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Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling as Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies

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CONTENTS

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Due to the rapidly developing issues, current periodicals were necessarily utilized. The authors attempted to avoid the use of any publications that are too influenced by the gambling industry. Katie Cook and Melissa Jordan provided valuable assistance in editing and cite-checking this analysis.

* John W. Kindt & Anne E.C. Brynn, *Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling as Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies*, 16 TEMPLE INT'L & COMP. L.J. 243 (2002-03) (lead article).

PART I

Introduction

A. Destructive Economic Policies in the Age of Terrorism[1]

The Age of Terrorism highlights that government-sanctioned gambling is economically and politically destabilizing. As exemplified by casinos, gambling provides quick and substantial quantities of stable cash flow to the owners of the gambling establishments, and particularly in less-secure governmental systems, the owners are often associated with groups dedicated to destabilizing the government, such as organized crime, terrorist, and rebel groups.

One example of this phenomenon during the late 1990s was Yasser Arafat's and the Palestinian Authority's largest, most profitable, and most stable asset—a Jericho casino—built with U.S. gambling technology, sanctioned by the Israeli government, patronized by Israeli tourists, and dedicated to finance the Palestinians' destructive policy toward Israel.[2] During the 1990s, the Israeli government could have prevented the establishment of the Jericho casino, but it did not,[3] and the trend was even toward allowing more casinos and gambling activities.

During the 1990s, the world's economic leadership ensconced in the United States largely ignored the rapid spread of legalized gambling from the Nevada establishment into the United States and the international community. This laissez faire attitude by U.S. governmental and economic policymakers signaled and encouraged the rapid embracing of the U.S. gambling industry's philosophies and technologies by other countries trying to emulate U.S. economic growth. Lost in the differentiation between entrepreneurial policies enhancing long-term economic efforts, and gambling policies cannibalizing the short-term economic wealth, governments worldwide ignored or forgot the basic principle that government-sanctioned gambling encourages transboundary economic raiding and destabilizes national and international economies. On a strategic scale, widespread government-sanctioned gambling activities constitute inherently destructive economic policy.

Specifically, Palestinian leader Yasser Arafat divulged his administration's financial secrets in 2000, revealing "a multimillion dollar slush fund to a state monopoly on cement and a $60 million share in a highly profitable casino."[4] For years, the international community had demanded that the Palestinian government

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[1] This particular article is summary in scope, but it was conceived within the penumbra of the McDougal/Lasswell model for decision-making. In the areas of legal and governmental policy, which subsume strategic socio-economic and business concerns, the classic decision-making models were formulated by post-legal realists, in particular Professor Myres McDougal and Professor Harold Lasswell who postulated a conceptual framework for legal decision-making in a landmark article directed toward legal educators and law professors. Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); *see also* Harold D. Lasswell & Myres S. McDougal, *Criteria for a Theory about Law*, 44 S. CAL. L. REV. 362 (1971); Myres S. McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966); John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Program*, 31 J. LEGAL EDUC. 512, 517-518 (1981); John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J. D./MBA Programme*, 13 LAW TEACHER 12, 14-16 (1979). The decision-making concepts, which McDougal and Lasswell introduced, were later expanded to include international law and U.S. domestic law, as these areas interfaced with "policy-oriented jurisprudence." Since then, their approach to law has received increasing acceptance and has become the major approach in the area of international law. *See* John N. Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell,* 54 VA. L. REV. 662 (1968); Frederick Tipson, Note, *The Lasswell-McDougal Enterprise: Toward a World Public Order of Human Dignity,* 14 VA. J. INT'L L. 535 (1974).

[2] Associated Press, *Arafat Divulges Financial Secrets,* N.Y. TIMES (ON THE WEB), July 4, 2000, *available at* http://www.nytimes.com/aponline/i/AP-Palestinian-Money-Trail.html [hereinafter *Arafat Divulges Financial Secrets*].

[3] *See, e.g.,* Presentation by Israeli Representatives, National Coalition Against Legalized Gambling, Annual Conf., Orlando, Fla., Sept. 27-29,1995.

[4] *Arafat Divulges Financial Secrets, supra* note 2.

disclose its financial dealings, which, once revealed, showed "millions of dollars in tax revenues to secret accounts...to which only Arafat and a few close advisers"[5] had access. Close to $530 million did not reach the Palestinian Treasury in 1998 and 1999, according to a Palestinian financial report released in 2000.[6] Significantly, the "largest holding, valued at $60 million, was a thirty percent stake in a casino in the West Bank town of Jericho."[7] Prior to the 2000 report, "the Palestinian Authority refused to acknowledge its involvement in the casino, apparently fearing criticism"[8] from the international community including "Islamic fundamentalists who oppose gambling on religious grounds."[9] These developments highlight the need for strategic analyses of government policies involving legalized gambling activities and their impact on national and international communities—particularly the economic security issues in the Age of Terrorism.

B. U.S. Legalized Gambling as Destabilizing World Economies?

As countries around the world and the G7 periodically consider options to help pull their economies out of recurrent economic malaise, many theories are being presented and evaluated. Although many of the causal factors of economic downturns can be identified, international policymakers and economists have missed the economic and political significance of the international megatrend toward legalizing organized gambling activities. The U.S. gambling industry constitutes a classic example of an industry plagued by "corruption and cronyism" which was thematic of the destabilizing economic factors highlighted by President Clinton in his October 16, 1998 speech at the IMF/World Bank Meeting. Unfortunately, the U.S. gambling companies have set the standards for the world and have touted themselves as the economic "wave of the future."

Throughout the 1990s, gambling activities were being organized and legalized on an unprecedented scale. By 2000, the $61.4 billion in gross revenues of the U.S. gambling industry[10] nearly doubled the combined revenues of the entire U.S. sports, movie, music, and theme-park industries. The academic research reviewed in this analysis demonstrates the destabilizing influence of gambling on most economic systems and suggests that it can even collapse the economies of less-developed countries—due in part to their lack of safeguards and infrastructure.[11] Gambling destabilizes economies due to negative externalities in the form of gambling addictions, bankruptcies, crime, and corruption. As quantified by reports delimited in this analysis, the socio-economic costs of legalized gambling far outweigh any possible benefits that it could bring to any economy.

C. New Addicted Gamblers Caused by Government Policies

New government-sponsored gambling creates substantial numbers of new pathological (addicted) and problem gamblers. For example, in the United States, from 1994 to 1997, legalized gambling created 1.5 million new pathological (addicted) gamblers.[12] Pathological gambling is a recognized addictive behavior according to the

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Arafat Divulges Financial Secrets, supra* note 2.

[10] *Gross Annual Wager*, 22 INT'L GAMING & WAGERING BUS. 1, 32 (2001) [hereinafter *Gross Annual*].

[11] Statement of Prof. John Warren Kindt, Univ. Ill., to the National Gambling Impact Study Commission, "U.S. and International Concerns Over the Socio-Economic Costs of Legalized Gambling: Greater than the Illegal Drug Problem?," Chicago, Ill., May 21, 1998 [hereinafter U.S. and International Costs]. For tables indicating the extent and range of socio-economic costs pursuant to expert analyses, *see* John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?,* 22 MANAGERIAL & DECISION ECON. 17, Tables A1-14 (2001) [hereinafter *Mega-Lawsuits*].

[12] *See* Howard J. Shaffer, Matthew N. Hall, & Joni Vander Bilt, Div. on Addictions, Harvard Medical School, Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis 43, Tables 13, 16, & 51 (1997) [hereinafter Harvard Addictions Meta-Analysis]; Press Release, Harvard Medical School, Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America (Dec. 4, 1997) (finding that from 0.84 percent, "the prevalence rate [for pathological gambling] for 1994-1997 grew to 1.29 percent of the adult population").

American Psychiatric Association (APA).[13] A 1994 resolution of the American Medical Association estimated the U.S. socio-medical costs at $40 billion per year, and these costs continued to increase.[14]

Associate Professor Howard J. Shaffer of the Harvard Division on Addictions reported in 1995: "Gambling is an addictive behavior, make no mistake about it .... Gambling has all the properties of a psychoactive substance, and again, the reason is that it changes the neurochemistry of the brain."[15] Addictions to gambling not only weaken society as a whole, but impose a great burden on both gamblers and non-gamblers alike in the form of increased taxes, based on social costs running into the billions of dollars per year.[16]

D. New Bankruptcies Caused by Government-Sponsored Gambling

Although it is difficult to measure exactly how much the increase in bankruptcies is related to the increase in gambling, a strong correlation exists. The reason for the difficulty in measuring the effects of gambling on bankruptcy can be compared to the difficulty of measuring the exact effects of the 1998 Asian financial crisis on the U.S. stock markets.

According to a 1997 study sponsored by the U.S. banking industry,[17] it was established that a significant relationship exists between legalizing gambling and causing new bankruptcies. However, the exact impact is difficult to measure due to the large amount of "noise" in the measurements. University of Utah Law Professor Richard I. Aaron believes the relationship between increased gambling and increased bankruptcy to be so strong and so obvious that to even question the relationship is "simply not worth asking."[18]

E. New Crime and Corruption Caused by Government-Sponsored Gambling

Virtually all pathological gamblers commit crimes, but most are not prosecuted because the crimes are against family members or close associates. Experts and studies report that between twelve-and-a-half and twenty-three percent of pathological gamblers will become incarcerated.[19] Political scientists note that governments should not encourage or promote criminal behavior or crimes—which governments do when they legalize, advertise, and promote gambling.[20]

Legalized gambling has many negative social aspects that make it a disingenuous policy for governments to support. Aside from the social justice debate that legalized gambling makes "poor people poorer," simple cost-benefit analysis shows the financial perils that gambling imposes on a nation. One representative analysis performed in 1996 indicates that the costs imposed on society are anywhere from two to six times greater than any possible benefits that can be gained from legalized gambling activities.[21]

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[13] AM. PSYCH. ASSN., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 615-18, Sec. 312.31 (1994) [hereinafter DSM-IV].

[14] Am. Med. Assoc., House of Delegates Resolution 430 (A-94) (1994).

[15] Ford Turner, *Neurochemicals Blamed for Compulsive Gambling,* 8 COMPULSIVE GAMBLING 1 (1995-1996) (citing article in the UNION-NEWS (Springfield, Mass.), May 10, 1995) (emphasis added).

[16] *See* Harvard Addictions Meta-Analysis, *supra* note 12. *See, e.g., Mega-Lawsuits*, *supra* note 11, at Tables A1-A4.

[17] SMR RES. CORP., THE PERSONAL BANKRUPTCY CRISIS 1997 (1997) [hereinafter BANKRUPTCY CRISIS].

[18] Richard I. Aaron, *How Much Does the Rise in Gambling Cause a Rise in Bankruptcy?*, 7 J. BANKR. L. & PRAC. 313 (1998).

