

SHOULD CASINOS EXIST AS MONOPOLIES OR SHOULD CASINOS BE IN OPEN MARKETS?

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I. INTRODUCTION: DESCRIPTIONS—MONOPOLY, OLIGARCHY, OPEN MARKETS

This article examines how the different structures of casino industries impact American states. It seeks to find whether monopolistic, oligopolistic, and open competitive structures lead to different outcomes. The literature of economics suggests that different outcomes are attached to varying industry structures. Specifically, monopoly structures are adverse to the interests of the consumers of their products.¹ Accordingly, this article will test two hypotheses: (1) whether monopoly casinos will offer artificially higher prices to customers, and (2) whether monopoly casinos will offer their customers lower service quality by using fewer employees and offering fewer amenities at their gaming properties.

This article will categorize thirteen U.S. commercial casino jurisdictions along a continuum from the most closed and monopolistic to the most open and competitive jurisdictions. Specifically, this article will compare price points and service attributes for the varying casino structures. This includes: slot machine payout percentages, number of employees, and quantity of amenities, such as number of hotel rooms, volume of convention space, number of restaurants, and number of entertainment venues. The relationship of these factors will be analyzed to test the basic hypotheses presented above.

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¹ PAUL SAMUELSON, *ECONOMICS* 116, 395 (9th ed. 1973); WALTER ADAMS & HORACE M. GRAY, *MONOPOLY IN AMERICA: THE GOVERNMENT AS PROMOTER* 23 (1955); DAVID SCOTT, *THE AMERICAN HERITAGE DICTIONARY OF BUSINESS TERMS* 400-01 (2009); PETER COLLIN, *DICTIONARY OF BUSINESS* 260 (2001); *Monopoly*, *ECONOMICS ONLINE*, http://www.economicsonline.co.uk/Business_economics/Monopoly.html (last visited Mar. 18, 2013).

II. DESCRIPTIONS—MONOPOLY, OLIGARCHY, OPEN MARKETS

The legalization of casinos has been a major policy issue in scores of national and sub-national jurisdictions over the past 60 years. One of the critical issues is whether casino establishments should be licensed as singular entities (i.e., monopolies) in a specific location (e.g., city, state, or nation) like public utilities, as opposed to licensed in an open free market competitive manner. A middle ground approach finds jurisdictions allowing a limited number of licenses, ergo, an oligopoly of casinos.²

A monopoly enterprise is one that serves its primary market (those purchasing its products) without a competitor selling identical or similar services or goods within the market.³ As a practical matter, all customers must purchase the products from that enterprise if they desire to have the product. There is no competition because the product sales are controlled by the single enterprise.⁴

In an oligopoly, a few enterprises control the distribution of the service or good to the market.⁵ Oligopolistic situations also arise if several producers work together, or collude, to control the supply and price of the products they sell.⁶ Such combinations of sellers may be called cartels.

With monopolies and oligopolies, the enterprises control the market. They typically seek to maximize their profits by setting higher prices, which consumers must pay if they want their products. These enterprises sometimes also use practices that preclude other enterprises from coming into and competing in that market. For example, oligopolies or monopolies may lower prices to levels that others in the market cannot compete with. When their competitors go out of business, they may raise prices considerably.⁷ Open markets occur where there are a sufficiently large number of sellers of particular services or goods, and no individual seller can set the prices for those services or goods.⁸

Monopolies may occur naturally or as a result of unfair competitive practices, also known as predatory practices, by larger enterprises in a market.⁹ Monopolies may also be authorized by governmental action.¹⁰ Certain industries require massive investments in facilities and equipment before they may offer their products for sale. Examples include enterprises such as utility com-

² James E. Roper & David M. Zin, *Monopolies, Duopolies, and Oligarchies*, in *ENCYCLOPEDIA OF BUSINESS ETHICS AND SOCIETY* 1401, 1404 (Robert W. Kolb ed., 2008). For a theoretical analysis of monopolies, see MARK S. MASSEL, *COMPETITION AND MONOPOLY* 1-14 (1962); DONALD DEWEY, *MONOPOLY IN ECONOMICS AND LAW* (1959); Walter Adams, *Public Policy in a Free Enterprise Economy*, in *THE STRUCTURE OF AMERICAN INDUSTRY* 533-63 (Walter Adams ed., 1982).

³ DEWEY, *supra* note 2, at 303-04.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Roper & Zin, *supra* note 2, at 1401.

¹⁰ *Id.*

panies, like electric and water companies.¹¹ There is sufficient financial risk in these industries that investors need certainty of sales revenue, so they seek to win a legal right to have monopoly status.¹² The enterprise must find capital suppliers to fund the start-up of their projects, yet banks and lenders will be reluctant to fund massive projects if they do not have the certainty of monopoly markets. Government licensing provides a needed economic security behind a producer of a product—electricity or water—that is considered critical for the public.¹³

When governments grant monopolies through licensing, they are aware of the power they are granting to the enterprise. Therefore, governments exercise regulatory power over the activities; specifically, the pricing of the products offered by the monopoly. Yet even then, the risk may be too great for private investors. Therefore, the government chooses to become the monopoly supplier of the goods.¹⁴

On the other side of the equation, governments have set forth laws prohibiting the operation of monopolies and the exercise of predatory practices by enterprises in most markets.¹⁵ The governmental authorities favor markets with free competitive enterprises, because while monopolies may offer some advantages, they usually offer severe disadvantages for society.¹⁶

The most notable advantage of a monopoly is the advantage of economies of scale.¹⁷ By purchasing large quantities of raw materials for conversion into its products, it can realize low input costs for its operations. In sales, economies of scale can help an enterprise to avoid considerable costs required to advertise products in competitive markets. By realizing higher profits, the monopoly has the ability to invest in technological innovations that contribute to production of higher quality products.¹⁸

On the other hand, history reveals that monopolies may do the opposite—they may fight innovation. Rather than spending money on improving products, monopolies transfer the money to profits. As long as they control the market, they have no incentive for product improvements¹⁹ or improving their workforce by offering higher salaries, providing training, or taking other steps to improve worker motivation.²⁰ Additionally, monopolies do not seek to improve customer service because the threat of competition does not exist. Further, they generally restrain production to achieve higher prices. By doing so,

¹¹ SCOTT, *supra* note 1, at 231; ARTHUR WEIMER, *INTRODUCTION TO BUSINESS: A MANAGEMENT APPROACH* 92 (1970); *ENCYCLOPEDIA OF BUSINESS AND FINANCE* 521 (Burton S. Kaliski ed., 2007). R

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ WEIMER, *supra* note 11. R

¹⁶ SAMUELSON, *supra* note 1, at 520-29. R

¹⁷ *See generally* MASSEL, *supra* note 2, at 42-82. R

¹⁸ *Potential Benefits from Monopoly*, TUTOR2U, http://tutor2u.net/economics/content/topics/monopoly/benefits_of_monopoly.htm (last visited Jan. 16, 2013).

¹⁹ DEWEY, *supra* note 2, at 39-40. R

²⁰ *See* Paul A. Geroski, *Intellectual Property Rights and Competition Policy*, in *PERSPECTIVES ON INNOVATION* 457-58 (Franco Malerba & Stefano Brusoni eds., 2007); SAMUELSON, *supra* note 1, at 498. R

they introduce inefficiencies that are considered “dead weight losses” for society.²¹

Furthermore, monopolies transfer wealth from unfortunate customers to monopolists. With monopolies in place, competitors face overwhelming obstacles; barriers to entry prevent competitors from competing for market share.²² Monopolies may also be adverse to the public interest because they give great political power to companies, especially if they control critical products or if they command economic power by providing large numbers of jobs and taxable revenue.²³

III. CASINO INDUSTRY STRUCTURES

After examining the structure of the casino industry in many jurisdictions, one can see that there are few cases of open market competition. More often, casino arrangements find structures of oligopoly with a few casinos dominating a local market. Many more, perhaps even a majority of cases, involve casinos operating as government-created monopolies.²⁴ After we review and assess available data on casino operations, this article will return to a vexing question: Why would the government decree that a casino enterprise should operate as a monopoly?

There seem to be surface answers, almost without need for independent proofs and support, as to why society would monopolize and regulate an enterprise delivering electricity, natural gas supplies and water. These goods are critical to the survival of a society. On the other hand, arguments that telephone companies and television stations had to be monopolies or oligarchies are not commonly made anymore.

Furthermore, there are arguments against the notion that governments must have monopoly control over all operations of prisons, fire-fighting services, and police forces.²⁵ While few argue against the need for government control over military forces, the U.S. Department of Energy has given a private enterprise the function of providing essential security forces to guard the United States’ arsenal of nuclear weapons at the Nevada Test Site.²⁶ Does a government-approved monopoly for providing casino gaming services make sense? This question will be addressed later in the article.

²¹ *Deadweight Loss*, ECONMODEL, www.econmodel.com/classic/terms/deadweight_loss.htm (last visited Jan. 16, 2013); *Deadweight Loss Definition*, INVESTOPEDIA.COM, <http://www.investopedia.com/terms/d/deadweightloss.asp> (last visited Jan. 16, 2013).

²² SAMUELSON, *supra* note 1, at 502.

²³ See ADAMS, *supra* note 1, at I, vii-viii, 5.

²⁴ See 2 WILLIAM N. THOMPSON, THE INTERNATIONAL ENCYCLOPEDIA OF GAMBLING 356-598 (2010).

²⁵ See *Privatizing Police and Fire Departments*, AMERICANLY YOURS, <http://americanlyyours.com/2010/08/09/privatizing-police-and-fire-departments/> (last visited Jan. 16, 2013).

²⁶ WSI NEVADA, www.wsinevada.com (last visited Jan. 16, 2013); *Wakenhut—Nevada*, REAL POLICE, <http://www.realpolice.net/forums/security-officers-loss-prevention-151/78617-wackenhut-nevada-test-site.html> (last visited Jan. 16, 2013).

At the mid-point of the twentieth century, a small percentage of the jurisdictions permitted casinos to exist anywhere within their boundaries.²⁷ However, this number steadily increased. By 1986, 77 countries permitted casinos, and by 1996 the number rose to 109.²⁸ Now, over 132 (or 67.3%) of the 196 recognized nations have casinos.²⁹ In the United States, only the state of Nevada permitted casinos for the majority of the twentieth century. New Jersey joined the list in 1978, and a decade later, a flood of new states began to jump on the casino bandwagon with riverboat casinos, Native American casinos, and, in a few cases, land-based casinos.³⁰ Today, casinos of some kind are found in 38 states.³¹ In Canada, casinos have been authorized in seven of the ten provinces, plus the Yukon Territory. In a majority of these jurisdictions, at least some casinos operate as monopolies for their market region. Only a small numbers of casinos are in competitive local markets.³²

While all business entities are subject to a myriad of legal rules and regulations, casinos and other gaming enterprises must overcome a special hurdle before they can offer services.³³ Gaming establishments must be given special grants of legality.³⁴ In many jurisdictions it is presumed that gambling operations are illegal unless there are specific laws legalizing the operations or exempting them from general prohibitions against gambling.³⁵ The prohibitions are in pages of state constitutional documents and court degrees.³⁶ The businessman who wishes to bring a restaurant, a retail store, or a manufacturing facility into a location, while faced with financial barriers and even regulatory hoops, does not face the question facing the casino operator: is it legal?³⁷

When casinos are given legal standing in a jurisdiction, lawmakers or citizens voting to permit the casinos, rarely give blanket approval like voters did in Nevada in 1931. Rather lawmakers are prone to designate the number of permitted casinos and where they may be located.³⁸

The political process leading up to legalization of casinos is usually a contentious one accompanied by debate. However, that debate is almost entirely consumed with a consideration of whether gambling is moral and whether it is appropriate as a form of entertainment. Most critically, the debate focuses on whether the casinos will produce considerable employment and tax revenue for a jurisdiction.³⁹ The debate rarely involves the merits of monopolies vis-à-vis

²⁷ William N. Thompson, *Casinos de Juegos del Mundo: A Survey of World Gambling*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 11, 13 (Mar. 1998).

²⁸ *Id.*

²⁹ *Id.*; see generally THOMPSON, *supra* note 24, at 355-598.

