76a (1972).

191. N.J. STAT. ANN. § 82 (West Supp. 1979-1980).

192. *Id.* § 5:12-89. The statute distinguishes between two kinds of casino employees: "casino employee" and "casino key employee." The former is:

Any natural person employed in the operation of a licensed casino, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; and bartenders, waiters and waitresses or other persons whose employment duties require or authorize access to the casino but who are not included in the definition of casino hotel employee, casino key employee, casino security employee, or principal employee

Id. § 5:12-7.

The latter is:

Any natural person employed in the operation of a licensed casino in a supervisory capacity or empowered to make discretionary decisions which regulated casino operation, and who is not within an employee category defined elsewhere in this act, including, without limitation, pit bosses, shift bosses, supervisors, and cashiers; casino managers and assistant managers; managers or supervisors of casino security employees; and any other employee so designated by the Casino Control Commission.

Id. § 5:12-9.

Similar requirements for licensing apply to both groups. See *id.* §§ 5:12-89(b), -90.

193. *Id.* § 5:12-82. To hold a gambling license a corporation must be incorporated in the State of New Jersey and maintain an office in the licensed premises. *Id.* § 5:12-82(d). A corporation is ineligible for a license unless each director, a holder, directly or indirectly, or an equity interest, and

any person who in the opinion of the commission has the ability to control the corporation or elect a majority of the board of directors of that corporation, other than a banking or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; each principal employee; and any lender, underwriter, agent or employee of the corporation whom the commission may consider appropriate for approval or qualification would, but for residence, individually be qualified for approval as a casino key employee. . . .

Id. § 5:12-85(c).

and sellers and distributors of gambling equipment¹⁹⁴ apply for gaming licenses. Each applicant for a casino license must demonstrate to the satisfaction of the Commission that he owns an "approved hotel,"¹⁹⁵ has the financial means and business competence to run a casino,¹⁹⁶ and has a "good reputation for honesty and integrity."¹⁹⁷ An applicant is automatically disqualified¹⁹⁸ if he fails to provide the Commission with adequate information and documentation to prove the above requirements.¹⁹⁹ He may also be disqualified if he has been convicted of a capital offense, high misdemeanor or misdemeanor,²⁰⁰ or is shown to be a member of a cartel such that there is a reasonable belief that the association "is of such a nature as to be inimical to the policy of the act and to gaming operations."²⁰¹ Casino employees,²⁰² hotel employees,²⁰³ and service industries and their employees²⁰⁴ must meet similar requirements.²⁰⁵ The

194. *Id.* § 5:12-92. "All casino service industries offering goods or services on a regular basis which directly relate to casino or gaming activity . . . shall be licensed in accordance with the provisions of this act . . ." *Id.* § 5:12-92(a). Additionally, owners, management and supervisory personnel must qualify under the standards, except residency, established for qualification of casino key employees. *Id.* §§ 5:12-82, -83.

195. *Id.* §§ 5:12-82, -83.

196. *Id.* § 5:12-84(a):

Each applicant shall produce such information, documentation and assurances concerning financial background and resources as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

197. *Id.* § 5:12-84(c):

Each applicant shall produce such information, documentation and assurances of good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and integrity. Such information shall include, without limitation, information pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the ten-year period immediately preceding the filing of the application.

198. *Id.* § 5:12-86.

199. *Id.* § 5:12-86(b).

200. *Id.* § 5:12-86(c).

201. *Id.* § 5:12-86(f).

202. *Id.* §§ 5:12-89, -90.

203. *Id.* § 5:12-91.

204. *Id.* § 5:12-92.

205. The Commission is empowered to enforce these provisions by issuing subpoenas and

Commission may conduct hearings to consider an applicant's qualifications.²⁰⁶ The applicant has the burden of proof for establishing qualifications for licensure.²⁰⁷ If an application is denied, the applicant may petition the Superior Court for judicial review.²⁰⁸

In Puerto Rico, a casino license may be granted only if the applicant proves, to the satisfaction of the Secretary, that he owns a hotel, restaurant, casino, clubhouse or other "bona fide amusement place proper for tourists,"²⁰⁹ has the means and commercial organization to operate a casino,²¹⁰ has not been convicted of a felony or misdemeanor involving moral turpitude, and enjoys "good standing" in the community.²¹¹ After meeting these requirements, the applicant must convince the Company that it is in the economic interests of the Commonwealth in general, and the tourist industry in particular, for a casino to be licensed at the proposed location.²¹²

compelling the attendance of witnesses, *id.* § 5:12-65, by conducting investigations and hearings, *id.* § 5:12-66, and, under certain conditions, by granting immunity to witnesses, *id.* 5:12-67.

206. *Id.* §§ 5:12-87(a), -87(b).

207. *Id.* § 5:12-80(a).

208. *Id.* § 5:12-110. The statute provides that, generally, filing an appeal shall not stay enforcement of the Commission's decision. The reviewing court may either affirm the Board's decision or reverse if it finds that "the rights of the petitioner have been prejudiced because the decision is: 1) in violation of constitutional provisions; 2) in excess of statutory authority and jurisdiction of the commission; or 3) arbitrary or capricious or otherwise not in accordance with law." *Id.* § 5:12-110(c). As in Nevada and Puerto Rico, a casino license is a revocable privilege in which the licensee cannot accrue a property right. *Id.* § 5:12-1(8). See P.R. LAWS ANN. §§ 75, 78 (Supp. 1978).

209. P.R. LAWS ANN. § 72(a) (Supp. 1978).

210. *Id.* § 72(c). A transfer of control is strictly limited:

No person other than the licensee and his employees may operate a gambling hall, nor shall the same be located at a place other than the one stated in the license. No transfer, assignment or cession of any share of or interest in the license shall be carried out without having previously obtained the written approval of the Secretary of the Treasury and the Tourist Development Company. Any transfer, cession or assignment, without the previous approval hereinbefore provided, or the concealment in any way of the real owner of the gambling hall; or of any share or participation in the person holding a license shall entail cancellation of the license.

Id. § 75.