[19] For a summary of these costs, see *Mega-Lawsuits, supra* note 11, at 47, Table A8, & 56-57; U.S. and International Costs, *supra* note 11, Table 8. The 1999 National Gambling Impact Study Commission reported that twenty-three percent of pathological gamblers and thirteen percent of problem gamblers had been incarcerated. The thirty-two percent of pathological gamblers who had been arrested were each calculated to have a lifetime arrest cost of $10,000. NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 7-14 (1999), *available at* http://gov.info.library.unt.edu/ngoc/reports/2.dpf [hereinafter NGISC FINAL REPORT].

[20] *See Mega-Lawsuits, supra* note 11, at 47-48, Tables A9-10, 57-60; U.S. and International Costs, *supra* note 11, at 9-10.

[21] *See E.* L. Grinols & J. D. Omorov, *Development or Dreamfield Delusions? Assessing Casino Gambling's Costs and Benefits,* 16 J.L. & COM. 49, 52-65 (1996) [hereinafter *Development or Dreamfield Delusions*].

As President Clinton summarized in his 1998 IMF address: "Strong government policies, [and] sound business practices...are needed to ensure growth into the future."[22] Entertaining recommendations of legalized gambling will only lead to minimal short-term benefits in exchange for significant long-term consequences that could take years to repair. In the developing and often ailing economies of the Pacific Rim and Russia, for example, policymakers should focus on recommendations that bring new economic expansion through "sound business practices," rather than utilize discredited gambling economics to redistribute wealth and create new social costs and negative externalities.

F. The U.S.–International Interface with Gambling

In 1996, the U.S. Congress passed the National Gambling Impact Study Commission Act[23] establishing a nine-member commission[24] to conduct a comprehensive study of the social and economic impacts of gambling in the United States.[25] Among other things, Congress was concerned that "the growth of various forms of gambling…could affect interstate and *international* matters under the jurisdiction of the Federal Government."[26] Congressional concern stemmed from the rapid expansion in the types of gambling available to the U.S. public and from the social costs associated with this expansion. The National Gambling Impact Study Commission (NGISC or 1999 U.S. Gambling Commission) concluded that "gambling is not merely a business like any other and that it should remain carefully regulated."[27] There was, however, dissent among the commissioners as to how much regulation was necessary. Notably, several Commissioners represented the gambling industry, but despite the gambling industry's influence, some of the Commissioners found that the evidence weighed so strongly against the gambling industry that it should be prohibited altogether.[28] Notwithstanding the differences of opinion, the 1999 U.S. Gambling Commission unanimously agreed that "the country has gone very far very fast,"[29] there should be "a pause in the expansion of gambling,"[30] and it should "perhaps even [be] prohibited."[31]

This analysis assesses the potential impact of government-sanctioned gambling and concludes that both domestic and international legalized gambling activities constitute international economic policy by default, which is inimical to U.S. and international long-term economic/legal stability of expectations, undermining the maintenance of a favorable legal order. An economic analysis of legalized gambling shows that because gambling activities addict significant proportions of any given population base, it imposes substantial costs on society by increasing the incidence of bankruptcy, crime, corruption, and poverty.

In the United States, tax revenue deriving from the industry has been insufficient to cover the costs it imposes on society.[32] For each tax dollar generated from legalized gambling during the 1990s, U.S. residents incurred three dollars in increased socio-economic costs due to bankruptcy, crime, and corruption.[33] The tax rate

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[22] President William J. Clinton, Message at the International Monetary Fund/World Bank Annual Meeting (Oct. 6, 1998) [hereinafter Clinton IMF Speech].

[23] National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 104th Cong., 2d Sess. (1996), codified at 18 U.S.C. § 1955 (1994 & Supp. 1998).

[24] *Id.* § 3(a).

[25] *Id.* § 4(a)(1).

[26] *Id.* § 2(3) (emphasis added).

[27] *See* NGISC FINAL REPORT, *supra* note 19, at 1-7.

[28] *See id.* at 1-7, App. I (Summary Statement by Comm'r James C. Dobson, Ph.D.).

[29] NGISC FINAL REPORT, *supra* note 19, at 1-7.

[30] *Id.*

[31] *Id.*

[32] *See generally* John W. Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities,* 39 ST. LOUIS U. L.J. 567 (1995) [hereinafter *Strategic Economic Base*]. *See National Gambling Impact & Policy Comm'n Act: Hearing on H.R. 497 before the House Comm. on the Judiciary*, 104th Cong., 1st Sess. (1995) [hereinafter *Congressional Gambling Hearing 1995*].

[33] John W. Kindt, *The Business-Economic Impacts of Licensed Casino Gambling in West Virginia: Short-Term Gain but Long-Term Pain,* 13 W. VA. U. PUB. AFF. REP. 22 (1996) [hereinafter *Business-Economic Impacts of Gambling*]. *See*

applied to the industry has not been adjusted to accommodate these built-in costs, making gambling a worthwhile investment at the micro-economic level only if significant revenue is "cannibalized" from outside the host jurisdiction.[34] As the socio-economic costs are inevitable, legalized gambling constitutes inherently deleterious macro-economic policy. If legalized gambling is allowed to proliferate, government-sponsored gambling destabilizes the global essential of "maintaining a favorable legal and economic order." This results because legalized gambling encourages costly addiction, exacerbating the occurrence of international criminal activities and poverty, and further stratifying society. Furthermore, gambling philosophies cannibalize entrepreneurial time and business development.

Statistics demonstrate that any strategic long-term economic plan—for the United States and/or the world economy—should not endorse legalized gambling.[35] Similar to the hypothetical legalization of prohibited drugs and the obvious costs, the high costs associated with legalized gambling are neither easily nor inexpensively mitigated. Even if all gambling industry tax revenues were directed at combating the associated increased costs in bankruptcies and crime, international societies would continue to bear unnecessary and untenable burdens.[36] In the United States during the mid-1990s, this fact was lost on decision-makers, which was perhaps explained in part by the enormous lobbying power of industry proponents.[37]

The United States shoulders the international responsibility of structuring its market system to encourage economic development and political stability, both domestically and abroad. With regard to gambling, the U.S. Congress has only partially met its burden. In acknowledging its jurisdiction over Internet gambling, for example, and the concomitant international economic concerns, the U.S. Congress has to some degree shielded the U.S. public from the potential destabilizing effect of "international economic cannibalization" via Internet gambling. Despite this, the reluctance of the U.S. Congress to provide federal regulation has allowed state legislatures to create and perpetuate unsound economic policies impacting the country as a whole. The commerce power of the U.S. Congress[38] easily extends to most domestic legalized gambling activities. Congress should thus reduce the costly transboundary economic raiding between states that accompanies legalized gambling by asserting its power over this traditionally state-dominated area.

Furthermore, U.S. and international policymakers should recognize the destabilizing effect legalized gambling will have on segments of the global economy, as well as the entire international economy. Rather than institute piecemeal protectionist measures which exacerbate the cannibalistic "us against them" approach often prominent in domestic and foreign policy on the issue, policymakers must engage in cooperative efforts to ensure the healthy growth of the global economy. In part, this goal would be accomplished through bilateral and multilateral treaties involving friendship, commerce, and navigation (FCN treaties) to prohibit international transboundary economic raiding via government-sanctioned gambling activities. As an example of one initial policy, it should be established that the international populace might "move to the legalized gambling," but the gambling should not be allowed to "move to the gambler" across national boundaries—thus prohibiting Internet gambling.

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generally The National Impact of Casino Gambling Proliferation: Hearing Before the House Comm. on Small Business, 103d Cong., 2d Sess. (1994) [hereinafter *Congressional Gambling Hearing 1994*].

[34] See generally John W. Kindt, *Legalized Gambling Activities as Subsidized by Taxpayers*, 48 ARK. L. REV. 889 (1995) [hereinafter *Gambling Subsidized*].

[35] *See generally Strategic Economic Base*, *supra* note 32.

[36] *See generally Gambling Subsidized*, *supra* note 34.

[37] John W. Kindt, *Follow the Money: Gambling, Ethics, and Subpoenas*, 556 ANNALS AM. ACADEMY POL. & SOC. SCI. 85, 85 (1998) [hereinafter *Follow the Money*].

[38] U.S. CONST. art. I, § 8.

PART II

Delimitation of Problems

A. The U.S. Gambling Landscape

Once New Hampshire revived the lottery in 1964,[39] gambling became more publicly accepted and widespread in the United States. As of 1999, thirty-seven states and the District of Columbia operated lotteries, forty-three states endorsed pari-mutuel wagering on horse races, fifteen states permitted pari-mutuel wagering on greyhound racing, two states allowed sports wagering, and twenty-eight states permitted casino gambling.[40] Gambling also exists legally or illegally in a number of states in the form of "convenience gambling" and "electronic gambling devices" (EGDs), such as slot machines, video poker, and video keno. These are often placed in public places, such as bars, truck stops, convenience stores, restaurants, and supermarkets. In some states, private sector businesses are allowed to operate EGDs, and in other states, EGDs are operated by the state lottery. In 1982, U.S. consumers spent $4.2 billion in casinos, and $2.2 billion on lottery tickets.[41] By 1997, these figures had increased to $27 billion and $16.6 billion, respectively.[42] By 2000, the gambling industry's combined gross revenues were $61.4 billion.[43] There was also growing evidence from experts that for every one dollar in new legalized gambling, there were one to two dollars (or more) in new *illegal* gambling. [44] While increased legalization and access stimulates the legal gambling market, it also grows an illegal shadow market that competes by providing (1) better odds; (2) better credit; (3) better service; and (4) a heightened sensation factor.[45]

B. The Myth of Gambling as Entertainment: Gambling as a U.S. and International Problem

According to Nobel Prize-winning economist Paul Samuelson,[46] it is basic economics that:

> [Gambling] involves simply sterile *transfers* of *money* or *goods* between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, where the main purpose after all is to "kill" time, gambling subtracts from the national income.[47]

Proponents of the gambling industry argue that gambling is just another form of entertainment—like playing a round of golf, watching a movie, or going to an opera—and as such should be subject to similar regulatory standards. Critics of the gambling industry claim that gambling is more analogous to illicit drug use than to acceptable forms of national entertainment for one reason in particular—gambling, like illicit drug use, imposes enormous costs on society which are not similarly imposed by the entertainment industry. Although many countries have experienced the destabilizing influence of government-sponsored gambling, only two

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[39] For a brief history of gambling in the United States, see NGISC FINAL REPORT, *supra* note 19, at ch. 2.

[40] NGISC FINAL REPORT, *supra* note 19, at 2-1 to 2-15.

[41] Erika Gosker, Note, *The Marketing of Gambling to the Elderly*, 7 ELDER L.J. 185, 187 (1999); Patricia Edmonds, *Gambling's Backers Find It Isn't a Sure Bet*, USA TODAY, Dec. 29, 1995, at Al.