³⁰ See THOMPSON, *supra* note 24, at 518-98.

³¹ See *id.*

³² See *id.*

³³ See generally WILLIAM T. CHAMPION, JR. & I. NELSON ROSE, *GAMING LAW IN A NUTSHELL* (2012).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See generally CHAMPION & ROSE, *supra* note 33.

³⁸ For a list of venues, see Thompson, *supra* note 24, at 356-598.

³⁹ See JOHN DOMBRINK & WILLIAM N. THOMPSON, *THE LAST RESORT: SUCCESS AND FAILURE IN CAMPAIGNS FOR CASINOS* 25-41, 176-77, 183-84 (1990).

oligopolies and open market structures for the casino industry.⁴⁰ Experts have conducted little research on the varying industry structures' effect on casino industry performance, such as job development, growth and profits, tax revenues and price structures.

Prior to presenting data and testing the hypotheses, this article will present a historical development of casino structures in major gaming jurisdictions including Monaco, Macau, and Nevada, as well as other jurisdictions in North America and Asia. Vignettes will be offered for thirteen American jurisdictions (plus one other) specifically used for the analysis.

IV. A LOOK AT CASINO JURISDICTIONS

Historically, most international jurisdictions authorized casinos as monopoly enterprises for the nation or for the local communities of a nation.⁴¹ This was the pattern across Europe, epitomized by the establishment of a tourism casino community in Monaco built around the state-controlled monopoly of Monte Carlo casino facilities.⁴²

A divergence from this traditional monopoly pattern was found in Macau, a Portuguese colony along the south China coast. In Macau, private casinos were licensed on a free competitive basis starting in 1847.⁴³ However, to secure better regulation and more guaranteed government revenues from the operations, a monopoly franchise was given to one company in 1934.⁴⁴ The monopoly continued as a new company took control from 1962 until 2002, when it was operating 11 casinos.⁴⁵ In 1999, the Portuguese colonial regime ended as Macau became a special region within China. In 2002, the new Chinese-controlled regime issued three concessions, or licenses, for casino operators, each of whom could have multiple casinos. The old monopoly operator, Stanley Ho, retained one of the three licenses, while new licenses went to Las Vegas entrepreneurs Sheldon Adelson (in conjunction with Lei Chi Woo of Hong Kong) and Stephen Wynn.⁴⁶ The new operators began opening casinos in 2004. Also in 2004, each license holder was permitted to have a sub-license holder. Adelson and Woo separated into two companies: Ho sold a sublicense to an M.G.M. partnership with his daughter Pansy Ho, and Wynn sold a sublicense to a partnership of Ho's son Lawrence and James Packer of Australia.⁴⁷

Now six companies hold licenses for multiple casinos⁴⁸ in an open oligopoly that does not preclude new companies in the future. New companies may secure portions of one of the three basic concessions and hold sublicenses. To accomplish this, a new company would need to make purchases from Stanley

⁴⁰ *Id.*

⁴¹ See THOMPSON, *supra* note 24, at 355-598; see INTERNATIONAL CASINO LAW (Anthony Cabot, William Thompson, Andrew Tottenham, and Carl Braunlich eds., 3d ed. 1999).

⁴² THOMPSON, *supra* note 24, at 455-57.

⁴³ ZHIDONG HAO, MACAU: HISTORY AND SOCIETY 75 (2011).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; William N. Thompson, *Two Countries, One System: Las Vegas and Macau—Sharing the Future*, 16 GAMING L. REV. & ECON. 81, 84 (2012).

⁴⁷ *Id.*

⁴⁸ The total number of casinos is 35.

Ho, Adelson, Woo, or Wynn, and gain permission from Macau's government authorities.⁴⁹ The dissolution of the monopoly structure in favor of a competitive model resulted in considerable growth in the casino gaming market as evidenced by casino revenues from 2000 through 2011.⁵⁰ Some of the phenomenal growth in gaming revenues must be related to the fact that mainland China began to allow its residents to go to Macau, albeit in a restricted manner, after the jurisdiction was integrated with the Chinese nation in 1999. However, there can be little doubt that revenues were driven by the creation of new competitive casino properties among the largest casinos in the world.⁵¹

TABLE 1. GAMING REVENUES IN MACAU: THE END OF A MONOPOLY AND PROSPERITY⁵²

Year	Number of Casinos	Revenue
2000	11	\$2.0 billion
2001	11	\$2.4 billion
2002	11	\$2.8 billion
2003	11	\$3.6 billion
2004	15	\$5.2 billion
2005	17	\$5.6 billion
2006	24	\$7.1 billion
2007	28	\$10.4 billion
2008	31	\$13.6 billion
2009	33	\$14.9 billion
2010	33	\$23.5 billion
2011	34	\$33.5 billion

Former monopoly holder, Stanley Ho, was not happy about sharing his business. In several press statements he lamented that: "We are Chinese. We should unite against foreign capital. We cannot keep silent. If not the foreign capital will bury us."⁵³ His prognostication was way off target. In 2003, before competitive operators opened their doors, Mr. Ho's premier casino was the 11-story Lisboa. At the time, his eleven properties realized revenues of \$3.6 billion. He began a building spree, and by 2010, he had 20 casinos, with his flagship casino being the new 57 story high Grand Lisboa. His revenues rose to \$6.4 billion. He had lost market share, dropping from 100% to 27%, but his gaming profits had risen 80%—a respectable trade-off for losing a monopoly.⁵⁴

⁴⁹ *Id.*

⁵⁰ *Macau Gaming Summary*, UNLV CENTER FOR GAMING RESEARCH, <http://gaming.unlv.edu/abstract/macau.html> (last visited Jan. 16, 2013).

⁵¹ See Thompson, *supra* note 46.

⁵² *Macau Gaming Summary*, *supra* note 50.

⁵³ *Adelson Worries Ho's Words Could Hurt Venetian*, MACAU NEWS ONLINE TODAY (Mar. 10, 2009, 3:16 PM), <http://macau-news.blogspot.com/2009/03/adelson-worries-hos-words-could-hurt.html>; see HAO, *supra* note 43, at 74.

⁵⁴ *Adelson*, *supra* note 53.

As casino development swept Europe in the later nineteenth century and over throughout the twentieth century, the monopoly pattern prevailed in Germany, France, Spain, Portugal, Netherlands, Italy and other countries.⁵⁵ Great Britain broke the pattern to a degree by allowing oligopolies of small casinos in some major cities (e.g., 20 in London and 6 in Birmingham), but in most cities where casinos are permitted, only one casino has been licensed.⁵⁶

In the United States, Nevada provided a model in which any business wishing to operate a casino could apply for a license under the state's 1931 legislation.⁵⁷ Very few restrictions were placed on license applicants. As casinos grew and became a major tourist attraction, especially around Las Vegas, licensing simply meant establishing credentials of integrity and some financial ability.⁵⁸ Even as mobsters came from other states where they had operated casinos illegally and began operations in Las Vegas, these people made a private decision that all applicants for casino licenses would be welcome in Las Vegas, and that there would be no monopoly control over the casinos by the mob or any branch, ergo "family" of organized crime.⁵⁹

New Jersey legalized casinos for Atlantic City in 1976. There was no set number of casino licenses, and since 1978, 13 casinos have been licensed. No company was allowed to have more than three facilities.⁶⁰

After the legalization of casinos in New Jersey, pressure mounted for casinos elsewhere. Beginning in 1989, several states embraced the notion of allowing either a single casino (a monopoly) or permitting only a few casinos (an oligopoly) in communities along major rivers in the state or bordering the state.⁶¹ Only Mississippi's boat casinos were in competitive market places.⁶² In 1988 and 1989, two western states allowed casinos in selected mountain areas with limited betting and competition among facilities.⁶³ Tribal casinos began to emerge in multiple states in 1989 as well. The 1990s brought more than 100 new tribal casinos. Almost all tribal casinos operated as local monopolies.⁶⁴ In 1996, the state of Michigan authorized an oligopoly of three commercial casinos for Detroit.⁶⁵

The debate rages on, but local monopolies and limited oligopolies seem to reign supreme. In 2006, Pennsylvania permitted 14 monopoly casinos in scattered cities, albeit Philadelphia and Pittsburgh had a few dispersed casino locations.⁶⁶ In 2011, Massachusetts granted monopoly licenses to four casinos.⁶⁷

⁵⁵ See generally Thompson, *supra* note 27.

⁵⁶ INTERNATIONAL CASINO LAW, *supra* note 41, at 323-480.

⁵⁷ THOMPSON, *supra* note 24, at 555.

⁵⁸ See generally JEFF BURBANK, LICENSE TO STEAL: NEVADA'S GAMING CONTROL SYSTEM IN THE MEGARESORT AGE 1-34 (2000).

⁵⁹ Interview with Jack Binion, former owner, Horseshoe Casino, in Las Vegas, Nev. (Sept. 20, 2004); see also THOMPSON, *supra* note 24, at 560-63, 570.

⁶⁰ See generally THOMPSON, *supra* note 24, at 584-86.

⁶¹ See INTERNATIONAL CASINO LAW, *supra* note 41, at 27, 33, 39-42, 92.

⁶² See generally THOMPSON, *supra* note 24, at 548-50; see also INTERNATIONAL CASINO LAW, *supra* note 41, at 72-91.

⁶³ THOMPSON, *supra* note 24, at 524-25, 589-90.

⁶⁴ 1 WILLIAM N. THOMPSON, THE INTERNATIONAL ENCYCLOPEDIA OF GAMBLING 139-51 (2010).

⁶⁵ THOMPSON, *supra* note 24, at 546-47.

⁶⁶ *Id.* at 584-86.

Similarly, Florida has been considering a monopoly structure for new commercial casinos.⁶⁸

While some in Nevada may have worried about the new competition across the United States, like Stanley Ho did in Macau, the impacts on the former monopoly jurisdiction were similar to the impacts on Nevada.⁶⁹

TABLE 2. NEVADA SURVIVES AS CASINO GAMING SWEEPS THE UNITED STATES⁷⁰

Year	States with Casinos	Non-Nevada Casinos	Non-Nevada Revenue	Nevada Revenue	Las Vegas Revenue
1989	7	53	\$2.8 billion	\$5.0 billion	\$3.4 billion
1990	7	115	\$3.6 billion	\$5.5 billion	\$4.1 billion
1995	17	300	\$14.7 billion	\$7.6 billion	\$5.7 billion
2000	27	384	\$24.8 billion	\$9.3 billion	\$7.7 billion
2005	36	861	\$52.6 billion	\$10.7 billion	\$9.7 billion
2010	37	935	\$61.3 billion	\$9.9 billion	\$8.9 billion

From 1989 to 2010, the number of states with casino gaming expanded from 8 to 38, including Nevada. Outside Nevada, the number of casinos expanded from 53 in 1989 to 935 in 2010, and casino revenues went from \$2.8 billion to \$61.3 billion. Nevada casinos were in constant competition, but the casinos in new jurisdictions did not destroy the Nevada industry. On the contrary, as new casinos appeared across the nation, revenues flourished and new casinos were developed in Nevada as well. Indeed, for each new casino outside Nevada, Nevada gaming revenue increased \$5,555,555 per year and Las Vegas gaming revenue increased \$6,235,828 per year.⁷¹ Certainly, market share was lost for Nevada, but profits increased.

Canadian provinces embraced casino gaming in the 1970s by tying it to charities or to government lottery schemes.⁷² In 1969, national legislation opened the door for lotteries and such “schemes.” Major government-owned monopoly casinos were created in Manitoba, Saskatchewan, Ontario, Quebec, Nova Scotia, and the Yukon Territory.⁷³ Charity casinos appeared within a

⁶⁷ Howard Stutz, *Key Moment in Florida*, LAS VEGAS REV.-J., Feb. 5, 2012, at 1D; Jeanette DeForge, *Casino Proposal May Help Prompt New Study of Traffic Problems on Chicopee’s Burnett Road*, MASSLIVE.COM (Aug. 1, 2012, 1:39 PM) http://www.masslive.com/news/index.ssf/2012/08/casino_proposals_create_a_new.html.

⁶⁸ *Id.*

⁶⁹ See the statistics in Table 2, showing that as casino gaming expanded across the United States, so too did the gaming revenues in Nevada and Las Vegas.

