

## THE (UN)CONTESTED GEOGRAPHY OF AMERICAN INDIAN CASINOS IN NEW YORK

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**ABSTRACT:** *The State of New York is considering various proposals to allow additional American Indian casinos to move ahead. At the surface, the politics surrounding the decision reveal much about the struggle for power between the governor and the legislature. However, as the two sides struggle to control the destiny of American Indian casinos in New York, virtually all discussion of qualitative differences between the proposals has been silenced. What lies just beneath the surface, and what has been lost in the debate, is a meaningful dialogue on the location of these casinos. Proposals to base casinos in urban areas versus proposals to base them in resort areas will bring about substantially different social impacts. Thus the different geographies of gambling in New York that have been proposed represent a critical topic for discussion.*

### GAMBLING IN NEW YORK

Without question there has always been some demand for games of chance and the gambling that accompanies them in New York; as there is in every other state and virtually every other known society. What has varied throughout New York's history, as well as that of the rest of the United States, is the supply of legal opportunities to gamble. Generally speaking, the supply of legalized gambling has waxed and waned with respect to prevailing economic conditions. Because states generally receive large tax revenues from legalized gambling, opportunities to gamble legally have tended to increase during economic downturns--when tax revenues are drying up--and to diminish gambling opportunities when the economy is doing well (see Rose, 1980; Grinols and Omorov, 1996a; Thompson, 1997).

The first serious economic crisis faced by the United States coincided with its very creation as costs associated with fighting the Revolutionary War led to the so-called first wave of gambling across the United States (see Rose, 1980). One of the first acts of the Continental Congress was to institute a national lottery to help pay off debts incurred during the war. Of course, it was not only the federal government that faced severe monetary shortages, many states faced similar problems as well and New York was among several states that adopted lotteries early on to make up for the shortfall. So popular were these lotteries that many other institutions soon began to follow suit. A number of prominent colleges and hospitals were able to expand their physical infrastructure through the use of lotteries.

The most notable example of this in New York was Kings College (now Columbia University), which used money from its lottery to strengthen its position as one of America's most prestigious schools.

With the early economic troubles facing the nation over, the first wave of gambling began to wane, aided greatly by the moral reforms of the Second Great Awakening and the Jacksonian Era. By the time of the Civil War the elimination of state lotteries was virtually complete as they were outlawed in all but three states (Thompson, 1997).

The ravenous effects of the civil war strained the United States economy as it dealt simultaneously with war debts and Southern reconstruction, leading many former Confederate states to adopt lotteries to alleviate their debts. This increase in legalized gambling occurred simultaneously with a proliferation of casino gambling in the frontier West, and led to the second wave of gambling in the United States. Falling outside the geographic boundaries of the reconstruction South and the frontier West, New York didn't see the rapid rise in gambling that other parts of the country experienced. Nonetheless, the New York did see an expansion of legalized gambling, most of which was in horse racing. This was an extension of previous gambling endeavors as New York had always been a central focus of the horse racing industry. In fact, the commercial racing industry in British North America was born in New York in 1665 when the first oval track in the colonies was laid out in Hempstead Plain, Long Island (a significant development in the evolution of horse racing for it allowed the proprietor of the track to take bets and charge admission). It was during the second wave of legalized gambling that the Travers

Stakes was run for the first time in Saratoga Springs. Originally part of horse racing's prestigious Triple Crown when it began in 1864, the Travers Stakes was the first stakes race in the colonies. While the Travers Stakes can no longer claim part of the Triple Crown, Long Island's Belmont Stakes, run for the first time in 1867, would eventually take its place.

While horse racing was the major outlet for legalized gambling in New York, lotteries were another form of gambling that many New Yorkers enjoyed. During the nineteenth century lotteries frequently advertised and shipped tickets across state lines and New York residents were regularly mailing in lottery tickets to various parts of the country. Most significantly, New Yorkers were mailing tickets to Louisiana, which had one of the largest lotteries in the country and one of the most notorious as well (Chafetz, 1960). The extent of bribery amongst state and local officials resulted in a congressional ban on the use of mail of lottery tickets after 1890, and forbade shipments of tickets across state lines in 1895.