[42] Gosker, *supra* note 41, at 187; Edmonds, *supra* note 41, at Al.

[43] *Gross Annual, supra* note 10, at 32.

[44] Statement and Testimony of William G. Hall, Exec. Dir. Ill. Econ. & Fiscal Comm'n, before the Ill. Legislative Gambling Task Force, Springfield, Ill., July 20, 1996; *see* Statement of William G. Hall, Exec. Dir., Edward Boss, Chief Econ., Ill. Econ. & Fiscal Comm'n, Gambling in Illinois: Its History, Revenue, and Future Trends, presented to the Ill. Legislative Gambling Task Force, Springfield, Ill., July 20, 1996. Gambling critics indicated that the series of socio-economic negatives reported in the seriatim 1996 hearings of the Illinois Legislative Task Force on Gambling were so embarrassing to gambling proponents that those public hearings were never printed for dissemination to the public and press.

[45] *Congressional Gambling Hearing 1995, supra* note 32, at 60-98.

[46] Paul Samuelson won the Nobel Prize in Economic Science in 1970.

[47] PAUL A. SAMUELSON, ECONOMICS 425 (10th ed. 1976) (emphasis added).

countries have in some measure quantified its costs: the United States and Australia. As Professor Earl Grinols[48] summarized the basic economic principle: "[t]hese costs are quite high and quite real."[49]

1. Government-Sponsored Gambling as Creating New Pathological (Addicted) and Problem Gamblers, New Bankruptcies, New Crime, and New Corruption

a. Addiction

It is significant to reiterate that as Associate Professor Howard Shaffer of the Harvard Division on Addictions has concluded: "Gambling is an addictive behavior, make no mistake about it…. Gambling has all the properties of a psychoactive substance, and again, the reason is that it changes the neurochemistry of the brain."[50] According to Henry Lesieur, Professor Emeritus and President of the Institute on Problem Gambling, between five and six percent of the U.S. population has a gambling problem.[51] This classification includes both "pathological" and "problem" gamblers. Pathological gambling is recognized in the APA's *Diagnostic and Statistical Manual of Mental Disorders*[52] as a type of addictive behavior.[53] The APA describes the essential feature of pathological gambling as "the persistent and maladaptive gambling behavior that disrupts personal, family, or vocational pursuits."[54] According to the APA, a pathological gambler:

> May be preoccupied with gambling (e.g., reliving past gambling experiences, planning the next gambling venture, or thinking of ways to get money with which to gamble. Most [pathological gamblers] say that they are seeking "action" (an aroused, euphoric state) even more than money. Increasingly larger bets, or greater risks, may be needed to continue to produce the desired level of excitement. [Pathological gamblers] often continue to gamble despite repeated efforts to control, cut back, or stop the behavior.... A pattern of "chasing" one's losses may develop, with an urgent need to keep gambling (often with larger bets or the taking of greater risks) to undo a loss or series of losses.... The individual may lie to family members, therapists, or others to conceal the extent of involvement with gambling. When the individual's borrowing resources are strained, the person may resort to antisocial behavior (e.g., forgery, fraud, theft, or embezzlement) to obtain money.[55]

A study financed by the gambling industry itself showed that one-half percent,[56] or 1.5 million people[57] of the U.S. population, became new pathological gamblers between 1994 and 1997, and that two percent of the U.S. population,[58] or 3.5 million people, became new problem gamblers during the same period.[59] Statistics

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[48] Earl Grinols is a Professor of Economics at the University of Illinois at Urbana-Champaign.

[49] Earl L. Grinols, *Gambling as Economic Policy: Enumerating Why Losses Exceed Gains*, ILL. Bus. Rev. 6 (1995).

[50] Turner, *supra* note 15, at 1.

[51] M. Neil Browne, *The Role of Ethics in Regulatory Discourse: Can Market Failure Justify the Regulation of Casino Gaming?*, 6 NEB. L. REV. 37, 48 (1999).

[52] DSM-IV, *supra* note 13, at 615-18.

[53] Technically, pathological gambling was classified as an impulse control disorder, but until gambling-industry research monies intervened, the academic trend was toward classifying pathological gambling as an addiction. *Compare* Turner, *supra* note 15, at 1, *with* David Ferrell & Matea Gold, *Casino Industry Fights an Emerging Backlash,* L.A. TIMES**,** Dec. 14, 1998, at Al.

[54] DSM-IV, *supra* note 13, at 278.

[55] *Id*. at 278-79.

[56] Harvard Addictions Meta-Analysis, *supra* note 12, at 43, Table 13.

[57] Multiplying the prevalence percentage for 1997 with the yearly population number from the U.S. Bureau of the Census yields 3.5 million for an increase of 1.3 million new pathological gamblers. However, the Harvard Addictions Meta-Analysis concludes that there were 4.4 million pathological gamblers in 1997, which would yield 1.3 million to 2.2 million new pathological gamblers. Since the Harvard Addictions Meta-Analysis did not include its calculations, 1.5 million new pathological gamblers is a conservative figure. Harvard Addictions Meta-Analysis, *supra* note 12, at 41, Table 13 & 51, Table 16.

[58] *See supra* notes 56-57 and accompanying text.

show that the comparable pathological and problem gambling rates among teens were double those of the U.S. adult population,[60] and furthermore, the elderly were particularly vulnerable to the lures of gambling.[61] Considering that these results were revealed often by industry-financed studies, these numbers were particularly alarming.

b. Bankruptcy

A conservative estimate shows that between 1994 and 1997, approximately twenty percent of new pathological gamblers in the United States filed for personal bankruptcy,[62] at an average cost of $29,650.[63] The total cost to society[64] of these new bankruptcies conservatively totaled $9 billion.[65] Problem gamblers suffered much the same fate as pathological gamblers. Between 1994 and 1997, the bankruptcies of problem gamblers cost society approximately $30 billion.[66] Taken together, the United States absorbed approximately $40 billion in new bankruptcy costs from 1994 to 1997 directly attributable to the legalization of gambling.[67]

c. Crime Costs of Pathological (Addicted) and Problem Gamblers

The speed with which legalized gambling spread throughout the United States in the 1990s, and the limited sources of funding available to study its impact prevented the production of many necessary impact studies. Despite a dearth of crime statistics, authoritative information suggests that the incidence of gambling-related crime is substantial. In its analysis of the economic and social cost impact of gambling, a comprehensive 1994 report by the Florida Governor's Office established a correlation between the legalization of casinos and the crime costs to society. Specifically, the report found that each new pathological gambler costs a state $1,624 for probation related expenses, $858 for community control related expenses, $19,987 in incarceration related expenses, and $363 in post-secondary release supervision related expenses.[68]

According to the Compulsive Gambling Center in Baltimore, Maryland, virtually all pathological gamblers commit crimes, but generally seventy-five percent of pathological gamblers are not caught or the criminal charges are dropped.[69] Some gamblers steal—from employers, insurance companies, family members, and close associates—to repay their debts or to feed their gambling habits.[70] Other gamblers resort to prostitution or drug

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[59] Multiplying the prevalence percentage for 1997 with the yearly population number from the U.S. Bureau of the Census yields 13 million, for an increase of 5.4 million new problem gamblers. However, the Harvard Addictions Meta-Analysis concludes that there were 11 million problem gamblers in 1997, which would yield 3.4 million to 5.4 million new problem gamblers. Since the Harvard Addictions Meta-Analysis did not include its calculations, 3.5 million new problem gamblers is a conservative figure. Harvard Addictions Meta-Analysis, *supra* note 12, at 43, Table 13 & 51, Table 16.

[60] As of 1997, there were 7.9 million pathological and problem gamblers between the ages of 10 and 19, and 7.5 million pathological and problem gamblers age 20 and older. U.S. and International Costs, *supra* note 11, figure 5, table 10.

[61] Gosker, *supra* note 41, at 195.

[62] BANKRUPTCY CRISIS, *supra* note 17, at 118 (commissioned by the banking/credit community, Am. Bankers Ass'n); Business Wire, *New National Study Shows Correlation Between Gambling Growth and the Significant Rise in Personal Bankruptcies*, BUSINESS WIRE FEATURES, June 27, 1997.

[63] *See generally* BANKRUPTCY CRISIS, *supra* note 17, at 116-30.

[64] *See id.* These costs are passed along to customers. *See id.* at 118.

[65] *Id.* at 123-24. Much higher costs can be extrapolated from the projections in WEFA Group, *The Financial Cost of Personal Bankruptcies,* at 1, 15, 19 (Feb. 1998).

[66] *See generally* BANKRUPTCY CRISIS, *supra* note 17 (concluding in 1997 that legalized gambling: (1) was the fourth leading cause of bankruptcies; (2) was the fastest growing cause; (3) carried a hidden cost per household of $408; and (4) carried a U.S. total of $40 billion a year).

[67] *Id.*

[68] FLA. GOV. OFF., CASINOS IN FLORIDA: AN ANALYSIS OF THE ECONOMIC AND SOCIAL IMPACTS 72 (1994).

[69] Interview with Dr. Valerie Lorenz, Exec. Dir., Compulsive Gambling Ctr., Inc., Baltimore, Md. (Dec. 10, 1992). *See, e.g., Mega-Lawsuits, supra* note 11, at 46-47, Tables A6-8,56-57.

[70] *Id.*

dealing.[71] In an extreme example of what criminal acts can follow from gambling addiction, one Illinois mother allegedly killed her two children in separate incidents and was imprisoned for trying to collect $200,000 of their insurance money so she could continue to gamble.[72]

Two-thirds of pathological gambling debtors contemplate suicide.[73] For example, the coroner's office linked several suicides in the Joliet, Illinois area to losses suffered at local casinos, including a husband-wife double suicide.[74] Such a scenario can develop quickly, as exemplified by a long-time police officer whose accumulated gambling losses led him to commit suicide in a Detroit casino shortly after it opened in 1999.[75]

By 2000, the economic and social disruption in the United States caused by pathological and problem gambling was extensive. Extrapolated to the entire community of potential new pathological gamblers in the United States, the unadjusted (and thus more conservative) cost in 1997 with respect to identified expenses totaled approximately $34.2 billion.[76] When these statistical trends were extrapolated to any potentially saturated gambling economy, particularly in developing countries, these statistics suggested significant social disruption.

d. Organized Crime

Gambling has traditionally been associated with organized criminal activities,[77] but stringent industry regulation in the United States has largely discouraged, although not eliminated, organized crime influences. However, other countries without substantial and stronger law enforcement mechanisms have not managed to curb such abuses. For example, historically, legalized gambling venues were rife with money laundering activities often linked to organized crime.[78] If the stringent U.S. law enforcement mechanisms have not eliminated all influences from organized crime, *a fortiori*, the governmental authorities and economies of those countries lacking efficient law enforcement infrastructures are at significant risk. In his statement before the U.S. Permanent Subcommittee on Investigations, Russian General Mikhail Yegerov cited gambling as one of the interests (along with money laundering, illegal money transactions, prostitution, and drug related industries) of

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[71] Vanessa Hua, *Asian American Trend Reflected in Crime, Breakdown of Families,* L.A. TIMES, Dec. 15, 1998, at A47.