⁷⁰ William Thompson, *Casinos in Las Vegas: Where Impacts Are Not the Issue*, in LEGALIZED CASINO GAMING IN THE UNITED STATES: THE ECONOMIC AND SOCIAL IMPACT 105 (Cathy Hsu ed., 1999); for the years indicated on Table 2, the data was collected from AMERICAN GAMING ASSOCIATION, STATE OF THE STATES (1999-2010), and NEVADA GAMING CONTROL BOARD, NEVADA GAMING ABSTRACT REPORTS (1990-2010).

⁷¹ Figures are calculated from data on Table 2.

⁷² THOMPSON, *supra* note 24, at 386-88.

⁷³ See *id.* at 388-404.

competitive market structure in Alberta and British Columbia and jurisdictions with government casinos.⁷⁴

In the 1970s, the Australian state of Tasmania opened its first casino in Hobart.⁷⁵ A second opened in Launceston in 1982.⁷⁶ The 1980s and 1990s saw monopoly casinos in the other jurisdictions. Casino monopolies existed in Victoria, South Australia, West Australia, New South Wales, The Capital Territory, while Queensland had four monopoly casinos. Queensland's casinos were located in the widely separated cities of Brisbane, Gold Coast, Cairnes, and Townsville.⁷⁷ The Northern Territory had two monopoly casinos in towns over 900 miles apart—Darwin and Alice Springs.⁷⁸ New Zealand authorized four casinos in the 1990s as well.⁷⁹

Singapore created a shared monopoly by authorizing two mega-casinos.⁸⁰ As this article goes to publishing, Japan continues to debate legalization with the main proposal permitting ten monopoly casinos in select cities.⁸¹ These two new casino jurisdictions have latched onto the concept of the integrated resort, with each casino attached to a full resort complex.⁸² Local monopoly casinos are also found in the Philippines, Korea, and Malaysia, while Vietnam has a casino oligopoly in Ho Chi Minh City.⁸³

Vignettes describing selected jurisdictions can illustrate the impact of casino structures on the gaming economy. The descriptive paragraphs can also aid in categorizing American jurisdictions on a continuum from the most monopolistic to the least.

V. VIGNETTES AND DESCRIPTIONS OF CASINO INDUSTRY STRUCTURES IN AMERICAN STATE JURISDICTIONS⁸⁴

A. *Colorado: In Three Mountain Towns by Accidental Design*

In 1990, Colorado voters approved “limited” casinos for three remote mountain towns: Central City, Blackhawk, which are twin towns about 30 miles from Denver, and Cripple Creek, a historic town 50 miles from Colorado Springs.⁸⁵ These three towns were chosen after some entrepreneurs came up with the idea. They asked business leaders in small towns in Colorado whether

⁷⁴ *Id.* at 388, 390.

⁷⁵ *Id.* at 383.

⁷⁶ *Id.*

⁷⁷ *See id.* at 382-84.

⁷⁸ *Id.*

⁷⁹ *See id.* at 384-85; INTERNATIONAL CASINO LAW, *supra* note 41, at 590.

⁸⁰ THOMPSON, *supra* note 24, at 380.

⁸¹ Interview with Ichiro Tanioka, Professor of Sociology, Head of Gaming Inst., & President, Osaka Univ. of Commerce, in Tokyo, Japan (Nov. 4, 2011).

⁸² For more background on integrated resorts, *see generally* INTEGRATED RESORT CASINOS (William R. Eadington & Meighan R. Doyle eds., 2009).

⁸³ THOMPSON, *supra* note 24, at 370, 375, 378-79.

⁸⁴ *See generally id.* at 524-96; *see also* Richard Nathan, *Colorado*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 17-153; WILLIAM N. THOMPSON, INTERNATIONAL CASINO LAW AND REGULATION (International Masters of Gaming Law, 2008-2012).

⁸⁵ THOMPSON, *supra* note 24, at 524.

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they would help finance the campaign.⁸⁶ Three towns said “yes” and the legislature limited casinos to only those three towns.⁸⁷ Each city could have as many casinos as could secure licenses.⁸⁸ However, the casinos could only offer blackjack, poker, and slot machines.⁸⁹ The maximum single bet in a game was \$5. This limit has since been increased to \$100.⁹⁰ The state gaming board was empowered to license the casinos and to set annual taxes for gaming.⁹¹

Beginning in 1991, over eighty casinos obtained licenses and opened.⁹² The market was immediately saturated, but within a year, over 20 casinos closed their doors.⁹³ Colorado exacerbated the casinos’ economic struggles by doubling taxes from ten percent to twenty percent for the second year of operations.⁹⁴ Few new applicants sought licenses. There are now 48 active casinos.⁹⁵ Because each casino had to be located within a building with another business, the town became saturated with souvenir shops offering gaming. Instead of economic growth, the towns experienced traffic jams and accident rates on their few winding mountain roads commonly caused by drunk driving.⁹⁶

B. Illinois: Let’s Put the Casinos by the Poor People – Let’s Help Them out a bit!

Illinois did not intend to create windfall profits for casinos when the legislature passed its gaming law in January 1990.⁹⁷ Its goals were much more benign. Legislators were seeking much needed tax revenue for the state coffers and economic development for its poorest communities.⁹⁸ The economic development was focused toward the economically depressed communities, such as East St. Louis, Joliet, Peoria, Rock Island and Galena.⁹⁹ New casinos in these communities would attract tourists from long distances and create jobs for unemployed local residents.¹⁰⁰ The new tourism would also help local merchants expand their businesses.¹⁰¹ Thus, ten riverboat casinos were author-

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*; Nathan, *supra* note 84, at 20-21.

⁸⁹ THOMPSON, *supra* note 24, at 524.

⁹⁰ *Id.* at 525.

⁹¹ Nathan, *supra* note 84, at 19; R. Keith Schwer & William N. Thompson, Predicting the Selection of Gaming Taxation: A Cross-Section Model, National Training Conference of the American Society of Public Administration (July 26, 1994).

⁹² Nathan, *supra* note 84, at 18.

⁹³ *Id.*

⁹⁴ *Id.* at 23-24.

⁹⁵ *Colorado Casino List*, WORLD CASINO DIRECTORY, www.worldcasinodirectory.com/colorado/casino-list (last visited Jan. 16, 2013).

⁹⁶ See Patricia A. Stokowski, *Crime Patterns and Gaming Development in Rural Colorado*, 34 J. TRAVEL RES. 63, 66 (1996).

⁹⁷ See Michael Ficaró, *Illinois*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 27-29.

⁹⁸ William N. Thompson & Ricardo Gazel, *The Economic Impact of Riverboat Gambling in Illinois*, (Better Gov’t Ass’n, Working Paper, June 11, 1996) (on file with author).

⁹⁹ *Id.*

¹⁰⁰ Terrence Brunner, Executive Dir., Better Gov’t Ass’n, Statement to the Metro Ethics Coalition Project (June 23, 1997), available at <http://www.lwvma.org/Casino%20Gambling%20Resource%20PDF%20Files/02%20Statement%20to%20the%20Metro%20Ethics%20Coalition%20Project.pdf>.

¹⁰¹ *Id.*

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ized for the entire state, located in depressed communities on major waterways.¹⁰²

To assure that there would not be windfall profits, each casino boat was limited to 1,200 gaming positions, which included slot machines and seats at gaming tables.¹⁰³ During gaming hours, the boats would have to be cruising on open waters.¹⁰⁴ Gaming would stop when the boats dock to let players off or to let new players on board.¹⁰⁵ The boats were in depressed communities, and as such, most of the gamblers were from poorer communities.¹⁰⁶ With the exception of Joliet, the casino communities each had a monopoly consisting of one boat.¹⁰⁷ While the casino locations¹⁰⁸ were largely isolated from each other,¹⁰⁹ the East St. Louis casino shared the immediate local region with four St. Louis Missouri area casinos¹¹⁰ and other casinos shared markets with Iowa and Indiana casinos.¹¹¹

Illinois' hopes that the casinos would attract customers from long distances and that customers' spending would create local jobs was a pipe dream.¹¹² However, nearby local populations furnished sufficient players to fill the allotted gaming spots in each casino.¹¹³ By limiting the size of each boat, the authorities created a situation in which the casinos did not have to advertise.¹¹⁴ They certainly did not have to build hotel rooms for the customers.¹¹⁵

One survey found that 54% of the players lived within 25 miles of the casino they visited and 86% lived in Illinois—even though five of the ten casinos were on rivers that shared state boundaries with Iowa, Missouri, or Kentucky.¹¹⁶ Only 17 out of 740 players interviewed (2.3%) stayed at a hotel or motel, and several of these players were not visiting the area to go to the casinos. Rather than bringing money into the community, a preponderance of the players was spending money at the casinos that they would have otherwise spent in the community.¹¹⁷

The limit on the number of casinos and the restrictions on the size of gaming areas precluded expansion of the casino business and kept the properties from advertising to potential tourists. The Chicago Better Business Bureau

¹⁰² THOMPSON, *supra* note 24, at 533.

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¹⁰³ *See* Ficaro, *supra* note 97, at 29.

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¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ WILLIAM N. THOMPSON & RICARDO GAZEL, BETTER GOV'T ASS'N, GAMBLERS IN ILLINOIS: WHO ARE THEY? (April 1996).

¹⁰⁷ Ficaro, *supra* note 97, at 27-28.

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¹⁰⁸ Listed above, in addition to, Elgin, Aurora, Metropolis, Alton.

¹⁰⁹ *Id.*

¹¹⁰ *See* THOMPSON, *supra* note 24, at 550-51; S. Maxwell et al., *Missouri*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 92.

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¹¹¹ THOMPSON, *supra* note 24, at 535-37; Lorenzo D. Creighton, *Iowa*, in INTERNATIONAL CASINO LAW, *supra* note 41, 39-41.

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¹¹² Thompson & Gazel, *supra* note 98.

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¹¹³ Thompson & Gazel, *supra* note 98; THOMPSON & GAZEL, *supra* note 106.

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¹¹⁴ Thompson & Gazel, *supra* note 98; THOMPSON & GAZEL, *supra* note 106.

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¹¹⁵ Thompson & Gazel, *supra* note 98; THOMPSON & GAZEL, *supra* note 106.

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¹¹⁶ THOMPSON & GAZEL, *supra* note 106.

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¹¹⁷ *Id.*

sent a survey team to visit 100 local businesses in Joliet, Illinois.¹¹⁸ They surveyors asked whether the introduction of two casinos (with four riverboats) into Joliet helped or hurt their businesses. If the business owner indicated that the casinos helped his business, the surveyors asked how it helped. Approximately one half of the businesses said that they had seen no effect on their business, while the other half found that their business had suffered with the introduction of casino gaming.

However, two business leaders asserted that business had never been better. “Thank god for the casinos,” they glowed.¹¹⁹ One of the businesses purchased used cars for cash. It realized great turn-over profits because of the steady supply of cars offered by owners for sale at fast and low prices. The other business was a travel agency. The survey team thought the travel agency’s business increase demonstrated the benefits of tourism coming to Joliet because of the casinos. However, the director of the travel agency responded to this suggestion with laughter. “No. No. You don’t understand, our many new clients are not people who have chosen to come to Joliet. They are people who live in Joliet. Since the casino doors have opened, they have rushed our doors, seeking our services. They are booking flights to Las Vegas.” Joliet casinos certainly did affect tourism.

C. *Indiana: Following the Neighbor, But Bigger*

The governor of Indiana vetoed legislation to allow riverboat casinos in his state. However, on July 1, 1993, the legislature overrode his veto.¹²⁰ In December 1995, the first of eleven casino boats opened its doors.¹²¹ Currently, five permanently docked boats operate along the shores of Lake Michigan.¹²² Three boats constitute an oligopoly in southeast Indiana operating within the Cincinnati, Ohio metropolitan area.¹²³ There is a single monopoly boat on the Ohio River north of Louisville, and another on the Ohio River in Evansville. The eleventh boat is on a southern Indiana lake by French Lick.¹²⁴

In 1997, researcher and coauthor of this paper, William N. Thompson was hired by the Horseshoe Casino Company¹²⁵ to analyze the economic impacts for a proposed casino river boat seeking a license for a location near Louisville.¹²⁶ Only one license was available. Mr. Thompson intended to show how

¹¹⁸ Brunner, *supra* note 100. Coauthor Thompson and Ricardo Gazel assisted Terrence Brunner in developing and analyzing the Joliet business survey in 1986.