211. *Id.* § 72(b). In the case of a corporation or other business association, all shareholders or partners must fulfill this requirement. Moreover, the Secretary is directed to hold actual owners, not merely nominal owners, to this requirement. *Id.*

212. *Id.* § 73. In approving a license, the Company is directed to consider the number of existing licenses, the location of such licenses and "the kinds and quality of the facilities offered by the concessionaries which shall best serve the purposes of this act, which are those of encouraging for, and providing tourists with, attractions and accommodations at a level with international standards, and which will best serve to promote tourism." *Id.*

Gambling room employees, such as managers, cashiers, and croupiers, must also apply for licenses.²¹³ Other persons "engaged in any activity connected to the operation of gambling places" must meet requirements set forth by the Company.²¹⁴ Application hearings are not statutorily required. The applicant is merely required to file with the Secretary.²¹⁵ There is no explicit statutory provision for judicial review if the application is denied.²¹⁶

New Jersey provides for continuing supervision of casinos and licensees in several ways. All licensees and registrants have a "continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division or . . . the commission."²¹⁷ The kinds of games permitted in a casino may not be changed without prior approval by the Commission.²¹⁸ A casino licensee must keep proper financial records²¹⁹ available for inspection by the Commission at all times during operating hours.²²⁰ The Division is responsible for conducting continuing reviews of casino operations "through on-site observation and other reasonable means"²²¹ and for conducting audits of the casino enterprises.²²² If a licensee fails to comply with the act and regulations, his license is subject to revocation.²²³

213. *Id.* § 78.

214. *Id.* § 76a. In contrast to New Jersey, Puerto Rico does not specify what requirements these personnel must meet. The Company has the authority to issue regulations setting forth the requirements to be met. *Id.*

215. *Id.* § 73.

216. Furthermore, a decision by the Secretary or the Company to suspend or cancel a license is not appealable. *Id.* § 78. The broad powers conferred by the entire act on the Secretary and the Company are nowhere more evident than in this provision.

217. N.J. STAT. ANN. § 5:12-80(d) (West Supp. 1979-1980).

218. *Id.* § 5:12-96.

219. *Id.* § 5:12-99.

220. *Id.* § 5:12-96(e).

221. *Id.* § 5:12-76b(6). The Division has the power, *inter alia*, to inspect the premises of a casino operation, to summarily seize equipment and supplies and to "inspect the person, and personal effects present in a casino facility licensed under this act, of any holder of a license issued pursuant to this act while that person is present in a licensed casino facility." *Id.*

222. *Id.* § 5:12-76(b)(7). The Commission is also empowered to inspect a licensee's financial affairs and to set forth internal financial controls with which a licensee must comply. *Id.* §§ 5:12-70(1)(m), -70(1)(n), -99.

223. *Id.* §§ 5:12-129(3), -129(4). To protect and preserve the interests of innocent parties, upon the revocation of a casino license, the Commission may appoint a conservator. *See id.* §§ 5:12-130.1 to -130.11.

Puerto Rico ensures that its casinos are properly managed in several ways. The continuation of a casino or employment license is conditioned upon compliance with the standards applied to the initial issuance of a license.²²⁴ The Secretary is empowered to conduct audits²²⁵ and the Company is authorized and directed to monitor "the bets and operations of the games of chance in the casinos or clubhouses"²²⁶ Both the Secretary and the Company may revoke the license of any licensee found to be in violation of any of its statutory responsibilities.²²⁷ The suspension or cancellation of a gambling license is final and unappealable.²²⁸

Unique to the New Jersey and Puerto Rico casino control acts are statutory requirements designed to control the casino market and to direct economic growth.²²⁹ In New Jersey, casinos are limited to Atlantic City and must be housed in a hotel.²³⁰ This geographic restriction is designed to target the economic benefits of legal casinos in Atlantic City.²³¹ The additional requirement that casinos be housed in hotels "is designed to assure that the existing nature and tone of the hospitality industry in . . . Atlantic City is preserved and that the casino rooms licensed . . . are always offered and maintained as an integral element of such hospitality facilities, rather than as the industry unto themselves that they have become in other jurisdictions."²³² The number of casino hotels,²³³ gambling hours,²³⁴ advertising²³⁵ and junkets²³⁶ are strictly limited. Finally, all

224. P.R. LAWS ANN. § 73 (Supp. 1978). See notes 209-14 *supra* and accompanying text.

225. P.R. LAWS ANN. § 74 (Supp. 1978).

226. *Id.* § 76a.

227. *Id.* § 78.

228. *Id.*

229. The fact that Nevada casinos are concentrated in Las Vegas and Reno is a result of free market forces, not statutory requirements. Furthermore, Nevada does not impose requirements on the kinds of games or the odds of play as do New Jersey and Puerto Rico. See notes 166-67 *supra* and accompanying text.

230. See note 209 *supra* and accompanying text.

231. N.J. STAT. ANN. § 5:12-1(4) (West Supp. 1979-1980). The public purpose declaration states that decisions on licensing hotels/casinos should also be consistent with preserving and enhancing environmental and aesthetic aspects of Atlantic City. *Id.* §§ 5:12-1(10)-(11). See also *id.* § 5:12-70(r).

232. *Id.* § 5:12-1(5).

233. *Id.* § 5:12-1(6).

234. *Id.* § 5:12-97.

235. *Id.* §§ 5:12-70(o), -70(r).