[72] Cam Simpson, *Baby Death Plot Told: Suburb Mom Indicted in Insurance Scheme,* CHI. SUN-TIMES, Mar. 7, 1998, at 1-2.

[73] *See Study Links Suicide Increase to Gambling*, N.Y. TIMES, Dec. 16, 1997, http://webservl.startribune.com/cgi-bin/stOnLine/article?thisSlug=suicl6. For the complete study, see David P. Phillips, Ward Welty & Marisa M. Smith, *Elevated Suicide Levels Associated with Legalized Gambling*, 27 SUICIDE & LIFE-THREATENING BEHAV. 373 (1997). *See* Press Release, U. of Cal. San Diego, Increase in Legalized Gambling Is Linked to Higher Suicide Rates in UCSD Study (Dec. 15, 1997); Shaun McKinnon, *Study Links Gambling, Suicide,* LAS VEGAS REV. J., Dec. 15, 1997, at B1. *See generally* Sandra Blakeslee, *Suicide Rate Is Higher in Three Gambling Cities: Study Shows as Betting Rises in U.S.,* N.Y. TIMES, Dec. 16, 1997, at A10. *See also* Stephen Braun, *Lives Lost in a River of Debt*, L.A. TIMES, June 22, 1997, at Al. This extensive article reports how coroner's subpoenas had to be issued to Illinois casinos to discover the $100,000s of dollars lost gambling by several suicides, and these problems were not reported as such in the local news until after this article was printed on page one of the L.A. TIMES. *See id. See generally*, Art Nadler, *Nevada Suicide Rate No. 1 in U.S.*, LAS VEGAS SUN, Aug. 29, 1997.

[74] Braun, *supra* note 73, at Al.

[75] Jim Suhr, *Officer Kills Himself in Casino after Losing at Blackjack Table*, ST. J. REG. (Springfield, Ill.), Jan. 28, 2000, at 3.

[76] *See supra* note 57 and accompanying text.

[77] *See, e.g., Congressional Gambling Hearing 1995, supra* note 32 (sworn testimony of former organized crime member William Jahoda).

[78] *See Edict in Turkey Closes Casinos in Anti-Crime Move*, CHI. TRIB., Feb. 12, 1998, § 1, at 16 [hereinafter *Edict in Turkey Closes Casinos*]; Darren Butler, *Casino Industry Nears Final Days in Turkey*, ST. LOUIS POST-DISPATCH, Feb. 4, 1998, at A8; Frank Walker, *Casino's Elite Bet Millions, but Lived in Squats*, SUN HERALD (Austl.), May 7, 2000, available at 2000 WL 6351932. For U.S. concerns on casinos and money laundering, see U.S. GEN'L ACCOUNTING OFF., MONEY LAUNDERING: RAPID GROWTH OF CASINOS MAKES THEM VULNERABLE (1996) [hereinafter GAO REPORT]; Assoc. Press, Wash., D.C. Bur., *U.S., Allies Want Crackdown on Money Laundering*, June 22, 2001.

the twenty-four Russian organized crime groups operating in the United States.[79] Furthermore, there is growing evidence that for every dollar in new legalized gambling activities, there are at least one to two dollars in new illegal gambling,[80] paving the way for increased avenues of operation for the type of international organized crime groups described by General Yegerov.

2. Why Governments Legalize Gambling

a. Illusory Promises

Historically, gambling representatives repeatedly described gambling as a tool for economic development that created new jobs for depressed regional economies[81] and proponents of gambling argued for its legalization by promising new tax revenues for various government units struggling to find funding.[82] Studies demonstrated that these promises were generally illusory promises.[83] A basic concept usually ignored in gambling-financed studies was the utilization of valid "before and after" data, because such studies almost invariably reflected unfavorably on gambling activities.

Accordingly, a 1996 analysis of Illinois' employment statistics taken before and after the widespread legalization of casino gambling confirmed that little, if any, growth was directly attributable to the new industry.[84] Because gambling transferred "money from one local pocket to another and from one local sector to another [gambling did] ... not lead to a net increase in regional demand."[85] A given area could realize growth only when it attracted buyers from outside the area, thus enlarging the local economy.[86] Secondly, assuming that a gambling establishment did attract buyers from outside the area, usually designated as the thirty-five-mile or 100-mile "feeder markets," the host area would subsequently realize growth only if the revenue generated from the outside buyers was spent in the host jurisdiction.[87] Thirdly, a host area would realize net employment growth only when the gambling establishment's employees lived in the host area at the time legalization was

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[79] *Hearing on Int'l Crime and its Impact on the United States Before the Permanent Subcomm. on Investigations of the Senate Comm. on Gov't Affairs,* 103rd Cong. 76 (1994) (prepared statement of General Mikhail K. Yegerov).

[80] *See supra* note 44 and accompanying text.

[81] ROBERT GOODMAN, LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT 16-18 (Ctr. Econ. Dev., U. Mass.-Amherst 1994) [hereinafter CED REPORT]; *Congressional Gambling Hearing 1994, supra* note 33 (testimony of Prof. Robert Goodman, U. Mass.); Paul Glastris & Andrew Bates, *The Fool's Gold in Gambling, States Learn How Hard It Is to Control Gambling*, U.S. NEWS & WORLD REP., Apr. 1, 1991, at 22; *Development or Dreamfield Delusions, supra* note 21, at 49, 66.

[82] For a specific industry proposal, which involves land-based casino-style gambling in Chicago, see CHICAGO GAMING COMM'N, ECONOMIC AND OTHER IMPACTS OF A PROPOSED GAMING, ENTERTAINMENT AND HOTEL FACILITY (May 19, 1992) (report prepared by Deloitte & Touche, Chicago, Ill.). The new tax revenue projections were substantial. *Id.* at 270-71. However, several problems involving these calculations meant that there were substantial public misperceptions about the new tax revenues to be generated by the projected casino complex in Chicago. John W. Kindt, *The Economic Impacts of Legalized Gambling Activities,* 43 DRAKE L. REV. 51, 55-56 nn.28-43 (1984) [hereinafter *Economic Impacts*]. These problems were also identified in analyses by several Illinois government units. For a summary of these problems, see Press Release, Off. Ill. Gov. James Edgar, Governor Warns Land-Based Casinos Could Bring Crime Surge as well as Overall Loss of Jobs and State Revenues (Sept. 29, 1992). *See also* Earl Grinols, *As Revenue Producer, Gambling Is Bad Debt*, CHI. SUN-TIMES, Dec. 7, 1991, at 18. *See generally*, Mark E. Stover, *Revenue Potential of State Lotteries,* 15 PUB. FIN. Q. 428 (1987). For an analysis of taxation in the context of casino gambling, *see* Mary O. Borg et al., *The Incidence of Taxes on Casino Gambling,* 50 AM. J. ECON. & SOC. 323 (1991).

[83] *See generally Development or Dreamfield Delusions, supra* note 21, at 49.

[84] *Id.* at 80.

[85] *Id.*

[86] *Id.*

[87] *Id.* (finding that "[c]asinos that attract large flows of external revenues but remove equally large flows do not enhance the local economy").

considered and then continued to do so.[88] The minimal employment effect in Illinois suggested that one or more of these requirements were not met in most situations[89] and that the promises made by the industry fell far short of meeting expectations. Even if all of the positive factors were present and the host area realized economic development from the presence of legalized gambling, it was usually in the temporary form of a "boom and bust" cycle.

The "boom and bust" phenomenon is due largely to the "cannibalistic" nature of gambling. Since the gambling industry is not taxed sufficiently to cover the social costs it imposes on society,[90] a gambling economy is not economically beneficial to a local area unless it can draw sufficient revenue from bettors outside the tax jurisdiction to counter the social costs inherent in gambling activities. Neighboring "feeder market" jurisdictions are thereby pressured to reclaim their lost revenue base, legalize gambling, and begin a race to the bottom that often leads to economic failure. These failures:

> Underscore the *economic cannibalism* that looms ahead as casinos proliferate. Casinos thrive as long as they lure out of towners. But once the wagering visitors get their own casino back home, the locals tend to be left holding the bag. *This boom and bust pattern is pandemic*, reports William R. Eadington, an economist, who heads the University of Nevada's Institute for the Study of Gambling and Commercial Gaming in Reno. In place after place, he says, a casino-based economy first soars but then *slumps into a black hole.*[91]

The town of Gardena, California constituted a microcosmic example of this phenomenon. In the mid-20th century, Gardena, California brought in more money from gambling than any other city in the state.[92] Tax revenue from its six prosperous card rooms financed "virtually every aspect of the city's operations, from its police to its parks."[93] When California passed Proposition 13—a "tax-limitation initiative that sank many towns into debt"[94]—many cities turned to poker clubs to make up for lost revenues,[95] usurping Gardena's virtual monopoly over local card clubs. By 1998, there was only one card room left in Gardena, and more importantly, storefronts were closed with no major shopping centers or fine restaurants left anywhere in the city.[96] Tom Parks, who ran two of the card clubs, noted, "A lot of surrounding businesses...are gone now."[97] There was insufficient diversity in Gardena's economic base to allow it to withstand the loss of poker room revenue.[98] As Richard K. Propster, the former police chief in Gardena, summarized, "There were stories for years about Sears Roebuck...looking for a site in this area and not choosing Gardena at least partially because [of the card rooms]."[99] Tom Parks described the psychological impact of this boom and bust phenomenon: "I don't think people really realized how dependent they were on the [card] clubs until they started closing up."[100] In an economic irony reminiscent of the Twilight Zone, by 1998 Gardena appeared doomed to repeat and intensify this same tragic scenario. In 1998, Gardena was millions of dollars in debt and looking to a proposal by Larry Flint, the avant-garde magazine mogul, to build a two-story, $30-million card room with a companion sports bar and restaurant.[101]

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[88] *See generally, Development or Dreamfield Delusions, supra* note 21, at 49.
[89] *Id.*
[90] *See generally, Gambling Subsidized, supra* note 34; *Development or Dreamfield Delusions, supra* note 21, at 49; U.S. and International Costs, *supra* note 11.
[91] Hellman, *Casino Craze*, TRAVEL HOLIDAY, Mar. 1994, at 86 (citing to Prof. William Eadington, U. Nev.-Reno) (emphasis added).
[92] David Ferrell, *Gardena's Changing Fortunes; Living by Casinos, Losing by Casinos*, L.A. TIMES, Dec. 14, 1998, at A6.
[93] *Id.*
[94] *Id.*
[95] *Id. See also*, Ferrell & Gold, *supra* note 53, at Al.
[96] Ferrell, *supra* note 92.
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] Ferrell, *supra* note 92.

b. Industry Pressure and Political Influence

Industry potential for economic reward is enormous. Arguably, the enormous profit margins inherent in legalized gambling activities can be attributable to gambling's addictive character. A disproportionate percentage of the gambling industry's revenue comes from pathological and problem gamblers whose "entertainment" transforms to compromise and eventually destroy their economic and social stability. Despite the extent to which society at large is financially burdened by legalized gambling, decisionmakers mistakenly afford the industry the luxury of avoiding internalizing the costs of gambling's negative externalities and of operating under the same tax structure as less costly industries. Furthermore, legalized gambling is inherently monopolistic with regard to the rest of the economy. "Because the nature of gambling requires government oversight and restriction (the limitation of competition), it is an industry that offers artificially high profits for the few fortunate enough to be licensed."[102] For example, one Illinois riverboat resulted in a reported tripling of the original $7 million investment after the casino was in business for only six months.[103] Professor Grinols observed that "[t]his kind of profit drives others to seek to expand gambling for their own profit."[104]

The success of industry expansion efforts in the United States has derived from "the extraordinary amount of money…legally used to overwhelm any opposition"[105] in both the political and the academic arenas. One way in which the gambling industry used its economic strength to overwhelm its competitors was by subsidizing its own body of data that was effectively unreviewable by the larger academic community.[106] As noted expert Professor Henry Lesieur concluded, "research funded by the industry [was]...going to dominate the dialogue"[107] for the early years of the 21st century.