¹¹⁹ *Id.*

¹²⁰ Carl Braunlich, *Indiana*, in *INTERNATIONAL CASINO LAW*, *supra* note 41, at 33.

¹²¹ THOMPSON, *supra* note 24, at 536.

¹²² Braunlich, *supra* note 120, at 33.

¹²³ See THOMPSON, *supra* note 24, at 536.

¹²⁴ See *Indiana*, *WORLD CASINO DIRECTORY*, <http://www.worldcasinodirectory.com/Indiana> (last visited Jan. 16, 2013); see also *CASINO CITY’S GAMING BUSINESS DIRECTORY* 61 (Winter 2012).

¹²⁵ Coauthor, William Thompson, was engaged to analyze the economic impacts for a proposed casino riverboat near Louisville. Thompson sought to show how the boat could result in an overall economic benefit for the entire Louisville metropolitan region. The political information in the paragraph was gathered during his direct observations while on personal visits to Indiana on behalf of the Horseshoe Casino.

¹²⁶ *Id.*

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the casino boat could lead to economic benefit for the entire Louisville metropolitan region. However, the Horseshoe Casino Company emphasized to the researcher that the state of Indiana was more concerned about how many jobs the boat would generate and how much tax revenue the boat would provide for Indiana.

In a sense, greater tax revenues for Indiana would be adverse to economic benefits for the region. Neither southern Indiana nor the Louisville area would benefit because the taxes would go to a government hundreds of miles away in central Indiana. Back to the drawing table, Mr. Thompson minimized the size of a hotel, reduced the number of restaurants and showroom activities, and added additional gaming area to the equation.¹²⁷ The changed analysis projected increased tax revenues, but the bottom line remained the same. Then, the Horseshoe Casino Company hired the former lieutenant governor to lobby their proposal.¹²⁸ A rival company hired a former governor and proposed a bigger boat with a bigger casino and more projected tax revenue. The rival company secured the license.¹²⁹

D. *Iowa: The Original Image, Crap Shooting With Huckleberry Finn*

Iowa was the first state to put casino boats on water. Riverboat gaming was approved in 1989, and casino activity began in Iowa in 1991.¹³⁰ The state has licensed fifteen—casino boats and three racetrack casinos.¹³¹ New casinos are permitted, but local jurisdictions must approve their presence.¹³² Along with three Native American casinos, most of the facilities stand as local monopolies, except for three casinos in the Council Bluffs area and four in the Davenport area.¹³³ Originally, patrons were limited to a \$200 loss for each cruising session, and patrons were not allowed to have a single bet of more than \$5.¹³⁴ These limits have since been removed.¹³⁵

E. *Louisiana: Boats and The Blues*

In 1992, Louisiana law authorized one land-based casino in New Orleans and 15 riverboat casinos.¹³⁶ Under the law, racetracks, truck stops, and bars are also authorized to have slot machines.¹³⁷ Advertising is strictly limited.¹³⁸ The New Orleans casino is designed to cater to tourist traffic, but it is not permitted

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*; Braunlich, *supra* note 120.

¹³⁰ Lorenzo D. Creighton, *Iowa*, in *INTERNATIONAL CASINO LAW*, *supra* note 41, 39-41.

¹³¹ THOMPSON, *supra* note 24, at 537; *Iowa*, *WORLD CASINO DIRECTORY*, <http://www.worldcasinodirectory.com/iowa> (last visited Feb. 12, 2013). Not all the 18 listed casinos are operational.

¹³² Creighton, *supra* note 130; *see also Current News and Information*, IOWA RACING AND GAMING COMM'N, www.iowa.gov/irgc.

¹³³ *Id.*

¹³⁴ THOMPSON, *supra* note 24, at 537; *Current News and Information*, IOWA RACING AND GAMING COMM'N, www.iowa.gov/irgc.

¹³⁵ *Id.*

¹³⁶ *Id.* at 541-42.

¹³⁷ *Id.*

¹³⁸ H. Buchler et al., *Louisiana*, in *INTERNATIONAL CASINO LAW*, *supra* note 41, at 57.

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to have a hotel, a sit-down restaurant or café, or live entertainment so as to not compete with existing entertainment venues in the city.¹³⁹ Initially, the law imposed a tax of 18.5% on gaming above the required annual fee of \$100 million.¹⁴⁰ The annual fee was later reduced to \$50 million.¹⁴¹

Presently, five of the riverboat casinos are in the New Orleans metropolitan area, five are in the Shreveport-Bossier City area, three are in Baton Rouge, and two are in Lake Charles.¹⁴² There are also three Native American casinos in the state.¹⁴³

F. *Michigan: To Stop Gaming Dollars Going Over the Bridge*

Voters in Detroit had several opportunities to approve advisory referenda on casinos. They voted against the referenda in 1976, 1981, 1988, and 1993.¹⁴⁴ However, shortly after the 1993 vote, the governor of Michigan approved casino compacts for seven Native American tribes.¹⁴⁵ Then on May 17, 1994, the government of Ontario, Canada opened a casino in Windsor, just one mile over the Detroit River's Ambassador Bridge from downtown Detroit.¹⁴⁶ Detroit voters could see the constant line of traffic over the bridge taking Detroit (and other Michigan) dollars across the international boundary to a foreign casino.¹⁴⁷ As such, in November 1994, they approved an advisory vote calling for the legalization of casinos in Detroit.¹⁴⁸ Legalization, however, required a change in the Michigan constitution.¹⁴⁹

The authors of the 1994 advisory proposal instituted a petition drive for a statewide vote to amend the state constitution to allow Detroit to have three casinos.¹⁵⁰ The proposition was put on the state ballot in 1996, but it contained a lot of fine print that was not in the summary on the ballot.¹⁵¹ Voters approved the proposal by less than 52%; however, they only saw that Detroit would have three casinos and that taxes would go to the state and the city of Detroit for good causes.¹⁵² The voters had also inadvertently approved the fine print, which stated that two casino licenses had to go to the two companies that supported the 1994 referendum campaign.¹⁵³

One sponsor, the Atwater Group, combined with Circus Circus Casinos to secure the first license, even though most of the principals at Atwater were

¹³⁹ *Id.* 58-59.

¹⁴⁰ THOMPSON, *supra* note 24, at 542; H. Buchler et al., *supra* note 138.

¹⁴¹ THOMPSON, *supra* note 24, at 542.

¹⁴² *Id.* at 541.

¹⁴³ *Id.*

¹⁴⁴ Fred Wacker & William N. Thompson, *Michigan*, in *INTERNATIONAL CASINO LAW*, *supra* note 41, at 64.

¹⁴⁵ *Id.* at 65. There are now twenty tribal casinos — all well outside of the Detroit Metropolitan area.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 64.

¹⁴⁹ For a history, see William N. Thompson & R. Fred Wacker, *The Michigan Question: A Legal Quandary*, 1 *GAMING L. REV.* 501, 501 (1997).

¹⁵⁰ *Id.* at 506; Wacker & Thompson, *supra* note 144, at 66.

¹⁵¹ Thompson & Wacker, *supra* note 149; Wacker & Thompson, *supra* note 144, at 66.

¹⁵² Thompson & Wacker, *supra* note 149; Wacker & Thompson, *supra* note 144, at 66.

¹⁵³ Thompson & Wacker, *supra* note 149, at 507.

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found unsuitable for licensing.¹⁵⁴ Greektown, another 1994 sponsor, combined with a northern Michigan Native American tribe and obtained the second license.¹⁵⁵ In competition with eight other non-1994 sponsors, M.G.M Grand obtained the third license.¹⁵⁶ Each of the three companies found existing properties in decaying downtown Detroit and constructed appropriately large parking garages and interior casino floor areas.¹⁵⁷ Although promises of completing hotel structures were delayed for over six years, gaming began in 1999.¹⁵⁸ The casinos were full, but almost all of the players were from the local Detroit area.¹⁵⁹ Casino sponsors assured Michigan voters that the volume of business at Casino Windsor would decline after the three Detroit casinos opened. This did not happen, however.¹⁶⁰ The Canadian authorities approved a second casino in Windsor and added nearly one thousand slot machines to the racetrack facilities in Windsor.¹⁶¹ Casino Windsor constructed 390 hotel rooms after the Michigan legalization, and later they approved a \$90 million expansion with an additional 200 hotel rooms.¹⁶²

G. Missouri: Regulation or Grabbing for the Big Dollar Sign

Missouri riverboat casinos were first licensed in 1993 and began full-scale operations in 1994.¹⁶³ At first, players had a \$500 loss limit during each cruising session.¹⁶⁴ Later the limit was dropped.¹⁶⁵ Initially, riverboat casinos were allowed in any county where voters had approved gaming.¹⁶⁶ In 2008, the state imposed a limit of thirteen riverboat casino licenses.¹⁶⁷

In the early stages, the state was eager to find operators and it tended to overlook factors that may have disqualified certain applications. Casino applicants hired local attorneys who used what some considered inappropriate influence over regulators to secure licensing. One such applicant was a major Nevada firm, Station Casinos, Inc. (“Station”).¹⁶⁸ Station won approval for licenses in Kansas City and in St. Charles in 1997. However, the operations did

¹⁵⁴ Wacker & Thompson, *supra* note 144, at 68-69.

¹⁵⁵ *Id.*

¹⁵⁶ THOMPSON, *supra* note 24, at 546.

¹⁵⁷ *Id.*; this is also a personal observation of coauthor Thompson, formerly a resident of the Detroit area.

¹⁵⁸ For background on the process, see Cameron McWhirter & Darren A. Nichols, *Casino Plan Downsized – Kilpatrick Seeks License Extension; Latest Plan Envisions Smaller Hotels, Less Revenue*, DETROIT NEWS, Mar. 21, 2002, at 01A.

¹⁵⁹ See Mike Tobin, *Detroit Casinos Lacking Benefits [sic] for City*, Cleveland Plain Dealer, Apr. 14, 2005, reprinted by AM. POL’Y ROUNDTABLE, http://www.aproundtable.org/news/newsindividual.cfm?news_ID=340&issuecode=casino (last visited Mar.20, 2013).

¹⁶⁰ See THOMPSON, *supra* note 24, at 399.

¹⁶¹ *Id.*

¹⁶² *Casino Windsor Plans \$400 Million Expansion*, CASINO CITY TIMES (Feb. 21-27, 2005), <http://newsletter.casinocity.com/Issue232>.

¹⁶³ S. Maxwell et al., *Missouri*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 92.

¹⁶⁴ See *id.* at 94.

¹⁶⁵ THOMPSON, *supra* note 24, at 551.

¹⁶⁶ Maxwell et al., *supra* note 163.

¹⁶⁷ Scott Franks, *Missouri Casinos*, USA TODAY TRAVEL, <http://traveltips.usatoday.com/missouri-casinos-19991.html> (last visited Mar. 20, 2013).

¹⁶⁸ *Stations to Sell Missouri Operations*, N.Y. TIMES, Oct. 19, 2000, at C4.

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not meet all state standards. Station was fined over one million dollars for activities such as accepting wagers from persons as young as thirteen years old.¹⁶⁹ Nonetheless, rather than revoking Station's license causing the company to lose their entire investment, the Missouri gaming authorities permitted Station to sell its casino interests to Ameristar Casinos.