The second wave of gambling began to fade around the turn of the century due to the moral zealotry of the temperance movements and the economic prosperity that followed the 1893 depression. The fact that there was rampant corruption in lotteries made their elimination that much easier. There was also significant corruption in the horse-racing industry, though it was not completely wiped out: in 1890 there were 314 racing tracks operating in the United States and by 1908 that number had been reduced to only 25 (Longrigg, 1972). The decline in the horse racing industry hit New York particularly hard with racing temporarily suspended at such major tracks as Saratoga and Belmont.

Legal gambling began to wax again during the Great Depression with states desperate for additional tax revenues and the temperance movement fading. Betting on horses was reintroduced in most states between 1935 and 1940 with New York coming at the tail end of that period. However, while the Great depression resuscitated the horse racing industry, further expansion of gambling--with the exception of Nevada--would not come until the late nineteen sixties and early seventies. This coincided with the economic retrenchment that accompanied the shift from Fordist to post-Fordist modes of production and combined with the oil crisis to create a major recession (see Harvey, 1990; Dicken, 1998). Among the earliest signs of retrenchment in the United States was the loss of manufacturing jobs in the industrial heartland, first to the sunbelt and eventually overseas. Consequently, the first states faced with a declining private sector

and tax revenue shortfalls were the former centers of heavy manufacturing, the soon-to-be rustbelt states. It was under these economic conditions that New Hampshire approved the first modern lottery, ushering in the third wave of gambling. Following New Hampshire, a number of other rustbelt states passed lottery bills including New York two years later. Passage of the lottery in New York, like many other states, was predicated on the state's share of revenue going towards education, an assertion that has created much debate in the years since. Nevertheless, after a shaky start--New York's lottery actually saw sales decline in its first few years due to high ticket prices and infrequent drawings (Goodman, 1995)--it appeared as if the lottery would accompany horse racing as the only two forms of legalized gambling in New York. This was in keeping with the positive economic conditions in the mid-eighties and consistent with the sentiments of long time governor Mario Cuomo (Dao, 1993). This all changed quickly, however, when a 1987 U.S. Supreme Court decision forced the New York governor to begin negotiating compacts to bring Native American casino gambling into the state.

## **THE INTRODUCTION OF AMERICAN INDIAN CASINOS**

The 1987 Supreme Court case that opened the door to American Indian casino gambling was *Cabazon v. California*. The case was brought by the Cabazon Band of Mission Indians who maintained it was their right to conduct gaming on reservation land so long as it was not in violation of the state criminal code. Because California allowed charitable gaming to take place, the court held that American Indians should be afforded the right to conduct the same activities, even if done on a for-profit basis. The decision was a major victory for the sovereignty claims of American Indians and immediately changed the economic prospects for hundreds of federally recognized American Indian Nations (Winchell et al., 1997).

The victory for American Indians was only a partial one though. With an immediate surge in casino activity on American Indian reservations, the federal government quickly passed the 1988 Indian Gaming Regulatory Act, establishing a common framework for gambling compacts to be negotiated between the American Indian Nations and the states. The act created three categories of gambling licenses: Class I licenses for charitable and social gaming involving nominal prizes, not requiring any state oversight; Class II licenses for bingo, punch board

and pull tab games, requiring a two year state oversight period after which regulation reverted to the American Indian Nations; and Class III licenses for high-stakes casino games, horse racing and lotteries (General Accounting Office, 1997). Most significantly, Class III licenses are regulated in accordance with compacts between state governments and federally recognized American Indian Nations. The granting of such a large state role overseeing any high-stakes gambling represents a potential loss of sovereignty for American Indian Nations who chose to pursue gambling and has been central to the strong divisions within American Indian communities.

Despite the turmoil that the Indian Gaming Regulatory Act created for American Indians, the granting of gambling licenses to American Indians quickly accelerated the pace of casino legalization. During the period from 1988 to 1996, nine states legalized casino gambling, while another fourteen states were forced to permit full scale American Indian Casinos (Eadington, 1997). In New York, the first test of the gaming act came from the presence of "underground" casinos run by a faction of the St. Regis Mohawks. The casinos had been operating since the mid-eighties but sovereignty questions kept police from making anything but a few minor raids (Kolbert, 1989). Over time, friction between Indians and the state mounted and by 1989 there was an armed stand-off between the Mohawk Sovereignty Security Force--representing the pro-gambling leadership of the St. Regis Indian Reservation--and the New York State Police. However, the situation had not bottomed out and things took a turn for the worse as tensions grew inside the reservation between opponents and proponents of gambling. By 1990 the increased presence of paramilitary groups on both sides eventually led to the deaths of two American Indians, one a vocal opponent of gambling and the other a bystander caught in the crossfire (Verhovek, 1990). And while Governor Cuomo refused to bring in the National Guard--owing to fears that it might increase tensions--it was clear that he would have to negotiate a compact with New York's American Indian Nations despite his reluctance to do so.