Another equally problematic aspect of casino-interest money could be found in its lobbying power. Pro-gambling interests became the 1990s' single most powerful lobbying group in many individual state legislatures.[108] In Illinois, for example, one casino company offered $20 million to two political insiders to help secure a casino license.[109] In 1995 in Virginia—a state with only some charitable gambling and a recently enacted lottery—casino proponents hired forty-eight lobbyists, who represented practically every lobbying firm in Richmond, in an attempt to prohibit any anti-gambling lobbyists from competing. The pro-casino interests then spent between $820,000 and $1.1 million during a forty-five-day legislative session in a failed attempt to legalize riverboat casinos.[110] As reported by the Center for Responsive Politics and the National Coalition Against Legalized Gambling (NCALG), data released by the Federal Election Commission revealed that by the end of the 1996 election cycle, contributions to federal candidates totaled $5.4 million, including $3.6 million in soft money. This was a 700% increase over the $457,600 contributed in 1991–92.[111] Interestingly, both the Democrats and the Republicans were receiving similarly large amounts from the gambling industry,[112] although sometimes from different gambling industry constituencies.

In congressional hearings before the U.S. Committee on the Judiciary, Representative Frank R. Wolf voiced his concern "that the flood of casino money into the states...[would] drown out the voices of ordinary citizens, and overwhelm state public officials."[113] Incidents in various states suggested that these concerns were

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[102] Grinols, *supra* note 49.

[103] *Id.* (citing CHI. SUN-TIMES, Apr. 18, 1994).

[104] *Id.*

[105] *Congressional Gambling Hearing 1995, supra* note 32, at 520.

[106] Ferrell & Gold, *supra* note 53.

[107] *Id.*

[108] CED REPORT, *supra* note 81, at 190.

[109] Jim Drinkard, *Gambling Uses Big Money to Woo States*, NEWS TRIB. (Jefferson City, Mo.), Feb. 25, 1996.

[110] *Congressional Gambling Hearing 1995, supra* note 32, at 19; Rick Snider, *Riverboat Hobbyists Spend Record in Virginia*, THE BLOOD HORSE, July 22, 1995, at 3336.

[111] Bernie Horn, *Gambling Interests Spent over $3.6 Million on "Soft Money" to Buy Political Influence with the National Parties*, Press Release, National Coalition Against Legalized Gambling, (Mar. 20, 1997) (on file with author).

[112] Federal Election Commission Data, as compiled by the Center for Responsive Politics and the National Coalition Against Legalized Gambling (1997).

[113] *Congressional Gambling Hearing 1995, supra* note 32, at 19.

well-founded.[114] In 1998, in California alone, gambling proponents contributed over $100 million to pro-gambling campaigns and political interests.[115] A review of parallel problems in several states has disclosed a pattern of gambling industry abuses of the political process.

i. Iowa

In Waterloo, Iowa, voters rejected casino gambling on May 17, 1994. The gambling interests were powerful enough that the issue was placed on the ballot again only four months later on September 27, 1994.[116] The gambling industry spent $40 for each dollar spent by its opponents, yet the initiative failed.[117]

ii. Florida

In 1994, the gambling industry spent over $16.5 million, approximately $10 for each dollar spent by its opponents, in their attempt to convince Florida voters to open their $32 billion tourist market to the casino industry.[118] This $16.5 million was more than the combined totals spent in the 1994 gubernatorial campaigns of then Governor Lawton Chiles and future Governor Jeb Bush. Florida voters voted against casino gambling in 1994, this time by a margin of over two-to-one.[119]

iii. Missouri

In Missouri, pro-gambling forces were able to place the issue on the ballot in November of 1994—only a few months after Missourians had voted against casino gambling in April. By increasing its November pro-gambling campaign expenditures to $10 million, a ratio of $78-to-$1 (almost doubling its expenditures from the April election), the pro-gambling interests won.[120]

Nat Helms, a former high-ranking member of the gambling industry's 1994 campaign to bring video gambling machines to Missouri, emphasized the "buy the opposition" strategy of pro-gambling interests: "Because of the unlimited money it generates, gambling also generates unlimited potential for abuse….I have never met anybody who could resist a full-court press by the gambling industry."[121]

iv. Arkansas

In 2000, Arkansas was faced with Amendment 5, a proposed constitutional amendment that would grant permission for casinos to be built in six Arkansas counties[122] despite the defeat of a similar 1995 proposal. Although a poll showed that fifty-one percent of the public in 2000 was against Amendment 5, Democratic Party and pro-gambling operative Glen Hooks stated: "I intend to run an intensive media campaign and an extensive grassroots campaign over the next 32 days .... We're going to be at every festival, at every block party, on the air with TV and radio."[123]

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[114] *See, e.g.,* GAO REPORT, *supra* note 78.
[115] *See, e.g.,* NGISC FINAL REPORT, *supra* note 19 (summary statement by Comm'r James C. Dobson, Ph.D.).
[116] Grinols, *supra* note 49, at 9.
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] Drinkard, *supra* note 109.
[122] James Jefferson, *Casino Group Plans Campaign in Face of Poor Results,* AP NEWSWIRES, Oct. 5, 2000, *available at* WL, *Allnews Database,* 10/5/00 APWIRES 18:41:00.
[123] *Id.*

On the national level, gambling opponents posited that as early as 1996, the formation of the National Gambling Impact Study Commission was subjected to the beginnings of similar pressures when the American Gaming Association spent $860,000 on federal lobbying. [124]

3. International Case Examples of Gambling Economies

a. Public Understanding of Gambling Impacts by Visualizing the "Island Economy"

For the public to understand the cost/benefit impacts of a gambling economy, it is often helpful to visualize casino gambling at the center of a thirty-five-mile radius designated the "thirty-five-mile feeder market." Visualizing an island with a limited radius which introduces casino gambling to the center of its island economy further simplifies the understanding that casino gambling merely cannibalizes its own citizens—even when island visitors can be enticed to bypass the water boundaries surrounding the island. In 2001, it was postulated that Hawaii, for example, would serve as a good "before-and-after" economic "petri dish" if legalized gambling was ever introduced to the Honolulu area. However, policymakers in Hawaii, and non-island economies as well, would be better served to examine the impacts of legal and illegal gambling on the island of Macau.

b. Macau: The Practical Example of the "Island Economy"

LIGHT DRAWS MOSQUITOES, CASINOS DRAW TRIADS[125]

> One by one, the judge read out their names and verdicts. Fat Woman. Scarface. Queen of Smuggling. And the notorious Broken Tooth, sentenced to 15 years as the boss of the 14K triad. As part of a 10,000-strong underground society, these characters lorded over this territory for years, presiding over its nine casinos and engaging in crimes such as money laundering, loan sharking, and drug smuggling.[126]

This is some of the 1999 news from Macau, a small picturesque island off the coast of mainland China. It encompasses a mere nine and one-fifth miles and has a population of less than half a million. The island is best known for its casino industry headed by Stanley Ho, who was granted a monopoly license over the industry in 1962.[127] His license was scheduled to expire on December 31, 2001.[128]

As a small island with little economic diversity, Macau exemplifies a type of "economic petri dish" for analyzing and visualizing the socioeconomic impacts of gambling activities. In 1996, gambling accounted for approximately thirty percent of Macau's gross domestic product, and gambling taxes accounted for about half of Macau's total government revenues. The island is governed by corruption and crime. By 1998, with profits waning in the face of competition from gambling resorts in South Korea, the Philippines, and Malaysia, and with the pending expiration of Stanley Ho's license, gang factions began jockeying for control over Macau's gambling industry.[129] In 1998, there were thirty-seven people killed in mostly gang-related homicides. The list of those killed in Macau since 1996 included the gambling inspector, the marine police chief, the chauffeur for the undersecretary of security, and members of the 14K gang who were hacked to death by hit men for the rival Rolex gang.[130] The list of those targeted but not killed on the island in the same period included Police Chief

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[124] Bernie Horn, *The American Gaming Association Paid Outside Lobbyists $232,000 to Stack the Federal Gambling Study Commission*, Press Release of National Coalition Against Legalized Gambling, Mar. 18, 1997.

[125] Bay Fang, *China Embraces a Speck Called Macau*, U.S. NEWS & WORLD REP., Dec. 20, 1999, at 40 [hereinafter Fang].

[126] *Id.*

[127] Kao Chen, *Open Warfare Erupts as Handover Looms in Macau*, THE STRAITS TIMES (Singapore), Feb. 7, 1999.

[128] *Id.*

[129] *Id.*

[130] Fang, *supra* note 125, at 40.

Antonio Batista, whose car was blown up, and five police officers.[131] The bomb that injured the five police officers also injured ten journalists.[132]

The island obviously suffers from a lack of regulatory oversight. No measures were in place to stop the transfer when Zhang Xiaoming, former manager of a state-owned Chinese company, funneled $850,000 in public funds through a Macau trading company and into the Macau branch of the Bank of China. Within five months, he lost all the money gambling in Macau's casinos. He was executed in 1991.[133] Joao Severino, then editor of the territory's Portuguese-language daily, stated that "the administration has lost control, and the triad knows it."[134] Macau legislator Antonio Ng confirmed this conclusion and stated "we cannot control the situation because our policemen are still influenced by criminal members."[135]

c. Australia

Australia has the highest per capita incidence of gambling in the world, with more than eighty percent of its population placing bets.[136] With at least one casino in every major city, by 1999 Australia's gambling market was virtually saturated.[137] In 1999, the Australian government released a report from the Productivity Commission Inquiry regarding the Study of the Gambling Industry.[138] The findings included in the report emphasized the enormity of the problems Australia faced because of its government's commitments to the legalized gambling industry.