After this decision, the state determined there would be a permanent oligopoly with only thirteen casinos. State regulators created a retroactive regulatory standard that restricted the size of casino operations.¹⁷⁰ They revoked a license from the President Casino, which was one of Missouri's first with a boat underneath the Arch in St. Louis.¹⁷¹ While the boat was making profits, the profits were not sufficient to satisfy the Missouri Gaming Commission.¹⁷² Commission members also feared that the boat was in a state of decay and its owners were not prepared to upgrade it.¹⁷³ A new license was awarded to a casino in Cape Girardeau which promised to bring in greater revenues.¹⁷⁴

H. Mississippi: From the Coast to a Ditch, to the Shore

After Nevada, Mississippi comes the closest to offering an open market for casinos.¹⁷⁵ There are 32 casinos in Mississippi, and like Nevada, casinos came to Mississippi in an almost natural progression from an existing reality to a licensed phenomenon.¹⁷⁶ Several ships offered "cruises to nowhere" from ports in Mississippi.¹⁷⁷ There was a debate over whether the ships could offer games while in the waters of the Mississippi Sound inside a line of outer islands in the Gulf of Mexico.¹⁷⁸ The courts and the legislature wrestled with the issue.¹⁷⁹ After several attempts, the legislature permitted one ship to operate games during "cruises to nowhere."¹⁸⁰ However, the ship was not sufficiently profitable and it ceased operations.¹⁸¹

During the debate, the legislature witnessed the legalization of riverboat casinos in Iowa and Illinois.¹⁸² In the summer of 1990, the legislature also approved casino boats for ports on the Gulf of Mexico and along navigable areas of the Mississippi River.¹⁸³ The licenses, however, did not require that

¹⁶⁹ *Id.*

¹⁷⁰ Kelsey Volkmann, *President Casino, Admiral to Disappear from Riverfront by July*, ST. LOUIS BUS. J. (Mar. 10, 2010), <http://www.bizjournals.com/stlouis/stories/2010/03/08/daily42.html?page=all>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Melissa Miller, *Cape Girardeau Casino Opens for Business*, SOUTHEAST MISSOURIAN (Oct. 31, 2012), <http://www.semissourian.com/story/1908830.html>

¹⁷⁵ See generally THOMPSON, *supra* note 24, at 548.

¹⁷⁶ *Id.*; see also T.B. Shepherd & C.L. Netz, *Mississippi*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 72-73.

¹⁷⁷ Shepherd & Netz, *supra* note 176, at 72.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*; THOMPSON, *supra* note 24, at 549.

¹⁸² Shepherd & Netz, *supra* note 176, at 73; THOMPSON, *supra* note 24, at 549.

¹⁸³ Shepherd & Netz, *supra* note 176, at 73; THOMPSON, *supra* note 24, at 549.

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boats make cruises, only that the gaming areas were above water.¹⁸⁴ Each casino boat became a permanent structure.¹⁸⁵ The casino floor was essentially a barge; although, it only moved up and down with changes in river levels.¹⁸⁶ After Hurricane Katrina devastated the Gulf Coast and the surrounding casinos in 2005, Mississippi allowed rebuilding on solid ground within 800 yards of the Gulf.¹⁸⁷ Mississippi now has three casinos in Gulfport-Bay St. Louis, nine in Biloxi along the Gulf Coast, eleven near Tunica in the north within an hour of Memphis, and eight along the River in Greenville, Vicksburg, and Natchez.¹⁸⁸ There is also one Native American casino.¹⁸⁹

Moreover, the Mississippi licensing process is open. The only restriction is that the location of the casino boats must be in river or Gulf water counties where voters approved gaming.¹⁹⁰ However, in 1996, the Casino board rejected a license for a fifth boat in Vicksburg because the boat would increase competition with the existing Vicksburg boats.¹⁹¹ In 2012, a license application for a new casino on the Gulf Coast was upheld so architects could redesign the facility to accommodate a much larger gaming floor.¹⁹²

I. Nevada: The Reigning American Title Holder

Nevada has an open licensing process with over 300 casinos and 2,000 restricted gaming locations, which have only a small number of slot machines (15 or under).¹⁹³ Gaming is permitted in all counties and cities except Boulder City. Until 1960, Boulder City was controlled by the federal government—the city had been established as a residential area for workers on the massive Hoover Dam.¹⁹⁴ While casino gaming was legalized in 1931, it did not become the state's dominating industry for a dozen years after that.¹⁹⁵ In the 1940s, operators of illegal casino establishments from across the United States gravitated to Nevada to set up shop where it was legal. Prominent among them were members of organized crime families. These “mobsters” met together and made a critical decision: Las Vegas (and Nevada) would welcome anyone who wished to come and start a casino.¹⁹⁶ They did not have to be members of this crime family, that crime family, or any crime family at all. From the start, the casino

¹⁸⁴ Shepherd & Netz, *supra* note 176, at 73.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ THOMPSON, *supra* note 24, at 550.

¹⁸⁸ See *Mississippi*, WORLD CASINO DIRECTORY, <http://www.worldcasinodirectory.com/> Mississippi (last visited Jan. 22, 2013).

¹⁸⁹ *Id.*

¹⁹⁰ Shepherd & Netz, *supra* note 176, at 74.

¹⁹¹ M. Jason Akers, *The Big Black River Question: Suitable Site or Suited for Trouble?*, 4 GAMING L. REV. 148 (2000).

¹⁹² Mary Perez, *Rotate Black Coming Back with Bigger Plans for Harbor Town*, SUN HERALD (May 10, 2012), <http://www.sunherald.com/2012/05/10/3938187/rotate-black-coming-back-with.html>.

¹⁹³ THOMPSON, *supra* note 24, at 553.

¹⁹⁴ *Id.* at 559.

¹⁹⁵ THOMPSON, *supra* note 24, at 561-62.

¹⁹⁶ Interview with Jack Binion, *supra* note 59; see also THOMPSON, *supra* note 24, at 562.

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entrepreneurs of Nevada determined that the industry was to be open and competitive—there was to be no monopoly in Nevada.¹⁹⁷

Today, the casinos of Nevada, especially those of Las Vegas are very competitive. For example, Stephen Wynn, a major casino entrepreneur, stated that the Las Vegas Strip was the essence of free enterprise.¹⁹⁸ He had competed openly and vigorously with other casino owners such as Sheldon Adelson, owner of the Venetian. In an interview, Wynn said, “He would offer a room deal, then I would have to offer a better deal, he would match me and offer better odds on a game, and I would have to follow—it was cut throat, we were at each other’s jugulars—AND I LOVED IT!”¹⁹⁹ According to Wynn, this competition was wonderful for the players because they received the best deals and the best customer service.²⁰⁰

The concerns of casino monopolies were raised before. For instance, the federal anti-trust authorities started actions against Howard Hughes because he was buying up properties on the Las Vegas Strip in the 1960s.²⁰¹ After he purchased seven casinos, they suggested that he own no more because he would be controlling too much of the casino activity.²⁰² Robert Maheu, aide to Hughes, found this ironic because he had arranged with federal officials for Hughes to buy Las Vegas Strip properties to end the influence of organized crime interests in Las Vegas.²⁰³ Wynn was upset in 2004 when the MGM Mirage corporation purchased the Mandalay Resort Group (which had merged with Circus Circus casino properties), which would give it control over 50% of the rooms on the Strip and 70% of the non-gaming entertainment operations.²⁰⁴ While that purchase came to be, both Adelson and Wynn continued their growth activities on the Strip and successfully competed against M.G.M. operations.²⁰⁵

An example of competition off the Strip illustrates Las Vegas gaming activity. There is a ring of three major casinos in the southern urban core of Las Vegas: the Green Valley Ranch (Constructed in 2001), the South Point (Built in 2005 as the South Coast, purchased by Michael Gaughn, and renamed South Point in 2006), and the “M” Resort (2009).²⁰⁶ Each location appeals to gaming patrons living in Henderson, the largest suburban city in the Las Vegas metropolitan area, and the second largest city in Nevada.²⁰⁷ The three are very competitive, especially being within a fifteen minute drive of one another.²⁰⁸ They

¹⁹⁷ Interview with Jack Binion, *supra* note 59; *see also* THOMPSON, *supra* note 24, at 562. R

¹⁹⁸ Interview with Stephen Wynn, CEO, Wynn Resorts Ltd., in Las Vegas, Nev. (Sept. 21, 2004).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ THOMPSON, *supra* note 24. R

²⁰² *Id.*

²⁰³ Interview with Robert Maheu, Chief Aide to Howard Hughes, in Las Vegas, Nev. (June 7, 2007).

²⁰⁴ Interview with Stephen Wynn, *supra* note 198. R

²⁰⁵ *See* THOMPSON, *supra* note 24, at 565. R

²⁰⁶ *Id.*

²⁰⁷ Interview with Bradley Wimmer, Professor of Econ., Univ. of Nev., Las Vegas, in Las Vegas, Nev. (Mar. 21, 2012).

²⁰⁸ *Id.*

market their facilities primarily to local residents, while their hotels and restaurants appeal to tourists, and each has a sports book.²⁰⁹

The South Point's sports book first allowed patrons to place bets on winners and on the total points for a game during the half-time of every game.²¹⁰ The Green Valley Ranch took notice, but by the time they changed their rules and allowed half-time betting on each basketball game, the "M" had opened its sports book operated by Cantor Gaming.²¹¹ The "M" offered both half-time bets as well as bets on game outcomes and total points scored during any time-out throughout the entire game for all games.²¹² This only lasted for a short duration because the Green Valley Ranch and the South Point adjusted to taking bets on game outcomes during timeouts throughout the course of the games. These changes gave the player more in terms of gaming product and gaming enjoyment.²¹³ However, they came with a cost to the properties because each had to hire more staff to analyze games through their entirety, exposing the staff to greater dangers of making mistakes, or simply being less skilled in game analysis than the best gamblers.²¹⁴ Therefore, the "best" gamblers started coming to these casinos because major sports books on the Las Vegas Strip were not willing to take the risks and lower profits realized by the Green Valley Ranch, the South Point, and the "M" Resort.²¹⁵

J. New Jersey: The Open Market Experiences the Power of a Monopoly

New Jersey casinos, established by a vote of the people in 1976 and subsequent legislation passed in 1977,²¹⁶ are structured for free and open competition. However, the casinos must be constructed within the boundaries of Atlantic City.²¹⁷ The high price of land and construction costs in Atlantic City, along with a requirement for having 500 hotel rooms, renders the local casino industry an oligopoly of 12 properties.²¹⁸ Casinos are permitted to have up to 60,000 square feet of gaming space in a 500-room hotel.²¹⁹ If a casino wants more gaming space, it may have an additional 10,000 square feet of gaming space for each additional 100 rooms.²²⁰

The New Jersey gaming law prescribes specific rules for each game that is played. The rules set minimum and maximum bets made for each game.²²¹ The

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Casino Control Act, N.J. STAT. ANN. § 5:12 (West 2011).

²¹⁷ Nicholas Casiello & Marie Jones, *New Jersey*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 121; N.J. STAT. ANN. § 5:12-1 (West 2011).

²¹⁸ THOMPSON, *supra* note 24, at 573; for the effects of the regulation, see VICKI ABT ET AL., THE BUSINESS OF RISK: COMMERCIAL GAMBLING IN MAINSTREAM AMERICA 145-47 (1985); for an historical overview of New Jersey gaming, see GEORGE STERNLIEB & JAMES W. HUGHES, THE ATLANTIC CITY GAMBLE 9-13 (1983).

²¹⁹ Casiello & Jones, *supra* note 217, at 132; THOMPSON, *supra* note 24, at 575.

²²⁰ Casiello & Jones, *supra* note 217, at 132; THOMPSON, *supra* note 24, at 575.

²²¹ Casiello & Jones, *supra* note 217, at 123.

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government also placed inspectors in each casino during times of play—which was originally 18-20 hours a day, but is now 24 hours a day.²²² This requirement for inspectors was dropped in 2011.²²³ The license application process is quite costly and labor intensive. New Jersey affirmed that its casinos were the most strictly observed and regulated in the world.²²⁴ The state set out stringent requirements covering even the décor and color combinations inside the casinos.²²⁵

While New Jersey wanted to have such strict regulations, reality struck the regulators with a vengeance in 1978 as the license application process was opened.²²⁶ Only one company stepped forth seeking to be licensed: Resorts International (“Resorts”). The New Jersey authorities promised very tight regulations that would prevent “bad people” from becoming casino operators. Indeed, as he signed the 1977 legislation, Governor Brendan Byrne had loudly shouted out to a virtual audience of organized crime mobsters—“Keep your filthy hands out of Atlantic City and keep the hell out of our state!”²²⁷ However, government authorities had also promised that the new casinos would bring vitally needed jobs, urban renewal, and considerable tax revenues.²²⁸ To uphold these promises, Atlantic City would need many casinos, but in early 1978, only one applicant, Resorts, stood in line to get a license.²²⁹

Resorts was the largest financial donor to the referendum campaign that won voter approval in 1976.²³⁰ However, the newly created Division of Gaming Enforcement (“DGE”) in the New Jersey attorney general’s office discovered issues when investigating Resorts. Close associates of the company had ties to organized crime and the company exhibited many serious defects in its casino operations in the Bahamas.²³¹ Moreover, the company was notorious for bribing government officials in the Bahamas.²³² The DGE recommended that the final decision-maker on licensing—the New Jersey Casino Control Commission (NJCCC)—deny the license application.²³³

The NJCCC had a dilemma. The NJCCC could choose the squeaky clean path and deny the license, which would indefinitely postpone job-creation in gaming and the collection of tax revenues. Alternatively, it could fold to reality and grant a license to a party recognized as an industry “bad actor.” The NJCCC tried to follow a middle path. It granted Resorts a temporary, six-month

²²² *Id.* at 132.