236. *Id.* §§ 5:12-102, -29.

funds received from the licensing procedure and taxes on gambling revenue are deposited in the "Casino Revenue Fund . . . exclusively for reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State . . ." ²³⁷ In Puerto Rico, the Company is directed to divide the Commonwealth into zones to further commercial and tourist development. ²³⁸ No gambling room is permitted to advertise or offer its facilities to the public of Puerto Rico. ²³⁹ Unlike New Jersey, proceeds of the licensing procedure and gaming tax are not promised to a specific class of residents. Instead, all fees and taxes are deposited in the general treasury. ²⁴⁰

The statutory requirements in the "tourist model" for targeting growth to specific locations ²⁴¹ results in costly entry barriers for potential casino operators. These barriers established, on a short-term basis, a legal monopoly for the first successful casino applicant in Atlantic City, Resorts International Hotel, Inc. ²⁴² On a long-term basis, there have been severe limitations on the number of successful casino applicants, with only three casinos in Atlantic City and twelve casinos in Puerto Rico now operating. ²⁴³ Such restricted growth naturally limits the potential economic and tax benefits derived from gambling. However, the system appears successful in its attempt to target the growth that does occur. Like Nevada's licensing system, the tourist area jurisdictions have attempted to prevent corruption and sever any possible ties to organized crime by denying licenses to undesirables. ²⁴⁴ In theory, limiting casinos to

237. *Id.* § 5:12-145(c). The constitutional amendment allowing casinos to open in Atlantic City, New Jersey provided that any state revenue derived from the newly legal gambling would "be applied solely for the purpose of providing reductions in property taxes, rentals, telephone, gas, electric and municipal utilities charges of eligible senior citizens and disabled residents of the State." N.J. CONST. art. 4, § 7, ¶ 2. This type of earmarking of gambling revenue has been criticized. Recently, the targeted beneficiaries of New Jersey's casino gambling revenue have complained that they have yet to benefit by the state revenue raised through legal casino gambling. *Jersey's Elderly Say Casino Tax, Pledged to Them, is of Little Aid*, N.Y. Times, Aug. 20, 1979, at A1, col. 3.

238. P.R. LAWS ANN. tit. 15, § 76 (1972).

239. *Id.* § 77.

240. *Id.* § 74.

241. See notes 230 & 238 *supra*.

242. See note 15 *supra*.

243. Gambling Times, March 1978, at 33.

244. See notes 201 & 211 *supra* and accompanying text.

tourist areas and large hotels should make it easier to control corruption and organized crime because there would be fewer applicants to investigate and fewer operating casinos to police. The size restrictions of the accompanying hotel limit the applicants to the larger corporations in the recreational field. The great costs necessary to operate a casino²⁴⁵ may not preclude the influence of organized crime, but, in theory, it does subject the few applicants to closer scrutiny and force operators to screen their ties more carefully.

Puerto Rico has been more successful in controlling corruption than Nevada. It is difficult to find a report of any incidence of corruption or criminal influence in Puerto Rico's casino industry.²⁴⁶ This commendable result may be due either to the severe restrictions placed on the issuance of licenses or to the different histories and sizes of operations of the two locales.²⁴⁷ New Jersey, with only three casinos operating, has not been as fortunate. The Attorney General of New Jersey recommended denying Resorts International a permanent license.²⁴⁸ An investigation of the company discovered, in part, that in establishing and running a casino in the Bahamas, Resorts had dealings with a business associate who had a record of association with criminal individuals; that Resorts continued its relationship with an individual of "unsuitable reputation, character, and nature" after being ordered by the Bahamian government to sever the relationship; that Resorts "maintained an unrecorded cash fund from which it rendered payments to Bahamian public officials;" and that Resorts currently employs an individual "who has admitted in sworn testimony an attempt to bribe a judge and supplying paid female companions to Bahamian public officials."²⁴⁹

245. It is estimated that an applicant must spend at least \$50 million before one dollar of revenue is generated. N.Y. Times, June 9, 1977, § 11, at 25, col. 1.

246. J. SCARNE, SCARNE'S COMPLETE GUIDE TO GAMBLING 205 (1961).

247. See *id.* at 225 (Puerto Rico); E. REID & O. DEMARIS, GREEN FELT JUNGLE (1963).

248. Statement of Exceptions, *In Re* Casino License Application of Resorts International Hotel, Inc. (filed by John J. Degan, Attorney General of New Jersey (Dec. 4, 1978)). [hereinafter cited as Statement of Exceptions]. Control experts had previously recommended denying Resorts a temporary permit. Variety, April 18, 1979 at 52.

249. *Id.* See also DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY, ATTORNEY FOR THE STATE OF NEW JERSEY, REPORT TO THE CASINO CONTROL COMMISSION WITH REFERENCE TO THE CASINO LICENSE APPLICATION OF RESORTS INTERNATIONAL HOTEL, INC. (1978).

Despite the Attorney General's recommendation and report, and the fact that the applicant has the burden of proving compliance with the requirements for obtaining a license, Resorts was issued a permanent casino license.²⁵⁰ The applications of Caesars World and Bally for casino licenses in Atlantic City have revealed similar links with organized crime. Nevertheless, the Commission has granted licenses to both applicants,²⁵¹ although certain restrictions were imposed on their corporate activity.²⁵²

Strict limitations on the number of licenses does have some adverse consequences on competence because there is a restriction on the size of the job market. This can be overcome to some extent by market forces—competent employees mean more profit for the casino. However, in practice, it takes time to achieve competence.²⁵³ Among the charges leveled against Resorts International in the Attorney General's report was its incomplete accounting system which allowed tens of thousands of dollars in slot machine change to disappear.²⁵⁴ This represented loss not only to the casino owners but to the taxpayers of New Jersey as well.

Targeting the growth and location of casinos minimizes adverse side effects more effectively than the Nevada free enterprise statute. One of the major adverse consequences of legal gambling is the regressive economic impact on the local citizens.²⁵⁵ By prohibiting advertisements²⁵⁶ and the admittance of local citizens to the casinos,²⁵⁷ Puerto Rico has alleviated the latter problem. In fact, because Puerto Rico is an island and the casinos are limited to expen-

250. *Resorts Wins a Permanent License to Operate Casino in Atlantic City*, N.Y. Times, Feb. 27, 1979, at A1, col. 3.

251. See notes 60-65 *supra* and accompanying text.

252. To receive a temporary permit to operate a casino in Atlantic City, the chairman of Caesars World was required to take an unpaid leave of absence from his position with the New Jersey subsidiary while the state investigated allegations that he had organized crime associations. Bally received a temporary permit only after its president and chairman agreed to sever all of his relations with Bally while the state investigated allegations of his associations with organized crime figures. N.Y. Times, Dec. 20, 1979, at B2, col. 3.