Approximately one percent of the Australian population were delimited as having "severe" problems with gambling,[139] while another two and one-tenth percent of the population had "significant" problems with gambling,[140] and yet another six and three-tenth percent of the population had some problem with gambling.[141] Of the total Australian problem gamblers, it was estimated that approximately fifty percent committed criminal offenses to support their gambling.[142] In Australia, problem gamblers accounted for fifteen percent of regular gamblers, and contributed between thirty-five and thirty-nine percent of all gambling revenue.[143] The annual losses for a problem gambler averaged $12,000, and between seven and eight (7.3) people were adversely affected by each problem gambler.[144] Children whose parents had a problem with gambling were more likely to develop problems themselves,[145] and the most immediate concern for children's welfare in problem gambling households was poverty and the resulting deprivation of life's essentials, including food.[146] By 1999, Australians were losing $7.25 billion a year to gambling, nearly twice the amount they spent on power and fuel combined.[147]

The report found that approximately seventy percent of Australians consider that gambling does more harm than good to the community.[148] Reacting to the Productivity Commission's findings, Prime Minister John

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131 *See id.*
132 *Id.*
133 *Manager Executed Over Gambling Losses*, S.F. CHRON., Apr. 21, 1992, at A8, *available at* 1992 WL 6257161.
134 Chen, *supra* note 127.
135 *Id.*
136 Christopher Zinn, *Australians Are Biggest Gamblers*, CHI. SUN-TIMES, July 29, 1999, at 30.
137 *Australians Love to Wager, but Critics Decry Social Costs,* ROANOKE TIMES (Va.), Mar. 9, 1998, at A8.
138 PRODUCTIVITY COMM'N, AUSTRALIA'S GAMBLING INDUSTRIES: FINAL REPORT SUMMARY (Nov. 1999) [hereinafter PRODUCTIVITY COMM'N REPORT].
139 *Id.* § 6.44.
140 *Id.*
141 *Id.* § 6.46.
142 *Id.* § 7.36.
143 PRODUCTIVITY COMM'N REPORT, *supra* note 138, § 3.8b.
144 *Id.* § 7.34.
145 *Id.* § 7.36.
146 *Id.* § 7.31.
147 Zinn, *supra* note 136, at 30.
148 PRODUCTIVITY COMM'N REPORT, *supra* note 138, § 9.19.

Howard said: "[T]his is an achievement of which I am ashamed .... I would like the federal and state governments to get together and see if there aren't intelligent things we can do to curb the abuse."[149] Despite the known hazards of gambling, and in the wake of the Productivity Commission's report, Australian authorities continued to expand casino capacity,[150] a government-addicted trend, which further destabilized the long-term Australian economy with economic ripple effects, poised to injure other countries invested in the Australian economy.

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[149] Zinn, *supra* note 136, at 30.

[150] Steward Oldfjeld, *Push for New Casino Games,* AUSTL. FIN. REV., Oct. 5, 2000, at 14, *available at* 2000 WL 26258017.

Part III

Clarification of Goals

A. Strategic Economic Goals and the U.N. System

Political-economic history demonstrates that any industry or combination of industries powerful enough to dominate an economy and the government's economic policies will destabilize that economy to promote the industry itself and thereby usually precipitate a boom and bust phenomenon.[151] Economic history, as well as basic statistics, suggest that because of inflated profit margins, coupled with its sterile need for continued expansion, the gambling industry is powerful enough to effect such eventual destabilization in any national economy. Indeed, academic research suggests that legalized gambling can easily catalyze the collapse of the economies of less-developed countries—due in part to their lack of safeguards and infrastructure.[152] The economic experiences of Gardena, California and Macau provide microcosmic examples of this destructive process.

The overall strategic goals for government should be to conform to the common law principle of maximizing "the public health, safety, and welfare" of its citizens, and to forge a common vision of international cooperation in the interest of the global good. The U.S. obligation to the United Nations (U.N.) exemplifies its commitment to this end. Article 55 of the U.N. Charter reads:

> With a view to the creation of conditions of stability and well being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> [H]igher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation....[153]

B. International Economic Goals and the World Bank Group

In the 1970s, the World Bank Group's policies involving the granting of loans began to be influenced by externalities other than just financial considerations. Specifically, attention was directed to the environmental impacts created by development projects underwritten by the World Bank Group.[154]

The World Bank Group consisted of the World Bank (Bank) itself, formally designated as the International Bank for Reconstruction and Development (IBRD), and its two affiliates, the International Development Association (IDA) and the International Finance Corporation (IFC).[155] Parallel with the establishment of the

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151 *See, e.g., Follow the Money, supra* note 37, at 91.

152 U.S. and International Costs, *supra* note 11, at 21.

153 U.N. CHARTER art. 55.

154 John W. Kindt, Note, *Providing for Environmental Safeguards in the Development Loans Given by the World Bank to the Developing Countries*, 5 GA. J. INT'L & COMP. L. 540,544 (1975) [hereinafter *World Bank to the Developing Countries*].

155 *See* Articles of Agreement of the International Bank for Reconstruction and Development, 60 Stat. 1440 (1946), T.I.A.S. No. 1502, 2 U.N.T.S. 134 (entered into force Dec. 27, 1945); Articles of Agreement of the International Development Association, 11 U.S.T. 2284, T.I.A.S. No. 4607, 439 U.N.T.S. 249 (entered into force Sept. 24, 1960); Articles of Agreement of the International Finance Corporation, 7 U.S.T. 2197, T.I.A.S. No. 3620, 264 U.N.T.S. 117 (entered into force July 20, 1956); W. FRIEDMAN, G. KALMANOFF, & R. MEAGHER, INTERNATIONAL FINANCIAL AID 90-112 (1966); E. MASON & R. ASHER, THE WORLD BANK SINCE BRETTON WOODS 21-27 (1973). *See also* Agreement Establishing the Inter-American Development Bank, 10 U.S.T. 3029, T.I.A.S. No. 4397, 389 U.N.T.S. 69 (entered into force Dec. 30, 1959).

International Monetary Fund (IMF),[156] the World Bank Group was created during the 1944 Bretton Woods Conference to address the international financial problems incident to World War II and its aftermath. The purpose of the IMF was to finance temporary balance-of-payments deficits, while the Bank was to provide long-term finance for the reconstruction of economies damaged by the war and for the development of the less developed countries (LDCs). Thus, the IMF dealt with problems of international liquidity and short-term credit, while the Bank handled the flow of long-term capital for investment purposes across national boundaries.

Initially, the Bank's lending policy was governed by two conditions. The loan had to be for a specific project, and the Bank could only finance the foreign exchange component of the project. The Bank's charter specified that loans had to be: (a) made for specific projects (except in "special circumstances"); (b) made for productive purposes; (c) guaranteed by the government concerned; (d) granted without prejudice as to country; (e) made only if there exist reasonable prospects for repayment; and (f) granted only if there is no other available source.[157]

However, by the 1970s, the Bank had liberalized its project approach and began funding many different types of stabilization programs within the LDCs. The delegates at Bretton Woods initially envisioned the Bank as operating mainly to guarantee loans by private investors, rather than making direct loans from its own capital.[158] However, from the outset the Bank has emphasized its other purposes, as stated in its Articles of Agreement, "to supplement private investment by providing on suitable conditions finance for productive purposes out of its own capital, funds raised by it, and other resources."[159] By the 1970s, the Bank was making loans to the LDCs in the areas of agriculture, industry, and transportation.

Since the Bank's major resources for lending came from private capital markets, it had to fix its terms accordingly.[160] Consequently, the IDA was founded in 1961[161] "to provide development financing to less developed countries on terms more flexible and bearing less heavily on their balance of payments than those of the World Bank…."[162] Only members of the World Bank could join the IDA; consequently, all members of the IDA were members of the Bank. Unlike the Bank, the IDA received virtually all its funds in the form of contributions.[163]

By lending to governments, the IBRD and the IDA were the main avenues for channeling development capital to the LDCs; however, the IFC also contributed by mobilizing private investment. Under a provision of the Bank's charter, loans made by the Bank, if not made to governments, required a government guarantee, and

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[156] Articles of Agreement of the International Monetary Fund, 60 Stat, 1401 (1946), T.I.A.S. No. 1501, 2 U.N.T.S. 39 (entered into force Dec. 27, 1945) (Bretton Woods Conf. July 1-22, 1944). Ironically, Bretton Woods was the situs for a 2001 conference, which included debates on bringing casinos to Bretton Woods.
[157] WORLD BANK, WORLD BANK AND IDA 3 (1974).
[158] A. CAIRNACROSS, THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT 7 (1959).
[159] Articles of Agreement of the International Bank for Reconstruction and Development, art. I, 60 Stat. 1440 (1946), T.I.A.S. No. 1502, 2 U.N.T.S. 134 (entered into force Dec. 27, 1945).
[160] *See* WORLD BANK, WORLD BANK AND IDA 3-4 (1974).
[161] *See* S. REP. NO. 834, 93d Cong., 2d Sess. 1-5 (1974). *See also* J. WEAVER, THE INTERNATIONAL DEVELOPMENT ASSOCIATION: A NEW APPROACH TO FOREIGN AID 11(1965).
[162] FRIEDMAN, KALMANOFF, & MEAGHER, *supra* note 155, at 91. Article I of the Articles of Agreement of the International Development Association states that:

> The purposes of the Association are to promote economic development, increase productivity and thus raise standards of living in the less-developed areas of the world included within the Association's membership, in particular by providing finance to meet their important developmental requirements on terms which are more flexible and bear less heavily on the balance of payments than those of conventional loans, thereby furthering the developmental objectives of the International Bank for Reconstruction and Development.

Articles of Agreement of the International Development Association, art. I, para. 1; 11 U.S.T. 2284, T.I.A.S. No. 4607, 439 U.N.T.S. 249 (entered into force Sept. 24, 1960).
[163] *See, e.g.*, S. REP. NO. 834, 93d Cong., 2d Sess. (1974).

this limited the extent to which the Bank could work with the private sector. Therefore, the IFC was established in 1956 to supplement the Bank's activities by providing risk capital and financing projects in the private sector without government guarantees.[164]

In this context, the World Bank Group began in the 1970s to incorporate externalities, such as environmental issues, into its loan policies. Specifically, the World Bank established an Office of Environmental Affairs in 1970.[165] This Office reviewed loan applications from the LDCs and decided whether or not the project adequately provided for environmental safeguards.[166] The Office established guidelines for projects in the areas of agriculture, industry, transportation, utilities, and public health.[167] This was a significant procedural development for the World Bank decision-making process. However, during the 1980s, the World Bank's decision-making image suffered when, for example, it became apparent that much of the Brazilian deforestation problems could be linked to World Bank loans. Regardless of these shortcomings in environmental decision-making, it seemed that these public policy trends provided significant precedent for the World Bank to focus on the "gambling policies" of LDCs before granting loans.