²²³ *115 Atlantic City Inspectors Jobs Being Eliminated*, NJ.COM, Feb. 3, 2011, http://www.vnj.com/atlantic/index.ssf/2011/02/115_atlantic_city_casino_inspectors_jobs_being_eliminated.html.

²²⁴ STERNLIEB & HUGHES, *supra* note 218, at 59-61.

²²⁵ Interview by Michael Aron with Richard J. Codey, Governor of N.J., in West Orange, N.J. (Mar. 23, 2010), *available at* http://governors.rutgers.edu/interview_forum/documents/Codey-interview.pdf.

²²⁶ STERNLIEB & HUGHES, *supra* note 218, at 65-66.

²²⁷ GIGI MAHON, *THE COMPANY THAT BOUGHT THE BOARDWALK* 8 (1980).

²²⁸ STERNLIEB & HUGHES, *supra* note 218, at 2.

²²⁹ *Id.* at 66; THOMPSON, *supra* note 24, at 575-76.

²³⁰ STERNLIEB & HUGHES, *supra* note 218, at 52; DOMBRINK & THOMPSON, *supra* note 39, at 37.

²³¹ *Id.*

²³² *See* MAHON, *supra* note 227, at 80; THOMPSON, *supra* note 24, at 575-76.

²³³ THOMPSON, *supra* note 24, at 576.

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license.²³⁴ After receiving the license, Resorts finished remodeling an old hotel as a casino. Resorts bought equipment, and hired staff.²³⁵ For six months it operated as a casino gaming monopoly in the eastern two-thirds of America. During those six months it made a killing, but it did not clean up its corporate act.²³⁶ Resorts offered abysmal customer service and sought to raise game limits, skirting the regulations wherever possible.²³⁷ It also set payout percentages at the lowest levels allowed. The DGE discovered Resorts had been violating regulations on a constant basis. Six months lapsed, and the DGE recommended that a permanent or continuing license be denied to Resorts.²³⁸

On the other hand, Resorts had hired four thousand workers, and it paid millions of dollars to the state in gaming taxes.²³⁹ The legislature had to calculate future tax revenue into the state budget. The state had money, but it did not have companies seeking a gaming license.²⁴⁰ The NJCCC only had Resorts. As such, it gave Resorts a permanent license.²⁴¹ For another eight months, Resorts operated its casino as a monopoly. Its profits were phenomenal.²⁴²

K. Pennsylvania: Just Make it Bigger

In 2003, the Pennsylvania legislature studied the possibility of authorizing slot machine casinos.²⁴³ This involved a study²⁴⁴ of slot machine revenues and the residence of players in New Jersey and Delaware. It also involved determining where revenues would go. The study revealed that most of the players were Pennsylvania residents. It also revealed that revenues mostly went to out-of-state casino owners, slot machine suppliers in Nevada, and other suppliers—some in and some out of Pennsylvania.²⁴⁵ The study found that gaming taxes would go to Washington, D.C. and Harrisburg, Pennsylvania.²⁴⁶ The conclusion was that even if Pennsylvania could collect a good share of the money going to New Jersey and Delaware casinos, more money would leave Pennsylvania than come into Pennsylvania as a result of having the machines.²⁴⁷

²³⁴ See STERNLIEB & HUGHES, *supra* note 218, at 66; see MAHON, *supra* note 227, at 157; RICHARD LEHNE, CASINO POLICY 91 (1986). R

²³⁵ STERNLIEB & HUGHES, *supra* note 218, at 66. R

²³⁶ STERNLIEB & HUGHES, *supra* note 218 at 66-68; MAHON, *supra* note 227, at 177. R

²³⁷ STERNLIEB & HUGHES, *supra* note 218 at 66-68; MAHON, *supra* note 227, at 177. R

²³⁸ THOMPSON, *supra* note 24, at 576. R

²³⁹ STERNLIEB & HUGHES, *supra* note 218, at 67. For more about New Jersey during this time, see generally MAHON, *supra* note 227, at 203-16, 226-40. R

²⁴⁰ STERNLIEB & HUGHES, *supra* note 218, at 68; LEHNE, *supra* note 234, at 93. R

²⁴¹ THOMPSON, *supra* note 24, at 576; LEHNE, *supra* note 234, at 93. R

²⁴² See STERNLIEB AND HUGHES, *supra* note 218, at 106-07. R

²⁴³ THOMPSON, *supra* note 24, at 584-86. R

²⁴⁴ As part of the study, coauthor William N. Thompson was engaged by an anti-casino lobby group to examine potential revenues and economic impacts for a proposed project to have 35,000 slot machines at fourteen separate (and monopoly) locations around Pennsylvania.

²⁴⁵ William N. Thompson, Address at Pennsylvania General Assembly Finance Committees: Analysis of Revenue Potential from a Proposal for Machine Gambling in Pennsylvania, Aug. 18, 2003, (on file with author).

²⁴⁶ *Id.*

²⁴⁷ *Id.*

A month after the study, the researcher²⁴⁸ received a call from the governor's office. The governor supported the idea of having the casinos and his staff wanted the researcher's opinion as to whether Pennsylvania could retrieve over one billion dollars in taxation if the state had 35,000 machines. The researcher agreed to analyze this single factor with the understanding that standing alone this would not be a conclusion in favor of or against casino.²⁴⁹ Assuming a tax of 33 1/3%, the answer was "yes."²⁵⁰ A machine could make \$90,000, meaning that it would produce \$30,000 a year in state taxes. With 35,000 machines, this would bring in \$1,050,000,000 in taxes.²⁵¹ The governor was happy with this response and told his legislative colleagues to revise the bill.²⁵² The legislation was passed.²⁵³ On July 5, 2004, the governor signed the bill authorizing fourteen casinos, seven at horse race tracks and seven "free standing." Each casino could have up to 5000 slot machines, with a maximum of 60,000 machines in the state.²⁵⁴ The first casinos opened in 2006. By 2009, the state was realizing over \$1.3 billion in casinos taxes, with a third more going to local governments.²⁵⁵ In 2010, the state began allowing the casinos to have table games.²⁵⁶ Overall, one thing motivated state activity on gaming: tax revenue.²⁵⁷

L. *Ohio: A Monopoly Created by The Monopolists*²⁵⁸

In 2009, Ohio voters approved four monopoly casinos for Toledo, Cleveland, Columbus, and Cincinnati.²⁵⁹ The Cincinnati casino shares its local market with three casino boats under Indiana jurisdiction. Somehow, the sponsors of the Ohio vote were able to sneak the details of their proposal by the voters with a promise of economic benefits such as jobs and taxes. Until the votes were counted, it went almost unnoticed that the proposition determined who would own the casinos. The proposition specified the exact parcels of land upon which the casinos were to be built, and these parcels already had owners. One party, the owner of sports teams in Cleveland, was thereby given ownership of two of the casinos.²⁶⁰ Post-vote protests led to legislative approval of casinos at each of seven horse race tracks in the state. The first casino opened in May 2012 in Cleveland.²⁶¹

²⁴⁸ The researcher tasked with assisting the governor was coauthor William N. Thompson.

²⁴⁹ *Id.*

²⁵⁰ Unpublished Paper from William N. Thompson to Ed Rendell, Governor of Penn. (July 2003) (on file with author).

²⁵¹ *Id.*

²⁵² See William N. Thompson, *Gambling Taxes: The Philosophy, The Constitution, and Horizontal Equity*, 17 VILL. SPORTS & ENT. L.J. 389, 397 (2010).

²⁵³ Pennsylvania Racehorse Development and Gambling Act 4 PA. CONS. STAT. §1101 (2004).

²⁵⁴ 4 PA CONS. STAT. §1201 (2010); see Thompson, *supra* note 252, at 585.

²⁵⁵ See Thompson, *supra* note 252.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Not considered in analysis, as the casinos are just beginning to open in mid-2012.

²⁵⁹ THOMPSON, *supra* note 24, at 581-82.

²⁶⁰ *Id.*

²⁶¹ Jen Steer & Josh Boose, *Horseshoe Casino Cleveland Officially Opens, Lines of People File in and Give positive Reviews*, NEWSNET5.COM (May 14, 2012), <http://www.newsnet5.com>

M. South Dakota: Reviving Wild Bill Hickok

The town of Deadwood, South Dakota gained a “Wild West” reputation in the nineteenth century. It was noted for offering “sin” opportunities for cowboys and fortune-seeking miners.²⁶² Wild Bill Hickok was shot in the back during a poker game in 1876.²⁶³ In the twentieth century, Deadwood exhibited its historical roots, appealing to tourists. Thus, casinos were proposed as an attempt to win more tourist trade. However, South Dakota voters defeated a casino vote in 1982.²⁶⁴ The tourist activity took a major hit after a fire destroyed much of the downtown area in 1987.²⁶⁵ City fathers responded by sponsoring another casino referendum in 1988.²⁶⁶ This time South Dakota voters approved it, and in 1989, after local voters gave a second approval, casinos opened.²⁶⁷ Now, there are 30 small gaming halls offering blackjack, poker, and slot machines.²⁶⁸ Each casino is limited to 30 slot machines or table gaming seats. Originally, bets were limited to \$5, but there is now a \$100 bet limit.²⁶⁹ The state imposes an 8% gaming tax, with the money going to gaming regulation and tourism development for the Black Hills region.²⁷⁰ Other areas of South Dakota have eight Native American casinos, while bars, restaurants, and hotels across the state are permitted to have a limited number of slot machines.²⁷¹

N. West Virginia: From Racino to Casino

The West Virginia legislature authorized an experimental installation of video gaming machines—keno machines, poker machines, and slot machines—at the Mountaineer horse racing track beginning on June 9, 1990.²⁷² At first, only seventy machines were installed.²⁷³ That number grew to 400 in 1994, with most of them being keno machines.²⁷⁴ The first machines had payouts of 88.6 percent.²⁷⁵ During a three-year experimental period, the lottery agreed not to put machines in other locations.²⁷⁶ Now machines are at the three other tracks: Charles Town, Wheeling Island, and Tri-State, with the latter two being

com/dpp/news/local_news/cleveland_metro/horseshoe-casino-cleveland-officially-opens-lines-of-people-file-in.

²⁶² THOMPSON, *supra* note 24, at 589.

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²⁶³ *Id.*; Anthony Cabot, *South Dakota*, in INTERNATIONAL CASINO LAW, *supra* note 41, at 138.

²⁶⁴ THOMPSON, *supra* note 24, at 589; Cabot, *supra* note 263, at 138.

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²⁶⁵ THOMPSON, *supra* note 24, at 590; Cabot, *supra* note 263, at 138.

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²⁶⁶ THOMPSON, *supra* note 24, at 589; Cabot, *supra* note 263, at 138.

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²⁶⁷ THOMPSON, *supra* note 24, at 589; Cabot, *supra* note 263, at 138.

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²⁶⁸ *See generally*, *South Dakota*, WORLD CASINO DIRECTORY, <http://www.worldcasino.com/south-dakota/casino-list> (last visited Jan. 18, 2013); *see generally also* CASINO CITY'S GAMING BUSINESS DIRECTORY (2010).

²⁶⁹ THOMPSON, *supra* note 24, at 590; Cabot, *supra* note 263, at 138.

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²⁷⁰ THOMPSON, *supra* note 24, at 590.