253. M. GOODMAN, *YOUR BEST BET* 188 (1975). The opening of Bally's casino, Park Place, was delayed two days because, *inter alia*, casino workers needed more practice. N.Y. Times, Dec. 30, 1979, § 1, pt. 2, at 32, col. 2.

254. Statement of Exceptions, *supra* note 230, at 11.

255. See notes 74-80 *supra* and accompanying text.

256. P.R. LAWS ANN. tit. 15, § 77 (Supp. 1978).

257. *Id.*

sive resort hotels, the Commonwealth has designed an economically progressive system by siphoning money away from other locales. New Jersey has attempted to reach the same end by limiting casinos to the resort area of Atlantic City.²⁵⁸ It remains to be seen whether such measures are effectual or even enforceable, especially in a private enterprise, revenue raised experiment conducted in a locale more accessible than Puerto Rico.

The financial gain produced for the state from casino gambling has been substantial. The National Gambling Commission concluded that in Puerto Rico, the eleven hotels and casinos represent "the base of the island's tourist industry."²⁵⁹ In one and a half years time three casinos have opened in Atlantic City and four more companies have made plans to open casinos and hotels. The operating casinos have thus far reported handsome profits.²⁶⁰ In addition, because the tourist-oriented casinos, by definition are established in specific locales for the purpose of encouraging the influx of revenue, existing facilities and special interests are seldom hurt financially.

Not all the economic effects are beneficial. Competing tourist areas can be hurt by the public's sudden attention to the new gambling center. If the out-of-state tourist industry cannot prevent legalization in a neighboring state,²⁶¹ it often is forced to lobby for legalization in its own jurisdiction for self-protection.²⁶² This can lead to a series of retaliatory moves by several neighboring states. A state that imposed limited tourist area casinos with the best intentions of limiting their growth could find itself faced with overwhelming competition from neighboring locales. The state may then be forced to choose between allowing great expansion of gambling

258. N.J. STAT. ANN. § 5:12-82 (West Supp. 1979-1980). New Jersey also regulates advertising, *id.* § 5:12-70(o), and limits the hours of operation, *id.* 5:12-97, but does not prohibit its citizens from entering casinos, *id.* § 5:12-100(a).

259. GAMBLING IN AMERICA, *supra* note 1, at 100.

260. See notes 15-20 *supra* and accompanying text.

261. It is a persistent rumor in Sacramento, California, that it is Nevada's lobbying effort which keeps casinos out of that state.

262. Casino-type gambling has already been legalized in this area [New Jersey]. I believe the State of Pennsylvania should receive their share of the revenue that would be lost to New Jersey. Since many of the residents of Pennsylvania will be going to New Jersey to gamble, my bill attempts to keep part of this revenue in the State. I have no control over legalized gambling in this area, since this was done by the State of New Jersey.

Letter from Ralph A. Garzia, Pennsylvania House of Representatives regarding his House Bill 68 (1977) to legalize casino gambling.

or permitting the entire operation to fail. After committing time, money and political reputations to the gambling experiment it is unlikely that state decision-makers would be willing to close down the casinos when they can regain a competitive edge simply by relaxing the restrictions on their growth.

Market access to casino ownership is as difficult in the tourist model states as they are in Nevada.²⁶³ By limiting the availability of casino licenses to wealthy individuals and large corporations, the tourist-oriented states have explicitly adopted the discriminatory market forces implicit in the Nevada model. Applicants for other government licenses, *e.g.*, radio or television, can overcome market forces through organization. Applicants for casino licenses cannot do the same because a fundamental criterion of certification is the financial wealth and stability of the applicants.²⁶⁴ All individuals that are in positions of ownership must go through the expensive licensing process.²⁶⁵ A similar barrier exists for the patrons of the casinos. Puerto Rico explicitly prohibits its casinos from offering their facilities to the Puerto Rican public.²⁶⁶ This goes far beyond the market forces that limit the clientele at Nevada casinos.

With barriers both to ownership of and admission to casinos, it becomes increasingly difficult for a state to justify its decision to legalize casinos on any ground other than revenue-raising. The state has not acted to facilitate free choice among its citizens; it has attempted to create an attraction to siphon money into the area from outside jurisdictions. Other reasons for legalization become unimportant and the state is left only with the open search for more

263. See notes 172-73 *supra*. See also NEV. REV. STAT. § 463.130(1) (1977).

264. P.R. LAWS ANN. tit. 15, § 72(b)-(c) (Supp. 1978); N.J. STAT. ANN. § 5:12-84(a) (West Supp. 1979-1980).

265. P.R. LAWS ANN. tit. 15, § 72(b)-(c) (Supp. 1978); N.J. STAT. ANN. § 5:12-85(b)(3) (West Supp. 1979-1980).

266. P.R. LAWS ANN. tit. 15, § 77 (1972). Additionally, both New Jersey and Puerto Rico allow casinos to ban patrons who have been convicted of certain criminal offenses or whose "presence in a licensed casino would, in the opinion of the commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both." N.J. STAT. ANN. § 5:12-71(a)(3) (West Supp. 1979-1980). See also P.R. LAWS ANN. tit. 15, § 73 (Supp. 1978) ("the licensee who operates a gambling room is hereby empowered to prohibit admittance into the clubhouse of any person who in his judgment constitutes a hindrance to the operation thereof, or affects or annoys the well-being and easement of the patrons or employees of the gambling rooms; Provided, That in regulating the admittance to club-houses no discrimination by reason of race, color, religion or social condition shall be made.") See note 171 *supra*.

revenue. Pressure for more licenses and looser restrictions could follow. The jurisdiction could follow the route taken by Puerto Rico and abandon the search for ever increasing revenue in favor of stabilization. If not, the tourist-oriented jurisdiction could find itself with a system where growth is primary and control is secondary at best.²⁶⁷