Recognizing the potential "domino effect" of economic-financial instability in any country, the United States and the World Bank community have spent billions of dollars in loans to support countries with economic-financial instabilities. It is incongruous to spend billions to stabilize a country economically and then allow that country to use those monies to destabilize itself by investing in casinos, and inviting U.S. casino companies to build in their jurisdictions. For example, U.S. and World Bank funds were used to stabilize Mexico's faltering economy during the mid-1990s. After receiving those funds, one of Mexico's prime economic so-called "development" strategies was to emulate U.S. gambling policy and invite U.S. casinos to Mexico City. From May 13-14, 1996, Mexico City was the site of the Mexico Gaming Summit and Conference hosted by representatives of several major U.S. gambling companies and designed obviously to influence the Tourist Commission of the Mexican Department of Commerce.[168] The Mexico Gaming Summit was advertised as a joint venture between the U.S. gambling industry's trade magazine, *International Gaming and Wagering Business*, and *Mexico Business* magazine which was billed ironically as "the leading magazine of the NAFTA marketplace."[169] However, the policies of the North American Free Trade Agreement (NAFTA)[170] were designed to promote and grow commerce via free trade, whereas gambling policies act in contravention of free trade and promote sterile transfers of wealth that denigrate, destabilize, and corrupt the Mexican economy and its government.

Perhaps ironically, in March 2002, the U.N. Summit on Global Development was convened in Monterrey, Mexico and "compelled the leaders of the World Bank, the World Trade Organization, [the European Union], and the International Monetary Fund, gathered together for the first time, to address the poor in terms rarely associated with high finance."[171] President George W. Bush, his administration, "and most of the Monterrey conferees agree[d] that increased development aid should flow only to deserving nations that... [would] spend

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[164] *World Bank to the Developing Countries, supra* note 154, at 551.
[165] *Id.* at 544.
[166] *Id.*
[167] *Id.*
[168] Advertising Supplement, INT'L GAMING & WAGERING BUS., Apr. 1996.
[169] *Id.*
[170] Oct. 7, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 (1993) & 32 I.L.M. 605 (1993). *See generally* Earl H. Fry, *The North American Free Trade Agreement: US. and Canadian Perspectives, in* IMPLICATIONS OF A NORTH AMERICAN FREE TRADE REGION 17, 18, 29 (Joseph A. McKinney & M. Rebecca Sharpless eds., 1992); GEORGE W. GRAYSON, THE NORTH AMERICAN FREE TRADE AGREEMENT REGIONAL COMMUNITY AND THE NEW WORLD ORDER 178, 179, 182 (Kenneth W. Thompson ed., Univ. Press Am. 1995); M. Jean Anderson, *Implications of NAFTA's Extensions to Chile and Other Countries—A US. View*, 23 CANADA-UNITED STATES L. J. 227 (1997).
[171] Tim Weiner, *More Entreaties in Monterrey for More Aid to the Poor*, N.Y. TIMES, Mar. 22, 2002, at A10.

the aid wisely."[172] As U.N. Secretary General Kofi Annan summarized: "There is no use... in underwriting corrupt regimes 'built on sand.'"[173]

As this analysis shows, legalized gambling creates economic-financial instabilities, creating more demands for international relief funds to address emergency situations. Furthermore, funding jurisdictions that sanction legalized gambling would be, in most circumstances, futile attempts at stabilization. Legalized gambling is simply contrary to sound international monetary policy because of its destabilizing effects.[174]

The United States is implicated in this global dilemma precisely because of its economic power. The spread of U.S. legalized gambling first precipitated and then promoted the acceptance of legalized gambling activities by other countries, and the United States has developed a substantial export market for gambling technology and related services. For example, as of 1998, G-Tech (Gambling-Technology), a U.S. company founded in 1981, controlled seventy percent of the worldwide lottery market, running lotteries in twenty-nine of the thirty-eight U.S. states with lotteries, as well as Great Britain and other places.[175] Unlike other organizations, it appeared that gambling organizations were more often stigmatized by scandals and allegations of corruption. In one well-known instance, a London jury found that the founder of G-Tech committed libel when he denied that he had tried to bribe a competitor into not challenging his bid for Britain's lottery business.[176]

The United States sets the global standards for gambling. In permitting gambling enterprises to flourish in the United States and abroad, the United States undermines global socio-economic stability in contravention of its international obligations. By virtue of both its position as world economic leader and its commitment to international relief organizations, the United States bears the burden of structuring its economy to reflect the goals of international stability and world order.[177] As President Clinton stated in his 1998 IMF address, "Strong government policies [and] sound business practices... are needed to ensure growth into the future."[178] Promoting gambling activities both in the United States and abroad stands in direct conflict with these stated goals.

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[172] *Id.*

[173] *Id. See also,* Paul Blustein, *Bush Shift on Foreign Aid Strengthens U.S. Position at Summit*, WASH. POST, Mar. 16, 2002, at A20; Hugh Dellios, *UN Talks Seek Aid for Poor*, CHI. TRIB., Mar. 22, 2002, section 1, at 4.

[174] *See generally* Blustein, *supra* note 173, at A20; Dellios, *supra* note 173.

[175] Brett Pulley, *Lottery Company Grows Even as Scrutiny Increases*, N.Y. TIMES, Apr. 4, 1998, at Dl.

[176] *See id.* (involving Guy Snowden of G-Tech); Marc Champion, *World's Biggest Lottery Put Up for Grabs*, WALL ST. J., Aug. 24, 2000, at A17.

[177] *See generally supra* note 1.

[178] Clinton IMF Speech, *supra* note 22.

PART IV

Historical Background

Arguably, gambling activities match the classic historical example of an economic process that transfers wealth so rapidly and has such a destabilizing potential that governments have suppressed and criminalized most gambling activities. While the "boom and bust" economic cycles created by legalized gambling activities appear throughout economic history, two of the most recent U.S. cycles occurred during the 19th century.[179]

At the beginning of the 1800s, the United States had already interfaced its economic base with the gambling philosophy—primarily via lotteries.[180] While scandals provided a focus for gambling opponents,[181] these opponents had their positions bolstered by the socio-economic negatives that necessarily accompany legalized gambling activities. In most historical scenarios, these business/economic negatives were reflected in a decrease in the quality of life, which translated into a net loss of jobs, the creation of large social problems, and the necessary increase in various taxes to address these problems.[182] Accordingly, most legalized gambling activities were re-criminalized in the 1820s and 1830s.[183] After the U.S. Civil War, gambling activities once again became fashionable and followed the expanding frontier.[184] However, the same socio-economic problems occurred and, with recurring scandals as catalysts, virtually all gambling activities were re-criminalized by 1910.

On February 11, 1998, Turkey re-criminalized gambling only 18 years after it was made legal, in spite of the fact that the casinos employed 17,000 people and accounted for nearly one-third of Turkey's tourist revenue.[185] Government officials closed the casinos because they were convinced that "the gambling halls were a hotbed of money-launderers, tax evaders, and mobsters."[186] The problems were so severe that the Turkish government closed the casinos even though it was potentially liable to casino investors for their losses.[187] Despite intense lobbying by U.S. gambling interests, India similarly eliminated its lottery in 1997 because it made "poor people poorer" and created new and more socio-economic problems. Further re-criminalization of gambling activities can be anticipated as countries look to long-term economic policies for stable growth.

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179 For a summary of the historical background involving the cyclical legalization and re-criminalization of gambling in the United States, *see* I. Nelson Rose, *The Impact of American Laws on Foreign Legal Gambling*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 129, 159-66 (1986).

180 *Id.* at 159.

181 *Id.* at 155, 159-63.

182 *See generally Economic Impacts, supra* note 82. The basic negative impacts do not change, although historical and demographical differences can provide for multiple variations.

183 Rose, *supra* note 179, at 159.

184 *Id.* at 159-60; *Business-Economic Impacts of Gambling, supra* note 33, at 22.

185 *Turkey's Casinos To Close in Blow to Tourism Sector*, WALL ST. J., Jan. 22, 1998, at A15.

186 *Edict in Turkey Closes Casinos*, *supra* note 78, at 16.

187 *Id.*

PART V

Trends and Conditioning Factors

A. International Land-Based Casinos as Economic Cannibalization

Despite its substantial social costs, gambling was being promoted globally as a revenue generating mechanism throughout the 1990s. By 1999, North Korea was trying to cure decades of mismanagement by piggybacking on the high-profit gambling industry.[188] The Hong Kong based Emperor Group invested in the $180 million Seaview Casino Hotel located in the Rajin-Sonbong area of North Korea.[189] "We're targeting the rich Chinese, but there aren't plenty [sic] around now," said Mr. Wong, an executive at the Emperor Group.[190] In an effort to mitigate losses and recognizing the inherent destructive nature of gambling, the North Korean government prohibited North Koreans from patronizing the casino.[191]

In Cambodia, officials closed down the two licensed casinos in Phnom Penh in 1999, after police established that gambling debts motivated most robberies, murders, and kidnappings in the city.[192] Rather than substantially rid itself of the blight of gambling-induced social problems, the Cambodian government opted to move the gambling operations to the Thai-Cambodian border.[193]

Also in 1999, the West Bank town of Jericho—whose predominantly Muslim population is opposed to gambling on religious grounds—was enjoying newfound casino riches.[194] In 1998, the $50 million Oasis Casino Resort opened, drawing Israelis and foreign tourists back to the forgotten town, and infusing $1 million a month into the local economy.[195] By the turn of the century, there was no available statistical data to show the repercussions on surrounding areas, but Jericho appeared to be still experiencing the "boom" phase of gambling's economic cycle.