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²⁷¹ *See id.* at 589-90.

²⁷² *Id.* at 595; William N. Thompson, *Inside Straight: Racinos and the Public Interest*, 3 GAMING L. REV. 283, 283 (1999).

²⁷³ Thompson, *supra* note 272.

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²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

dog tracks.²⁷⁷ The tracks keep 70 percent of the revenues and 30 percent goes to the state.²⁷⁸ There are now over eleven thousand machines at the tracks.²⁷⁹ Lottery machines are also permitted in over a thousand bars and taverns.²⁸⁰ In 2007, in response to the expansion of gaming in Pennsylvania, the state legislature approved a measure allowing casino table games at the four tracks if they received local voter approval.²⁸¹ The approvals were secured, and four full casinos operate in the state.²⁸²

VI. CLASSIFYING AND ORDERING AMERICAN STATE VENUES

The following table classifies the 13 American jurisdictions from the most monopolistic to the most competitive. These classifications are determined by the number of casinos permitted, their locations vis-à-vis one another, and whether new casinos may seek licenses.

At the top of the table are the seven casino jurisdictions that have limited the number of casinos. They are arranged by the number of casinos permitted and their geographical spread.

TABLE 3: THE ORDER OF STATES—MOST MONOPOLISTIC TO MOST OPEN²⁸³

Closed Number of Casinos	
West Virginia	4 monopoly casinos
Pennsylvania	14 monopoly and oligopolistic casinos
Michigan	3 oligopolistic casinos
Illinois	10 monopoly and oligopolistic casinos
Indiana	13 monopoly and oligopolistic casinos
Missouri	13 monopoly and oligopolistic casinos
Louisiana	16 monopoly and oligopolistic casinos
Unlimited Number of Casinos	
Iowa	17 monopoly and oligopolistic casinos
New Jersey	13 limited location-competitive casinos
South Dakota	30 limited location-competitive casinos
Colorado	40 limited location-competitive casinos
Mississippi	30 competitive casinos with some location limits
Nevada	300+ competitive casinos

²⁷⁷ THOMPSON, *supra* note 24, at 595.

²⁷⁸ Thompson, *supra* note 272.

²⁷⁹ *Id.*

²⁸⁰ THOMPSON, *supra* note 24, at 595.

²⁸¹ W. VA. CODE § 29-22C-7 (2007).

²⁸² Thompson, *supra* note 24, at 596.

²⁸³ See entries in THOMPSON, *supra* note 24, at 524-95.

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VII. MEASURE OF IMPACTS OF MONOPOLY ON INDUSTRY OUTPUTS

Literature suggests that monopolies' major impacts are upon pricing and providing quality services to customers. The general theory is that a monopoly structure will burden the customer with artificially higher prices and will lower the quality of goods and services.²⁸⁴ It is difficult to measure these factors in relation to the casino industry because there are not many price points on a casino gaming floor that can be accurately assessed across large numbers of casinos. Players do not pay a set fee to play games. And while the games offered return benefits to the player in terms of wins, most games are played with the same rules and odds over many casinos. Where differences in odds exist, they are not such that they can be easily determined and analyzed. Differences are also as likely to be found within the same casinos as to be found across several. Ergo, a blackjack game may offer slightly different rules if the game is for low stakes (\$5) as opposed to high stakes (\$100 and over), or if it is dealt from a shoe, an automatic card shuffler, or from a single deck. Roulette wheels may offer a house advantage of a single zero, or they may offer double zeros. Yet, in America, wheels with single zeros are extremely rare so comparisons are not fruitful. Within some foreign casinos, wheels of both types may appear on the same gaming floor.²⁸⁵

There is one measure that can be used to assess the cost of a gambling product.

Slot machines make random payouts to players. However, the odds that exist over long terms of play are amazingly consistent for specific casinos and jurisdictions. They are also reported in official records. Of the thirteen states, only Michigan does not report payoff percentages. While the payouts of five cent, twenty-five cent, dollar, and other machines vary, casinos typically report the payouts of each machine denomination and the rates for all machines together. Of the thirteen casino states in this analysis, four—Illinois, Indiana, Iowa, and Missouri—report payout percentages for individual casinos.²⁸⁶ These four and eight others make reports for all machines in the jurisdiction.

A. *Monopolies and Slot Machine Payouts*

First, the impact of a monopoly structure will be tested with the following hypothesis: "monopolistic casinos will have lower slot machine payout percentages than will open competitive structures." The below table is organized beginning with the most closed and monopolistic jurisdictions to the most competitive and open jurisdictions. A closed jurisdiction is one in which no more casinos will be allowed.²⁸⁷

²⁸⁴ SAMUELSON, *supra* note 1.

²⁸⁵ Personal observation of coauthor Thompson during visit to Casino St. Vincent, Italy, July 18, 1987.

²⁸⁶ See *Slot Machine Payback Statistics*, AMERICAN CASINO GUIDE, <http://www.american-casinoguide.com/slot-machine-payback-statistics.html> (last visited Jan. 18, 2013).

²⁸⁷ *Id.*

TABLE 4. MONOPOLY STRUCTURES AND PRICING: SLOT MACHINE
PAYOFF PERCENTAGES

Closed States	Slot Machine Payoff (median casino)
West Virginia	89.78%
Pennsylvania	90.76%
Michigan	—
Illinois	91.58%
Indiana	91.28%
Missouri	90.85%
Louisiana	90.90%
All Closed States (minus MI)	90.88%
Open States	Slot Machine Payoff (median casino)
Iowa	90.86%
New Jersey	91.28%
South Dakota	90.99%
Colorado	92.32%
Mississippi	92.56%
Nevada	93.80%
All Open States	91.80%
Overall Median	91.09%

The hypothesis presented is proven. Monopoly casinos have a tendency to suppress slot machine payouts, raising the price of gaming for players. Open competitive jurisdictions offer higher payouts, ergo better prices for the players.

B. Service Quality Attributes

As mentioned above, it is difficult to find price points on casino floors, at least prices that can be compiled for comparisons among large numbers of casinos. However, there are attributes of casino operations that may have a major impact on the quality of service and the value that casinos add to their communities and their player base. Data was collected on several of these attributes, namely, job numbers, number of hotel rooms, convention space, number of restaurants, and number of entertainment venues in casinos.²⁸⁸

For each attribute, casino revenues were analyzed to obtain the amount of casino revenue associated with one casino job, one hotel room, one square foot of convention space, one restaurant, and one entertainment venue in the

²⁸⁸ The data is utilized in a previous article: William N. Thompson, *Casino Taxes - Accentuating the Negative*, 15 GAMING L. REV. & ECON. 599, 600 (2011); Sources of data include: AMERICAN GAMING ASSOCIATION, STATE OF THE STATES (2010), and CASINO CITY'S NORTH AMERICAN GAMING ALMANAC (Steve Bloom & Michael Opton eds., 2012); CASINO CITY'S GAMING BUSINESS DIRECTORY (Winter 2012).

casino.²⁸⁹ The data was accumulated for each state and for individual casinos in four selected states. The data is presented in tables 5a, 5b and 6. The data is used to test the hypothesis that open competitive casinos will offer better service quality than closed monopolistic casinos.²⁹⁰

TABLE 5A CASINO REVENUES, JOBS AND AMENITIES (2009)
CLOSED STATES²⁹¹

State	Total Revenue	Calculation	Jobs	Hotel Rooms	Convention Space	Restaurants	Entertainment Venues
WV	\$906m	Total Units Revenue per Unit	4,688 \$193,171	663 \$1,365,852	37,800 \$23,957	29 \$31,241,379	10 \$90,559,000
PA	\$3,549b	Total Units Revenue per Unit	14,925 \$237,453	488 \$7,262,295	38,500 \$92,052	62 \$57,161,290	7 \$506,285,710
MI	\$1.339b	Total Units Revenue per Unit	8,122 \$164,861	800 \$1,673,750	32,735 \$40,904	13 \$103,000,000	10 \$133,900,000
IL	\$1.429b	Total Units Revenue per Unit	7,083 \$201,751	1,116 \$1,280,466	50,100 \$28,523	40 \$35,725,000	13 \$109,923,070
IN	\$2,799b	Total Units Revenue per Unit	15,857 \$176,515	4,028 \$694,886	179,050 \$15,633	70 \$39,985,714	25 \$111,960,000
MO	\$1.730b	Total Units Revenue per Unit	10,961 \$157,832	2,567 \$673,938	184,550 \$9,374	57 \$30,350,877	24 \$72,883,333
LA	\$2.456b	Total Units Revenue per Unit	17,610 \$139,466	4,523 \$543,002	119,940 \$20,477	74 \$33,189,189	19 \$129,263,150
Total	\$14.208b	Total Units Revenue per Unit	79,246 \$179,290	14,185 \$1,001,621	642,675 \$22,108	345 \$41,182,608	108 \$131,555,556

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* The figures on each table have been taken from sources, formulated and calculations set forth made by the coauthors.

TABLE 5B CASINO REVENUES, JOBS AND AMENITIES (2009) OPEN STATES²⁹²

State	Total Revenue	Calculation	Jobs	Hotel Rooms	Convention Space	Restaurants	Entertainment Venues
IA	\$1.381b	Total Units	9,241	1,627	101,320	55	23
		Revenue per Unit	\$149,443	\$848,801	\$13,630	\$29,109,090	\$60,043,478
NJ	\$3.943b	Total Units	36,377	16,406	768,669	151	57
		Revenue per Unit	\$108,392	\$240,339	\$5,130	\$26,112,582	\$69,175,438
SD	\$102m	Total Units	1,765	1,148	29,850	44	2
		Revenue per Unit	\$57,734	\$88,763	\$3,414	\$2,315,909	\$50,950,000
CO	\$735m	Total Units	8,821	1,392	61,928	75	10
		Revenue per Unit	\$83,277	\$527,723	\$11,862	\$9,794,533	\$73,459,000
MS	\$2.465b	Total Units	25,739	12,936	346,875	130	47
		Revenue per Unit	\$95,769	\$190,554	\$7,160	\$18,961,538	\$52,446,808
NV	\$10.393b	Total Units	177,397	148,975	11,683,792	1,283	375
		Revenue per Unit	\$58,586	\$69,763	\$890	\$8,100,546	\$27,714,666
Total	\$19.019b	Total Units	259,340	182,484	12,992,434	1,738	514
		Revenue per Unit	\$73,336	\$104,223	\$1,464	\$10,943,037	\$37,001,945
Total Without NV	\$8.626b	Total Units	81,943	33,509	1,308,642	455	139
		Revenue per Unit	\$105,268	\$257,423	\$6,592	\$18,958,241	\$62,057,553

The information in Tables 5a and 5b suggests confirmation of the hypothesis presented. Data consistently reveals that the open market states offer more employees and more amenities to their guests. While the hypothesis may be confirmed, the persistence of an outside variable must be mentioned. The taxation element will be discussed with the same data set in a previous study cited above.²⁹³ The monopoly states have higher gaming tax rates, and these are also associated with lower job numbers, as well as lower levels of amenities.

The six “closed” states have 79,610 jobs in their casinos. With gaming revenues of \$14.2 billion dollars a year (2009), it takes \$179,290 in gaming revenue to produce one job. However, the seven states with open casino competition have 259,340 jobs produced by revenues of \$19.0 billion, which is only \$73,336 for each job. For each dollar spent by gamers, and for each single gamer, there are more employees in open market states. This impacts quality.

Recently, the state of New Jersey took a license from one of the Atlantic City casinos.²⁹⁴ There was a litany of abuses, which contributed to the casino’s disqualification. However, one of the bigger abuses was the casino’s wholesale

²⁹² *Id.*

²⁹³ Thompson, *supra* note 288.

²⁹⁴ See Press Release, New Jersey Casino Control Comm’n, Commission Denies License Renewal for Tropicana; Trustee Takes Control Immediately (Dec. 12, 2007), available at <http://www.nj.gov/casinos/news/archive/pdf/immediatereleasetropicana.pdf>; Howard Stutz, *Tropicana Denied by N.J. Panel*, LAS VEGAS REV.-J., Dec. 13, 2007, at 1D.

employee layoffs.²⁹⁵ In turn, the casino received many complaints about customer service and established a record of having unclean and unhealthy facilities.²⁹⁶ Job numbers make a difference.