C. England: The Club Model

Casinos in Great Britain were legalized for purposes far different from those behind legalization in Nevada or New Jersey. In England, gambling is seen as a social evil to be controlled, not a means of raising revenue for the state.²⁶⁸ In addition to a system of licensing and continuing supervision through on-sight surveillance and audits, Great Britain adds a superstructure of controls, paternalistic in their design, that completely overwhelm the basic system. The emphasis is consistently on limiting gambling and its perceived adverse side effects. "[I]f casino gambling were to disappear entirely from the English scene, the gaming board would be congratulated."²⁶⁹

Casino gambling is regulated by the Gaming Board for Great Britain (the Board).²⁷⁰ The Board is empowered to grant licenses and supervise gaming operations.²⁷¹ Its power is plenary, although limited procedures for judicial review are available.²⁷²

Casino gambling is limited to private clubs which must be certi-

267. The New York State Casino Gambling Study Panel has recommended legalizing casino gambling and enacting a control statute similar to the New Jersey Casino Control Act. FINAL REPORT, *supra* note 51, at 39-50. The Report recommended that private casinos be permitted in at least a half dozen locations. The Panel Report ignored the issue of organized crime, based its economic forecasts on the incorrect presumption that there would be no major competition from neighboring states, *id.* at 7, and minimized adverse side-effects of legalization upon individuals and the community. *Id.* at 11, 59, 61.

268. Gaming Act, 1968, c. 65. The act is designed "to control commercial gambling by introducing a system of licensing and registration of clubs and by imposing new restrictions in relation to gaming in clubs and by means of gaming machines." *Id.* Preface. For a general history of the economic and social forces which led to the enactment of the Gaming Act, see *Gambling in Great Britain, 1945-1976* in DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 11, at 914.

269. SKOLNICK, *supra* note 62, at 335.

270. Gaming Act, 1968, c. 65, § 10. The Board consists of a chairman and other members appointed by the Secretary of State. *Id.* § 10(1). See *id.* sched. 2.

271. Gaming Act, 1968, c. 65, §§ 10(3), 43.

272. *Id.* sched. 2, para. 29. See note 253 *supra*.

fied by the Board.²⁷³ A casino license may not be granted to a foreign corporation or an individual under twenty-one years of age.²⁷⁴ An applicant for a casino license must have a good "character, reputation and financial standing."²⁷⁵ The Board is authorized to take into consideration "any other circumstances appearing to them to be relevant in determining whether the applicant is likely to be capable of, and diligent in" the operation of a casino club.²⁷⁶ Most importantly, the Board must find that a substantial demand for casino gambling exists in the community "on the part of prospective players for gaming."²⁷⁷ If the Board finds that these criteria are met the licensing authority in the jurisdiction in which the proposed club is to be situated must either recommend or deny the application.²⁷⁸ Should the licensing authority deny the application, the applicant may appeal to the court of quarter sessions²⁷⁹ which "may deal with the application as if it had been made to the court . . . in the first instance."²⁸⁰ The judgment of the court is final.²⁸¹

A player must obtain certificate of approval to take part in a casino game.²⁸² A casino employee is required to obtain a certificate of approval if his duties involve assisting the gaming by operating or handling any apparatus, cards, tokens or other articles used in

273. Gaming Act, 1968, c. 65 § 11(1). See *id.* scheds. 2, paras. 3, 7. A "licensing authority" is actually responsible for granting a license. However, to apply for a license an applicant must receive a certificate from the Board allowing him to apply for a license to a licensing authority. *Id.* sched. 2, para 3(1). Furthermore, there are no provisions for appealing a Board decision not to grant a certificate. The licensing authority is directed to take into account advice given the Board. See *id.* sched. 2, paras. 19(2), 28.

274. *Id.* sched. 2, para. 4(4).

275. *Id.* sched. 2, para. 4(6). In the case of a corporation, the manager and other beneficiaries of the license must be qualified. *Id.* sched. 2, para. 6(b). Transfers of control are strictly limited. *Id.* sched. 2, para. 55.

276. *Id.* sched. 2, para. 4(6).

277. *Id.* sched. 2, para. 18. "Demand" goes beyond the notion of economic demand. Rather, it implies existing social demand for a casino gambling in a given location. SKOLNICK, *supra* note 62, at 339.

278. See Gaming Act, 1968, c. 65, sched. 2, paras. 3-24. The criteria the licensing authorities are to consider are similar to those which the Board reviews. *Id.* sched. 2, paras. 18-24.

279. *Id.* sched. 2, para. 29.

280. *Id.* sched. 2, para. 29(4). Provisions are also made for appeals by the Board. *Id.* sched. 2, para. 31.

281. *Id.* sched. 2, para. 29(4).

282. *Id.* § 19(2)(a).

gaming, issuing, receiving or recording cash or tokens, and acting in any supervisory capacity.²⁸³

The Board is authorized to inspect gaming premises and machines "at any reasonable time" and to inspect a licensee's financial records.²⁸⁴ Failure to permit such inspection is grounds for revocation of a license.²⁸⁵

Several significant limitations exist which restrict a casino's operation. Only members of the licensed club or their guests may enter a club to gamble.²⁸⁶ Slot machines are limited to two per club.²⁸⁷ Advertising is prohibited²⁸⁸ and detailed rules are set forth concerning the play of various games.²⁸⁹ In addition, no club member is eligible to take part in any gaming activity unless he has "given notice in writing, in person on [the club's premises] to the holder of the license . . . of his intention to take part in gaming on those premises, and at that time at least forty-eight hours have elapsed since he gave that notice."²⁹⁰

These restrictions seem to have been successful in limiting the overt presence of organized crime and corruption. Criminal activity, in the form of direct ownership of gambling enterprises or protection rackets, has been stemmed.²⁹¹ The illegal casinos have apparently disappeared and the growth of legal casinos has been severely limited. In the mid-1960s under the loose rules and enforcement practices of the 1963 Betting, Gaming, and Lotteries Act²⁹² there were over 1,200 gaming clubs in England, many of them connected with organized crime.²⁹³ By 1972, four years after the strict 1968 Gaming

283. *Id.* §§ 19(2)(b), 19(2)(c), 19(2)(d), 19(3).