B. Internet Economic Cannibalization

If not prohibited by U.N.-sponsored and general multilateral treaties, Internet gambling will eventually destroy global economic stability. Addiction rates associated with gambling exist in proportion to the speed of the gambling activity.[196] The faster the gambling activity, the more highly addictive it is, and the more addictive the gambling activity is, the more revenue it will generate for the industry.[197] Again, this is because as Associate Professor Howard Shaffer of the Harvard Division on Addictions reported: "Gambling… changes the neurochemistry of the brain."[198] Reflecting on the potential impact of Internet gambling, Shaffer stated, "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced."[199] This is reinforced by studies showing that twenty-seven to fifty-five percent of casino revenues come from pathological and problem gamblers,[200] and eighty percent of casino revenues come from

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[188] *North Korea Opening (Gasp!) a Casino*, (AP) N.Y. TIMES, July 31, 1999, at A2.
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] Chris Fontaine, *Cambodia Puts Curbs on Casinos*, THE COLUMBIAN (VANCOUVER, WA), June 30, 1999, *available at* 1999 WL 18256952.
[193] *Id.*
[194] Deborah Sontag, *The Wheel of Fortune Turns for a Biblical Town*, N.Y. TIMES, Oct. 29, 1999, at A4.
[195] *Id.*
[196] *Mega-Lawsuits, supra* note 11, at 26-28.
[197] *Id.*
[198] Turner, *supra* note 15.
[199] Steven Crist & Don Yaeger, *All Bets Are Off*, SPORTS ILLUS., Jan. 26, 1998, at 82, 91.
[200] Henry R. Lesieur, *Costs and Treatment of Pathological Gambling*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 153, Table (1998); *see* BETTER GOV'T ASS'N, STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO (1992).

video gambling.[201] The ubiquitous nature of Internet gambling places it in every home and with access to every demographic group—especially children.

Internet gambling has all the characteristics of video gambling, but its reach is far more sweeping and the potential consequences much more dire. Estimates concluded that approximately nine million people had online investing accounts by 1999[202] and that by 2003, online brokerage accounts would be valued at $3.3 trillion.[203] The implications were obvious. In very little time, any person with instant online access to credit card, bank, and investment accounts could incur sizable credit card debt to overseas gambling companies and lose all of their assets almost instantaneously.

The addictive nature of the activity and its built-in mega-profits create a substantial market for online gambling. Industry analysts valued the market at approximately $7 billion in 1999, and it was projected to rise to $10 billion in the year 2000.[204] By 1999, there was already a significant market for online gambling, but the newness, size, and scope of the market was luring many other potential operators. At the time the *Final Report* of the 1999 U.S. Gambling Commission was published, a significant number of jurisdictions already had laws in place to issue Internet gambling licenses.[205] Thereafter, this number continued to increase.[206]

The absence of geographical restrictions on the Internet posed an enormous problem for gambling providers as competitors. Many of the online gambling sites in operation during the 1990s were based in offshore casinos and were subject to minimal, if any, tax obligations, regulation, or security.[207] While many online gamblers could question the integrity of these sites and be hesitant to frequent them, these sites could also offer the best returns in the industry because their profit margins would be significantly greater than those market participants subject to more rigorous taxation.

New entrants into the field needed to compete with the offshore casinos, as must the prior existing land-based (and primarily U.S.) casino industry. This intensified the competition for one country to economically cannibalize another country via Internet gambling as, for example, Canada had cannibalized the U.S. economy by locating casinos along the Canada-U.S. border. The U.S. response by the cannibalized states was to propose and/or build their own casinos to recapture the gambling dollars going to Canada—a situation emphasizing the U.S. State Department's need to negotiate amendments to its FCN bilateral and multilateral treaties to prohibit "transboundary economic raiding" via gambling activities.

Regardless of these determinations, another problem was that for existing gambling interests to remain profitable, they would have to remain competitive with online gambling sites. Obviously, this scenario would lead to continued pressures to reduce gambling taxes and thereby tax revenue, despite the inevitably accumulating social costs associated with gambling. The Australian Productivity Commission heard arguments to this effect when a group of Australian casinos pointed out that "if they are not to kill off their domestic gambling industries, States will need to lower gambling taxes as competition from the Internet emerges."[208] They validly queried whether "in the long run we are likely to have any alternative than a zero tax."[209]

C. Treatment for Gambling Addictions

The 1999 U.S. National Gambling Impact Study Commission unanimously called for a "pause in the expansion of gambling" as part of a moratorium, in part because pathological gambling was considered a difficult disorder

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201 *See id.*

202 Mark Ishman, *Computer Crimes and the Respondeat Superior Doctrine: Employers Beware*, 6 BOSTON U. J. SCI. & TECH. L. 6, 20 (2000).

203 *Id.*

204 Lenmore Taylor, *Global Gambling*, AUSTL. FIN. REV., June 26, 1999, at 30.

205 NGISC FINAL REPORT, *supra* note 19, at 5-1 n.5.

206 INTERACTIVE GAMING NEWS, *available at* http://www.igamingnews.com/sample_stories.cfm?SID=9 (last visited Nov. 11, 2000).

207 *See* Taylor, *supra* note 204.

208 *Id.*

209 *Id.*

to treat—with many experts claiming it could never be cured, only repressed. "As with substance abuse, treatment for pathological gambling is a costly, time-consuming effort, often without quick results and with a high degree of re-occurrence."[210] The Commission credited the American Gaming Association, the gambling industry's lobbying group, with recognizing and taking some initiative to address the problem of pathological gambling. However, as the Commission noted, "industry funds earmarked for treatment for pathological gambling are miniscule compared to that industry's total revenue."[211] Indeed, it could be argued that the gambling industry has a vested interest in not curing pathological gamblers of their disease because pathological and problem gamblers constitute a major source of industry revenue.

In its assessment of available treatment courses and resources for pathological gamblers,[212] the NGISC listed Gamblers Anonymous as "one of the most important non-profit groups working in this area."[213] The Commission also found the recidivism rate of pathological gamblers to be substantial and cited to the fact that according to the only known study assessing the effectiveness of the Gamblers Anonymous' program, a mere eight percent of its members had abstained from gambling activities at the end of a year.[214]

Vanessa Hua's article on the high incidence of problem gambling in Asian-American populations points to the magnitude of the problem facing treatment providers. In a study, the Chinese Health Coalition found that nearly seventy percent of the Chinese-Americans it surveyed ranked gambling as the greatest problem confronting their home lives and communities, surpassing concerns about gangs and drugs. Language and other cultural barriers, combined with insufficient funding, has resulted in little, if any, recourse for those who seek treatment.[215]

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[210] NGISC FINAL REPORT, *supra* note 19, at 4-14. *See also* Hua, *supra* note 71, at A47 (noting the difficulty of treating pathological gambling in Asian-Americans because of the dearth of financial resources and because cultural perceptions among Asian-Americans make treatment difficult).

[211] NGISC FINAL REPORT, *supra* note 19, at 4-14.

[212] *See generally id*. at ch. 4.

[213] *Id.* at 4-17.

[214] *Id*. at 4-15. (citing 152 BRIT. J. PSYCHIATRY 284, 284-88 (1998) (*cited in* Henry R. Lesieur, *Costs and Treatment of Pathological Gambling*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 153, 158 (1998)).

[215] *See* Hua, *supra* note 71, at A47.

PART VI

Policy Alternatives and Recommendations

Legalized gambling, when analyzed at a strategic macro-economic level, was a no-win proposition for individual countries, as well as the international economy. The massive amount of capital that accrues to the gambling industry at the expense of the public, destabilizes economies by effectively foreclosing opportunities for new and pre-existing, non-gambling industries, and by imposing social and rehabilitative costs on society which tax revenues are insufficient to cover. The vast expenditure of money by pro-casino interests suggested "unbalanced decision-making processes by elected officials, regulatory agencies, and even the court system."[216]

The United States needed to take a proactive approach to minimize the destructive, destabilizing impact of the transnational economic raiding inherent in legalized gambling activities. First, the United States, as leader of the international economy, was prodded to spearhead international discussions concerning the viability of gambling as a tool for economic growth. These discussions were to be conducted with the ultimate goal of instituting international multilateral treaties designed to combat the transnational economic raiding between countries caused by government-sanctioned gambling activities. Unfortunately, efforts in this area were difficult due to U.S. domestic gambling policy—or, more accurately, the lack of a U.S. gambling policy. Forcing the issue in the international arena without setting a workable U.S. standard as a model was deemed essentially inconsistent. Until the United States committed to different policy decisions on the domestic level, economic isolationists would argue that the United States needed to assure that its citizens were incubated from the dangers implicit in the spread of international legalized gambling. To this end, the United States would need, for example, to effectively legislate against the specialized dangers of Internet gambling, relying not on outdated laws such as the Wire Act,[217] which were designed to apply to other technology and passed in view of different concerns. Since most transfers to Internet gambling operations are accomplished through banks or credit cards, holding these service providers responsible for illegal gambling transactions would deter much unwanted behavior. Absent effective measures in these types of issue areas, the U.S. economy would be transferring a substantial portion of its citizens' assets, but not the accompanying social costs, to other jurisdictions.

For the United States to achieve its goal of domestic and international economic stability, it needed to address the domestic state-sanctioned gambling issue. The first step required for effective change was to undermine the unbalanced influence pro-casino interests had on the legislative processes. Several measures needed to be taken to accomplish this goal. First, the federal government needed to undercut interstate cannibalism by assuming jurisdiction over gambling-related industries by invoking the Commerce Clause. The federal government then would have an option. The U.S. Congress could and should, with the exception of Las Vegas and Atlantic City (because the industry is too deeply embedded in the social fabric of the cities) ban legalized gambling in its entirety. Preexisting gambling casinos and accompanying hotels and restaurants could be transformed into educational institutions, trade schools, and colleges using the gambling industry's own revenues. Although industry interests would claim substantial repercussions from such decisions, they have already made many times their returns on investment and would lose nothing, while the states would gain an educated public, as well as new consumer dollars pump-priming the economy. A decision to this end would also mitigate the problems surrounding ill-adapted and deficient treatment programs for pathological and problem gamblers. Short of this measure, the federal government should impose a tax structure upon legalized gambling operations that reflects the cost they impose on society, such as the Canadian model where taxes are 100 percent with only management fees going to the casino companies. The U.S. government should appropriate the revenue collected and allocate it to treatment and rehabilitation programs for pathological and problem gamblers, as well as for educational buy-outs of the gambling establishments.

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[216] *Congressional Gambling Hearing 1995*, *supra* note 32, at 520.

[217] 18 U.S.C. § 1084 (criminalizing wagering that utilizes wire communication).

PART VII

Conclusion

The United States wields an enormous amount of power in determining global policy and bears a proportionate burden to structure its economy to minimize deprivation, poverty, and instability. Legalized gambling is an enormous problem for both the U.S. and the international economies. The inherently addictive nature of gambling activities makes it an untenable burden on society. Strategic cost-benefit analysis shows that gambling is a no-win proposition for the United States and for the world. The United States has created a global trend toward the legalization of gambling activities. This has spurred a system of transnational economic raiding which produces insufficient revenue to cover the bankruptcy, crime, and corruption costs associated with these activities. The U.S. Congress has the power to reverse the global trend of economic cannibalism, poverty, and instability, and its first step toward this end should be to incubate the United States from the destructive forces of Internet gambling. The Congress should also recognize that legalizing gambling activities falls far short of maximizing the “public health, safety, and welfare” of U.S. citizens and should legislate nationally on the issue. This will give the United States the credibility it needs to effect a change in global perspective and to encourage economic stability in the maintenance of a favorable world legal order.