Governor Cuomo signed the first gambling compact in 1993 with the New York Oneidas for a casino located on reservation land in upstate New York between Syracuse and Utica (see Figure 1). Later that year Cuomo also signed a deal allowing the St. Regis Mohawks to operate a casino on their Akwesasne reservation along the Canadian border. In accordance with the Gambling Act, the state was not allowed to collect anything above the costs of regulating the casinos. Interpretation of that measure

has by no means been consistent from state to state, but in the case of New York, the revenues collected paid only for direct costs incurred by the State Wagering and Racing Commission as well as additional policing. In addition, casinos were not allowed to operate slot machines, easily the most popular and profitable casino game--accounting for upwards of 60% of casino revenues where it is legal (National Gambling Impact Study Commission, 1999).

Without any public debate, casino gambling had quickly become a reality in New York and it appeared that the state was going to have to deal with any additional social costs stemming from gambling pathologies without any additional revenues. Governor Cuomo's successor, George Pataki, sought to rectify this and quickly embraced gambling, attempting to make the state a larger player by opening it up to the private sector where it could be taxed much more heavily and controlled to a much greater degree.

## **GAMBLING AND POLITICS IN NEW YORK**

Governor Pataki's desire to expand casino gambling to the commercial sector faced many political obstacles from the outset. First and foremost, the state's constitution forbids high-stakes gambling and therefore needs to be amended before it can be introduced. In New York this is a rather lengthy process requiring passage by two successively elected legislatures followed by a binding public referendum. Nonetheless, Pataki moved the process forward shortly after taking office in 1995. His initial bill came up rather quickly, without a lot of preparation and while the bill easily passed in the Assembly, it received only partisan support in the Senate and passed by just three votes.

The gambling proposal called for the development of casinos in five New York counties: Erie, Niagara, Saratoga, Sullivan, and Warren (see Figure 2). Sullivan County lies on the southern edge of the Catskills and contains the famous Borscht Belt region of the Catskills. The political leadership in this county was eager for gambling and stood strongly behind Governor Pataki's legislation. Niagara and Erie Counties include the cities of Niagara Falls and Buffalo respectively, which hoped to land casinos to compete with those on the Canadian side of the border and provide a market for demand in western New York. Saratoga and Warren Counties represented another resort region at the southern edge of the Adirondacks but, unlike the

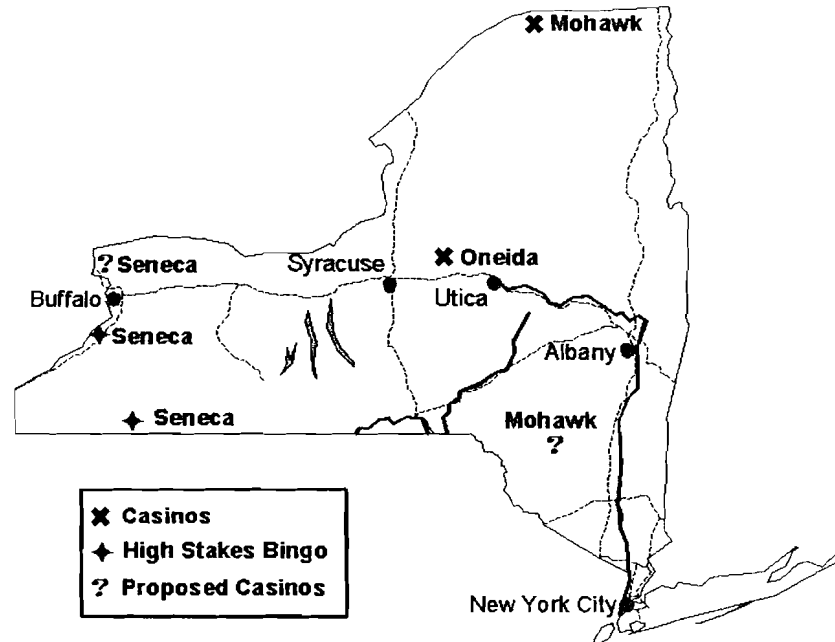


Figure 1: American Indian Casinos

other counties. Warren and Saratoga were not suffering economically and did not universally support the introduction of casinos.