284. *Id.* § 43(2).

285. *Id.* sched. 2, para. 18.

286. *Id.* § 12.

287. *Id.* § 31(2).

288. *Id.* § 42.

289. *Id.* sched. 2, para. 25(1). Skolnick reports that this concern for the player went so far that in the London Playboy Club "the bunnies who deal the games are required to cover their décolletage with bibs so as not to distract the player's attention from the game itself." SKOLNICK, *supra* note 62, at 341.

290. Gaming Act, 1968, c. 65, § 12(3)(b).

291. Downes, *Analysis of a Project on Gambling Activity in England and Wales in GAMBLING IN AMERICA*, *supra* note 1, app. 1, at 1005 [hereinafter cited as Downes].

292. Betting, Gaming & Lotteries Act of 1963, c. 2.

293. Downes, *supra* note 291, at 1009. See also *Controlling Casinos*, *THE ECONOMIST*, June 17, 1967, at 1209.

Act became effective, the number of clubs was reduced to 120.²⁹⁴

The superstructure of control has succeeded to a considerable extent in protecting the patron and limiting the adverse side effects of legalized gambling. Because no credit can be extended to gamblers,²⁹⁵ it is difficult for a player to bet over his limit and fall into dependence on loansharks. The "forty-eight hour"²⁹⁶ rule greatly restricts impulse gambling, as does the two slot machine per casino limit²⁹⁷ and the general restrictions on the availability of gaming. Yet gambling is not completely unavailable, so the player is not forced to find an illegal game if he wishes to gamble. The regressive nature of gambling is countered to some extent by the nature of the club system. Because the clubs are private, membership fees and dress codes that effectively exclude poorer segments of society can be imposed. In fact, as Skolnick points out in his study of British gambling, "European governments have traditionally employed concepts of class segregation in forming casino gaming policy and

294. Downes, *supra* note 291, at 1009.

295. Gaming Act, 1968, c. 65, § 16. The statute reads, in pertinent part:

(1) Subject to the next following subsection, where gaming to which this Part of this Act applies takes place on premises in respect of which a licence under this Act is for the time being in force, neither the holder of the licence nor any person acting on his behalf or under any arrangement with him shall make any loan or otherwise provide or allow to any person any credit, or release, or discharge on another person's behalf, the whole or part of any debt,—

- (a) for enabling any person to take part in the gaming, or
- (b) in respect of any losses incurred by any person in the gaming.

(2) Neither the holder of the licence nor any person acting on his behalf or under any arrangement with him shall accept a cheque and give in exchange for it cash or tokens for enabling any person to take part in the gaming unless the following conditions are fulfilled, that is to say—

- (a) the cheque is not a post-dated cheque, and
- (b) it is exchanged for cash to an amount equal to the amount for which it is drawn, or is exchanged for tokens at the same rate as would apply if cash, to the amount for which the cheque is drawn, were given in exchange for them;

but, where those conditions are fulfilled, the giving of cash or tokens in exchange for a cheque shall not be taken to contravene subsection (1) of this section.

(3) Where the holder of a licence under this Act, or a person acting on behalf of or under any arrangement with the holder of such a licence, accepts a cheque in exchange for cash or tokens to be used by a player in gaming to which this Part of this Act applies, he shall not more than two banking days later cause the cheque to be delivered to a bank for payment or collection.

296. See note 290 *supra* and accompanying text.

297. See note 287 *supra* and accompanying text.

law."²⁹⁸ Social pressure is also employed. A player must have sufficient funds to cover a check written for gambling chips as the check is legally enforceable. A player who wins cannot redeem a check written for chips and cannot consolidate a number of checks into one large one.²⁹⁹

The imposition of a club system involves little harm to existing economic interests as proof of existing demand must be shown to receive a casino license.³⁰⁰ In England, gambling clubs operate much as private nightclubs would: play is mostly at night and the clubs compete for the discretionary funds of a limited segment of the population.³⁰¹ The number of clubs is limited so there has not been a dramatic impact on the entertainment industry.

These desirable results, however, have fostered a system infused with paternalism and concern for the slightest detail of operation and the establishment of, what has been called, "the most autocratic British institution since the Star Chamber,"³⁰² the British Gaming Board.³⁰³ No government agency in the United States has the complete statutory discretion exercised by the British Gaming Board. As explained above, the Board may decide the number of clubs in general or the suitability of an applicant to operate a particular club. Each applicant must obtain a certificate of consent from the Board before proceeding with the initial investigation by the Board. If the certificate is denied, the applicant is barred from proceeding further and there is no right of appeal. The Board need not defend its conclusions and all Board hearings are conducted in total secrecy.³⁰⁴ It is highly unlikely that a state in this country could

298. SKOLNICK, *supra* note 62, at 338.

299. Gaming Act, 1968, c. 65, § 16. These rules are designed to notify the banker that, in the heat of gambling, a player has written several checks in one evening to the club, indicating that he has played more than he originally intended. Such information is said to embarrass a businessman in the financial community. While the clubs dispute the value of this theory, the British Gambling Board contends that the threat of embarrassment deters businessmen from writing more than one check per evening to their clubs and thus inhibits impulse gambling.

300. See note 277 *supra* and accompanying text. "The licensing authority should normally allow only one casino to operate, as a monopoly, in each area; this is not a field in which competition is to be encouraged." *THE ECONOMIST*, June 17, 1967, at 1212.

301. SKOLNICK, *supra* note 62, at 338.

302. *Id.* at 340.