Because casino gaming in Nevada is much larger than any other U.S. state, all analysis must carefully consider the fact. Therefore, one could consider just the attributes of five open states in tables 5a and 5b, excluding Nevada. However, when this is done, the conclusions do not change, and the hypothesis remains confirmed.

Casino amenities off the gaming floor have the capacity to add value to the casino community and to increase its base of casino players. Hotel rooms, convention facilities, restaurants, and entertainment venues are attractive to a community. The seven closed states have 14,185 rooms, or one room for each \$1,001,621 in gaming revenue. The six open states have 182,484 hotel rooms, or one room for each \$104,223. Taking Nevada out of the equation, the five other open states produce one room for \$257,423.

One square foot of convention space corresponds to \$22,108 of casino revenue in the seven closed states, but only \$1,464 in the six open states. Not including Nevada, the revenue for each square foot of space is \$6,592 in the five open states. One restaurant in the closed states, which had a total of 345 restaurants, was tied to \$41,182,608 in gaming revenue. The gaming revenue was only \$10,943,037 for each of the 1,738 restaurants in the six open states. Not including Nevada, the revenue for each restaurant is \$18,958,241 in the five open states.

There were 108 entertainment venues in the six closed casino states. Each came was tied to \$131,555,556 in gaming revenue. In the six open states, the gaming revenue is \$37,001,945 for each of 514 entertainment venues; without Nevada, it is \$62,057,553 for each of 139 entertainment facilities in the five open states.

The data in the tables above offers confirmation of the two tested hypotheses. Open competition in the casino industry results in enhanced values for customers, including lower prices, more amenities, and better quality service. However, there are some caution flags with the casinos in four mid-western states.

VIII. PRICE POINTS IN MONOPOLISTIC CASINOS IN FOUR SELECTED STATES

Further analysis takes one to four states, all of which are monopolistic-oligopolistic jurisdictions. Three states—Illinois, Indiana, and Missouri—are closed states, while the other—Iowa—may be open to new licenses. The individual casinos in these states (with two exceptions for new casinos) provide information on their slot machine payoffs and the service quality. Of the 51 casinos open in 2009, 20 were monopoly facilities because no other casino was

²⁹⁵ Stutz, *supra* note 294.

²⁹⁶ *Id.*

within 50 miles.²⁹⁷ Thirty-one were in oligopolistic settings because there were competing casinos within fifty miles.²⁹⁸

With the same two hypotheses for these sets of casinos, one should expect that the monopolistic set of 20 casinos will have higher slot prices, meaning lower payout percentages to the players, and lower service quality than top competitive casinos.

The data does not support the hypotheses. Slot machine payoff percentages were not distinguishable—the 20 monopoly casinos had a median slot payoff percentage of 91.08%, while that of the 31 competitive casinos was 91.07%.

Also, the evidence on the service quality was directly contrary to the hypothesis. Jobs in monopoly casinos came with gaming revenues of \$124,900, but in the competitive states, \$173,200. Hotel rooms: monopoly unit price \$591,300; with competitive casinos, \$828,500. Convention space: monopoly unit price \$6.6 per square foot; competitive casinos, \$16.2 per square foot. The monopoly casinos had \$22,448 in gaming revenue for each restaurant, and \$49,517 for each entertainment venue. The competitive casinos had \$31,760 for each restaurant, and \$103,223 for each entertainment venue.

However, before rejecting the hypothesis, one might consider another explanation. All of these casinos are in states with monopolistic and oligopolistic casino industry structures. While Iowa could allow new casinos, it is unlikely to do so in the short run. The casinos can expect artificial market stability not present in the other open states. Perhaps in these states, monopoly casinos experience greater levels of profits and use these to hire extra staff and invest in amenities, which improve service quality. However, the evidence suggests this spread of factors only in the selected states and not across all casino states where opposite findings are in evidence.

The following table analyzes data for casinos located in Iowa, Illinois, Indiana, and Missouri. There are a total of 51 casinos—20 are “monopoly” casinos and 31 are “competitive” casinos. A “monopoly” casino is the only casino within 50 miles. A “competitive” casino is a casino located within 50 miles of another casino.

²⁹⁷ The casino locations were identified on maps by the coauthors. Distances between casinos were determined by hand calculations using map legends and Google Maps.

²⁹⁸ *Id.*

TABLE 6. PRICE AND SERVICE FACTORS OF INDIVIDUAL CASINOS—IN MONOPOLY SETTINGS AND IN COMPETITIVE SETTINGS IN SELECTED STATES²⁹⁹

	Monopoly (20)		Competitive (31)	
Total Revenue	\$1.7 billion		\$5.4 billion	
Calculation	Total Units	Revenue p/Unit (thousands)	Total Units	Revenue p/Unit (thousands)
Jobs	13,469	\$124.9	30,987	\$173.2
Hotel Rooms	2,847	\$591.3	6,479	\$828.5
Convention Space	256,357	\$6.6/sq. ft.	332,098	\$16.2/sq. ft.
Restaurants	75	\$22,448.0	169	\$31,760.9
Entertainment Venues	34	\$49,517.6	52	\$103,223.1
Slot Payoffs*	91.08%	—	91.07%	—

*Slot payoffs are collective medians

IX. A SUMMARY NOTE: FUTURE RESEARCH

The data presented on tables 4, 5a, and 5b support the hypotheses that monopoly-state casinos will offer higher prices for their products, and offer fewer amenities. This gives the customers fewer benefits overall. However, this is not a definitive report, but rather exploratory and preliminary suggestion. The findings in table 6 do not definitively support or reject the hypotheses. Casino legalizations may have reached a “tipping point” and many new states will soon be setting forth industry structures for their casinos. More research could be valuable to attain definitive findings. Replications of the approaches taken here would be valuable, as would cross-jurisdiction studies using sample surveys of many players regarding their perceptions of service quality in casinos they have visited.

X. PARTING DISCUSSION: OF ALL INDUSTRIES, WHY SHOULD CASINOS BE MONOPOLIES?

Literature suggests that some industries are appropriately monopoly enterprises. Do casinos fit the bill as part of such industries? This section will examine five arguments in support of monopolies.

First, monopolies are considered to be appropriate when authorities believe that the product of the monopoly is critical for society and that the supplier of the product may not be successful if confronted with vigorous competition. For example, because electric power is vital, power producers should be monopolies. The same may be true for utilities producing drinking water and services for cleaning wastewater.

²⁹⁹ The data is utilized in a previous article: William N. Thompson, *Casino Taxes - Accentuating the Negative*, 15 GAMING L. REV. & ECON. 599, 600 (2011); Sources of data include: AMERICAN GAMING ASSOCIATION, STATE OF THE STATES (2010), and CASINO CITY'S NORTH AMERICAN GAMING ALMANAC (Steve Bloom & Michael Opton eds., 2012); CASINO CITY'S GAMING BUSINESS DIRECTORY (Winter 2012).

However, casino gambling simply is not a vital product or service. At best, it is a recreational service that may result in economic benefits. At its worst, it can become addictive and harmful to the individuals involved in gambling and to the general society. No reasonable assessment would suggest that casino gambling institutions need the special protection of monopoly status because they fulfill such a critical need for society.

One anomaly occurs in Sweden, where the government has a monopoly over sales of alcoholic beverages, limiting consumption, and keeping prices high. They do this with notion of protecting the public.³⁰⁰ Sweden's special protection for alcoholic beverage sales involves limited consumption. Governments and private casino monopoly owners do the opposite. They seek to raise levels of consumption in order to realize higher profits and taxation levels.

Second, monopolies are supported by the notion that certain businesses need especially large capital investment.³⁰¹ Accordingly, they find that investors are reluctant to furnish capital funds without assurance that the businesses will achieve a high profit level—levels that only monopoly businesses can achieve. Also, if competitive enterprises offer the same product, there will be major inefficiencies with duplicate investments such as multiple telephone poles on the same street, or duplicate sets of train tracks over the same pathways. Certain modern casinos may carry costs approaching several billions of dollars, but such high costs are not necessary to produce casino facilities in some areas. Casinos historically were created as side rooms off other facilities. Some gaming facilities are but temporary locations for playing card and dice games. Moreover, the most extravagant casinos today—ones with investments over a billion dollars each—are found in very competitive market places such as Las Vegas, Atlantic City, Macau, and Singapore. Therefore, casinos do not need monopoly protection in order to attract capital investment funds.

Third, the enhanced profits of the monopoly business structure may be used to develop new innovative products that will be beneficial for society.³⁰² While casinos are constantly tweaking their games with rule changes and graphic appeals, the level of innovation in casinos is minimal. The games played in casinos are very old and the types of equipment for the games (i.e. roulette wheels, green felt tables, dice, and decks of cards, and even slot machines) have been around for well over a century, or indeed many centuries.³⁰³ Casinos do not sell products; they sell services. The innovation in their service delivery is not capital-intensive. Most casino innovations have come from suppliers who sell to all establishments or from the minds of entrepreneurs at competitive casinos.

Fourth, efficiency is one reason to support monopolies.³⁰⁴ One idea is that many competitive establishments operate with the same customer base, but one

³⁰⁰ *What is a Government Monopoly?*, eHow, http://www.ehow.com/about_5471337_government-monopoly.html (last visited Jan. 18, 2013).

³⁰¹ DEWEY, *supra* note 3, at 50.

³⁰² Pau Klein, *Monopoly Advantages and Disadvantages*, PAUKLEIN.COM, www.pauklein.com/monopoly/monopoly.htm (last visited Jan. 22, 2013).

³⁰³ *See generally*, THOMPSON, *supra* note 24, at 239-88.

³⁰⁴ For more analysis, *see* DEWEY, *supra* note 2, at 50, 66; STEPHEN J. K. WALTERS, ENTERPRISE, GOVERNMENT, AND THE PUBLIC 218 (1993); *see* Sumner H. Slichter, *In Defense of*

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performs more effectively and with greater efficiency. As business costs are reduced, casinos might reduce prices and expand their facilities. Competitors are unable to meet the more efficient casino's prices, losing their customers. Thus, in a Darwinian fashion, the most efficient enterprise forces the others out of business, and wins a monopoly position in the economy. However, this rationale for monopolies—to the most efficient go the spoils—cannot apply to the casinos in this study. Monopoly casinos did not earn their monopoly standing. Governments gave the casinos their monopoly standing. Some earned their governmental gift through a competitive bidding process, but many were simply the sole qualified bidder for a casino license in a particular location.

Fifth, there is an argument that monopolies may exist if they are subject to strict government regulations.³⁰⁵ Some may even suggest that monopolies are good because they necessitate strict regulation. This rationale hardly fits the casino industry. Strict gaming regulation was first applied to casinos in Nevada in the 1950s, when the industry had already developed along the lines of open competition. Atlantic City casinos were hailed as the most strictly regulated even after a competitive number of licenses were granted.

Nevada, New Jersey, and Mississippi—all open and competitive jurisdictions—instituted rules that casinos had to have a certain level of amenities, such as a number of hotel rooms. Similarly, in New Orleans, a monopolistic jurisdiction, the casinos could not have hotel rooms, sit-down restaurants, or shows. Thus, the correlation between monopolies and strict regulation is tenuous.

None of the rationales supporting a monopoly structure applies to casinos. This should be re-explored with replication and other new research. It is incredible that the American political system has invested millions of hours of judicial and executive expertise and countless hours of legislative work on the subject the monopoly business enterprise. Textbooks devoted to the area of monopoly study and practice fill shelves in law libraries. Law journals devote a myriad of pages to these questions and the almost endless cases. Yet, a cursory review of the literature revealed no law texts or articles addressing these questions in the context of the casino industry. While American scholars and political leaders fight over how many petroleum companies, cereal companies, steel companies, or even baseball leagues there must be in our competitive society, casinos may operate in any way that their lobbyists persuade legislators or voters to allow, sometimes without strict oversight. Thus, the topic of monopolies in the American casino industry demands more attention.

Bigness in Business, in MONOPOLY POWER AND ECONOMIC PERFORMANCE 13-18 (Edwin Mansfield ed., 1974).

³⁰⁵ ADAMS, *supra* note 2, 488-92.