In the two years that followed the initial passage of the bill, the lack of consensus on the issue served to rally gambling opponents far more than the proponents. Part of this can be explained by recent political losses suffered by the casino industry, which has never fared well in public referendum (Goodman, 1995). A particularly high-profile case took place in Florida, the year before Governor Pataki introduced the gambling bill, in which major casino interests spent \$16 million on a public referendum and lost handily. Closer to New York, gambling magnate Steve Wynn was in the process of losing \$1 million promoting a proposed casino in Bridgeport, Connecticut. Given these types of losses, major casino interests were more content to let politicians and local developers fight for legalization and move in later if the vote went their way (Goodman, 1995).

In fact, the only influence exerted by major casino interests were actually against legalization. Much of the anti-gambling campaign was funded by developer and casino magnate Donald Trump, who was working to protect his investments in Atlantic City (Dao, 1997). Trump joined with a number of churches and related organizations, including Methodist Minister Tom Grey and the National Coalition Against Legalized Gambling, to create one of the more unusual anti-gambling coalitions. This relationship was strained at times, particularly when Donald Trump ran a series of negative advertisements defaming the St. Regis Mohawks, but

nevertheless it managed to hang together until the bill was due to come up a second time (Swidey, 2000).

The final factor that worked against the passage of the bill stemmed from a lack of coalition building under Governor Pataki prior to the second vote. Given the strict party vote in the Senate the first time around, the Governor had to ensure that every Republican senator was accounted for. This was never accomplished and five Republicans who had Off-Track Betting establishments in their districts refused to vote the party line fearing that casinos would hurt their local establishments. In the end, the bill never even made it to the floor leaving Pataki to negotiate with the American Indian Nations in order to expand casino gambling.

But negotiating gambling compacts with American Indian Nations had not become any easier with the emergence of a major anti-gambling campaign. The ability of state leaders to plan casino development via the Indian Gaming Regulatory Act has been hampered by a number of legal issues, the most significant of which surrounds the location of power in New York State politics. When the first gambling compacts were negotiated with the Oneidas and the Mohawks, the state's interests were represented by then Governor Mario Cuomo. Anti-gambling groups and state legislators complained that such actions were unconstitutional and that only the legislature could agree to such compacts. Governor Pataki's 1999 amendment of the original gambling compact was ultimately challenged in court by the anti-casino Saratoga Chamber of Commerce (a group that was opposed to casino gambling because of its