303. Gaming Act, 1968, c. 65, § 10.

304. See note 281 *supra* and accompanying text.

withstand the political controversy surrounding the imposition of such a system, even if it could overcome the legal challenges to such uncontrolled discretion.³⁰⁵

The National Gambling Commission recommended against the legalization of casinos.³⁰⁶ Recognizing, however, the strong pressure to legalize casino gambling, the Commission recommended that states choose the English club model rather than the Nevada free enterprise model.³⁰⁷ Skolnick disagrees. He concluded that should states legalize casino gambling, they will do so in response to economic pressures. Because the Nevada model is designed to raise revenue, whereas the club model is designed to correct a social problem, economic reasons alone preclude the use of the club system in the United States.^{307.1} It follows that restrictions imposed by the club model on the number of slot machines, credit, advertising and casino operation would be impossible in a revenue raising model. More importantly, the control system inherent in the club model, namely uncontrolled agency discretion, pervasive paternalism and governmentally sanctioned discrimination on the basis of class is antithetical to American values.³⁰⁸ Although many of these factors could be modified to fit the American system, to do so would inevitably change the system so that the club model would no longer retain its basic characteristics and would become almost identical to the tourist-oriented model. It is conceivable that gambling clubs could be licensed throughout an urban area to meet the perceived demands of the local population. However, policing such a system would be prohibitively expensive, especially if there were many small clubs. If the clubs were large, gambling would be encouraged, economic forces would push for expansion and the basic reasons for imposing the club system would be defeated.

305. See *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

306. GAMBLING IN AMERICA, *supra* note 1, at 101.

307. *Id.* at 103.

307.1. Skolnick's claim is verified by a recent study issued by the New Jersey Department of Community Affairs. It is reported that the economic strength of the casino industry in Atlantic City has frustrated the goal to retain the city's image as a family-oriented resort. *State Report Sees Casinos Bringing 'Ominous Clouds' to Atlantic City*, N.Y. Times, Jan. 20, 1980, § 1, pt. 2, at 42, col. 3. "The city's economy has already become casino dependent . . . and is likely to remain so because casino interests will be able to outbid other economic interests for available land." *Id.* at col. 4. Thus, after only three years as a casino resort, Atlantic City may be unable to contain the growth of casinos.

308. SKOLNICK, *supra* note 62, at 346.

D. Government Ownership

Direct state ownership of casinos has been suggested as one solution to the problem of control.³⁰⁹ Gambling invites corruption, in part, because it can be the source of great profits for the operators. State ownership of casinos, it is argued, can prevent such corruption. The excess profits that lead to corruption can be controlled and any money raised by these predictably lucrative operations will go directly to the state coffers. Furthermore, if the main reason for legalizing casinos is to raise revenue, either by diverting cash from criminal operations or as a purpose in itself, it does not make sense, the argument goes, to split the profit with outside operators, especially when the short end of the split goes to the state.³¹⁰

Various models are possible for government owned casinos in the United States. One possibility is state ownership and operation directly through an agency set up for this purpose.³¹¹ A second is a lease contract with private operators running government owned facilities.³¹² Other arrangements include combinations of the first suggestions; for example, allocating ownership, leasing and operation of various parts of the facility, or even different games, within a casino.³¹³ Another model would call for the creation of a public benefit corporation similar to New York's Off-Track Betting Corporation³¹⁴ that would be quasi-governmental yet separate from the state's legal and financial responsibilities.³¹⁵

309. *Governor Favors State Operation Of Any Casino*, N.Y. Times, Jan. 26, 1979, at B1, col. 6; *Carey Favors State Casinos But With Private Operators*, N.Y. Times, March 13, 1979, B3, col. 1. The Casino Gambling Study Panel recommended against state-owned casinos. See note 267 *supra*.

310. *EASY MONEY*, *supra* note 53, at 66.

311. *Albany to Get Bid for Wider Gaming*, N.Y. Times, Jan. 12, 1972, at 1, col. 7.

312. *FINAL REPORT*, *supra* note 51, at 33.

313. It is reported that Governor Carey of New York wanted a "combination of state and private operation—possibly having the state rent slot machines to hotels and other semipublic areas for a share of the returns, for example, while letting private companies operate casinos in limited areas of the state, under close state supervision." *Carey Favors State Casinos But With Private Operators*, N.Y. Times, March 13, 1979, at B3, col. 1. Carey altered his position in favor of state operated casinos because such a program would require the hiring of a great many more state employees. Employees of a state owned casino would be protected by civil service regulations, making it difficult for gaming control officials to fire someone on mere suspicion of, for example, cheating.

314. N.Y. UNCONSOL. LAWS §§ 8081-8104 (McKinney 1979).

315. *EASY MONEY*, *supra* note 53, at 66.

The practical problems of state ownership should not be underestimated. It is argued that only state ownership and control of all casino operations could prevent the possible infiltration of organized crime. There is no guarantee, however, that a state operation would be free from corruption with organized crime.³¹⁶ Moreover, it is hard to imagine how the state's investigation of potential lessee-operators could be more rigorous than Nevada's.³¹⁷ As noted above, it has been difficult to keep that system free of scandal and corruption. There is little reason to believe that state-employed casino operators and dealers would be any more honest or competent than private employees. In fact, a state bureaucracy could make it easier for illegal activities to go undetected, or if detected, unreported, for fear of appearing incompetent to superiors. Any scandal that hits a government owned casino would naturally become a political problem for state leaders.³¹⁸ Politicians know that a quasi-government body may protect the state from legal responsibilities,³¹⁹ but not from political scandal. It is probably for this reason that the idea of government ownership has never been widely supported by political leaders.³²⁰

Competence and honesty are needed not only to prevent corruption but also to ensure the flow of revenue to the state. The National Gambling Commission found that casinos are not always the sure money-makers envisioned by outsiders. Some casinos go bankrupt and some are only marginally profitable.³²¹ Of course, the state having a monopoly may lessen the risk inherent in the competitive

316. Huey P. Long, while exercising great control over the state machinery in Louisiana as Governor and later Senator, apparently brought New York racketeer, Frank Costello, and large numbers of slot machines to New Orleans. Peterson, *supra* note 59, at 263.

317. See pt. IV(A) *supra* and accompanying text.

318. See GAMBLING IN AMERICA, *supra* note 1, at 102.

319. *Hotel Dorset v. Trust for Cultural Resources*, 46 N.Y.2d 358, 385 N.E.2d 1284, 413 N.Y.S.2d 357 (1978); *Robertson v. Zimmerman*, 268 N.Y. 52, 196 N.E. 740 (1935).

320. See notes 267-309 *supra*.

[N]either Nevada nor England ever really considered government-run casinos, even though England has nationalized several industries. Nobody has ever elaborated the reasons, but they are different in England and in Nevada. Since the English see gambling as an evil to be tolerated, but not encouraged, they could scarcely adopt a system of state-owned gambling. The Nevadans do not regard gambling as an evil, but they consider socialism to be one. Moreover, authorities in both systems comprehend how complex casino gambling is, and how difficult it is to control its honesty.

SKOLNICK, *supra* note 62, at 344.

321. GAMBLING IN AMERICA, *supra* note 1, at 102.

system, but government operations tend to run at a deficit.³²²

Bureaucracies often feel a need to expand as well as to justify and ensure their continued existence. This can lead to a direct conflict with the idea of control, especially where the bureaucracy already has great discretion in defining the limits of the problem. State owned casinos would appear to present the ultimate test of an agency's ability to suppress its own self-interests in the name of the public good. The bureaucracy would be running the operation rather than trying to control it from the outside. It is improbable that such an agency would favor a static operation, let alone one of constantly shrinking size. Add to this the state's interest in a growing revenue source and possible competition from neighboring states and it appears inevitable that a state gambling operation would soon be pressing vigorously for expansion of its province.³²³

Pressure for expansion would bring the state operation into direct conflict with the control issues of limiting adverse side effects and preventing undue economic harm to established interests. Quick expansion would also lead to more problems of discretion, control of corruption and incompetence because the agency would have to rush through applications for key casino positions or switch to a system of at least partial operation by private lessees. As was seen in the first New Jersey licensing case, the rapid expansion of revenue-generating casinos does not always lead to the most studied, controlled agency action.³²⁴

The regressive nature of gambling causes a special problem for state owned casinos. If the state attempted to limit play by imposing barriers to entry similar to those of the tourist-oriented or club models, equal protection issues would inevitably emerge.³²⁵ In ad-

322. New Jersey decided against state owned casinos because "it was felt hotels would not spend the money to provide first class services expected by tourists if they had no financial stake in the gambling operation." *Variety*, March 7, 1979, at 169. The New York Casino Gambling Study Panel expressed a similar opinion, stating that "[s]tate operation of all casino hotels (a public monopoly) would preclude the essential economic ingredient of competition to the detriment of the optimum development of the industry." FINAL REPORT, *supra* note 51, at 34-35.

323. EASY MONEY, *supra* note 53, at 77.

324. See notes 248-52 *supra* and accompanying text.

325. While classifications based on wealth are not inherently suspect, *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973), state discrimination based on wealth would raise controversial equal protection problems.

dition, state owned or operated casinos would obviously make it more difficult for authorities to control those forms of gambling still outlawed. This, in turn, would lead to more arguments in favor of further relaxing gambling laws and increase support for the expansion of legal gambling operations.

Finally, the issue of state ownership must be examined in the context of the proper role of the state vis-à-vis its citizens. On the one hand, state ownership would actively facilitate the choice of citizens to gamble. On the other hand, it might appear unseemly for the state to actively promote this choice.³²⁶ In sum, it is uncertain whether our image of the American system of government could withstand the strain placed upon it by the creation of state owned and operated casinos.

V. Conclusion

It appears that the legalization of casino gambling is inevitable and that many states will follow the examples of Nevada, New Jersey and Puerto Rico. States should focus on the purposes to be obtained through legalization and the means available to control corruption and limit the adverse side effects of legal gambling.

Any system of control must be built with the present system of law enforcement and gambling laws in mind. The creation of legal casinos does not mean that the prohibitions on other forms of gambling should be lifted or relaxed. On the contrary, except for the legalization of social gambling, enforcement of the present prohibitions should be increased and the penalties stiffened. Illegal gambling should be made "expensive," possibly through the imposition of mandatory, light jail sentences. The goal is to eliminate police and prosecutorial discretion and its accompanying corruption without creating new problems.

States must acknowledge that it is unlikely that legalized gambling will render illegal gambling operations unprofitable, nor will it raise substantial amounts of revenue for the state. Legalized gambling is expensive to police and causes some injury to the local citizenry. Control must be rigorous. This leads to problems of agency discretion. The wide discretion given to control authorities under existing statutes may give rise to constitutional objections.

326. See note 95 *supra* and accompanying text.

Unless standards are clear, an agency's power to deny a casino license to an applicant on the basis of tenuous ties to persons of unsavory character may conflict with the applicant's rights to due process and freedom of association. In addition, states that seek to exclude the poorer segments of the local population from gaining access to casinos, either directly, as in Puerto Rico, or indirectly, as in England, risk creating distinctions which violate guarantees to equal protection under the law. Nevada has rejected these constitutional issues by taking a strong states' rights position with regard to the control of gambling within the state. As more states legalize gambling these issues may have to be reexamined. However, vigilant and effective state control of legal gambling may necessitate the relaxation of constitutional standards and the adoption of Nevada's states' rights interpretation of gambling control.

Difficult decisions must be made by the state. These include limiting credit, advertising, hours of operation and pay-out odds on the various games. Casinos should be limited in number and isolated in location. It is doubtful whether there is any justification great enough to overcome the danger of putting a casino in an urban center.

Although circumstances will vary among states, the optimum model for the control of legal casinos is the tourist-oriented model. This model permits gambling to be used to revitalize a dilapidated resort area at little cost to the state. However, more careful control than New Jersey has exercised must be used in the licensing process.

If a state sets clear, limited objectives and is willing to maintain rigid control over the growth of its own bureaucracy as well as the gambling operations, legal casinos can be a boon, especially for a badly depressed tourist area. However, if the state succumbs to the dual arguments of easy money and quick control of organized crime, it will inevitably find itself worse off than when it began, facing an outcry from the population to outlaw the games. Only when adequate attention has been given to the issues of control can the state hope to achieve the limited purposes which justify the legalization of casino gambling.