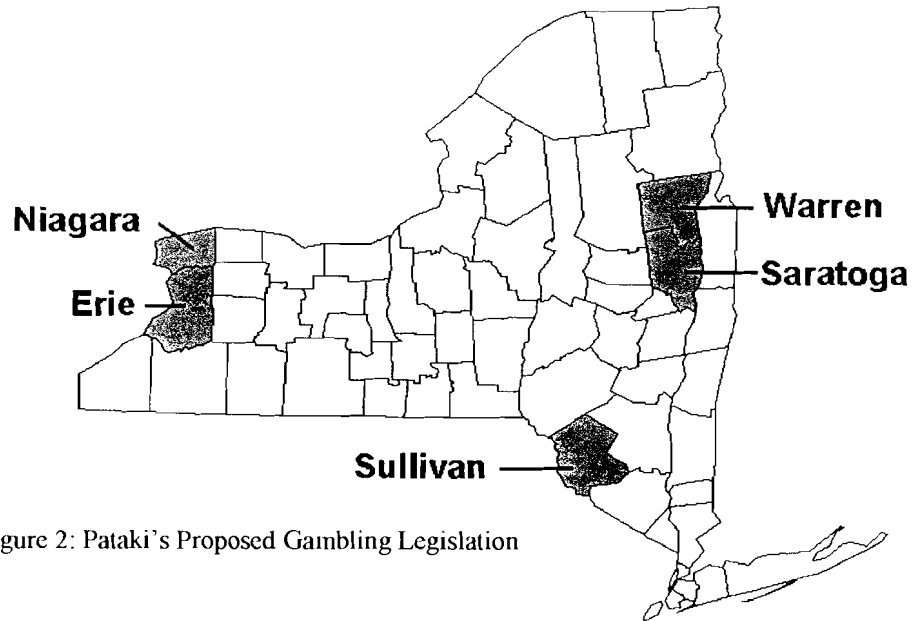


Figure 2: Pataki's Proposed Gambling Legislation

potential damage to the Saratoga Race Track). The issue dragged on in court for a couple of years before it was finally resolved in April 2001 and--in keeping with most other state decisions--the New York Supreme Court ruled in favor of Saratoga County, handing authority over to the state legislature (Caher, 2001). It should be noted that the previous compacts with the Mohawks and Oneidas were not affected by the ruling owing to the "excessive harm" it would do to American Indian Nations who had made substantial investments in their casinos.

The ability of legislators to plan casino development was further hampered by a number of other minor legal disputes, most of which directly involve the American Indian Nations. These included questions over (1) recognized leadership, (2) land claims, and (3) choice of developers. The question of legal representation is a long-standing problem that has plagued many American Indian Nations. Ever since the Indian Reorganization Act of 1934, there has been a major divide within many American Indian Nations between those who support "traditional" forms of governance and those that support the "progressive" form of government imposed by the federal government (Robbins, 1992). The division between the two factions goes back to questions over whether American Indians are truly sovereign people with a right to self-determination--including the right to choose their own leaders in the way they see fit--or whether they should submit to the authority of the United States and accept a government imposed from the top down. This question has become central to the Mohawks in northern New York where the state recognizes the St.

Regis Mohawk Tribal Council but where traditionalists still support the Mohawk Nation Council of Chiefs. The fighting over the existence of illegal casinos that resulted in the deaths of two Mohawks exemplifies how antagonistic this split has become. Similar contestation over governance affects both the Senecas and Oneidas in New York, both of whom are already running gambling operations and are likely recipients of new licenses should the state proceed with legalized gambling.

The question over land claims is another major hurdle that has to be cleared in casino negotiations. Shinnecock claims in the Hamptons and the Seneca claims to Grand Island are but two of the more prominent instances in New York where such land claims have become contentious. Such land claims often become a bargaining chip that American Indians use to (1) speed the negotiating process along, (2) obtain permission to build in the most desirable locations or (3) extend the limits of what forms of gambling are permissible. The end result of such claims tends to be both an increase in gambling and an inability of the state to exert control over the process of siting casinos. Recent evidence of this can be seen in neighboring Connecticut where the Mohegans agreed to drop a claim to several thousand acres in exchange for slot machines at their Mohegan Sun casino.

The choice of developers has become another issue that can stall, if not derail, the implementation of a casino development plan. While the *Saratoga County Chamber of Commerce v. Pataki* case was working its way through the courts, a deal between the Governor and the Mohawks to build

a casino in the Catskills was similarly winding its way through the legal system. The St. Regis Mohawks were sued by Catskill Development shortly after they canceled their plans in favor of another developer, Park Place Entertainment. The switch in developers was not, in itself, illegal but the three million dollars that Park Place "loaned" to the Mohawks was, and consequently the project never came to pass (the new compact was no longer legal after the Saratoga case).

There may also be one additional dispute if high-stakes casino gambling ever comes to pass in New York. Because New York's constitution specifically bans gambling--with the exception of horse racing and charitable gaming--there is no legal consensus on whether or not the state legislature can grant slot machine licenses without amending the constitution. In 1994, then State Attorney General, Oliver Koppell, issued a formal opinion stating that the 1938 constitutional amendment banning gambling did cover slot machines even though they were not specifically mentioned. Present state attorney general Elliot Spitzer is not likely to see it that way, but it is sure to be a lively debate. Undoubtedly, any decision to allow slot machines in American Indian casinos will be met with legal challenges and it will be left to the courts to decide.

## **THE GEOGRAPHY OF GAMBLING**

With all of the attention that been paid to the politics surrounding the casino gambling, a truly meaningful discussion of its spatial aspects has largely been ignored. Yes, there has been much discussion of casino location with respect to casinos in neighboring states and provinces, but there has been very little discussion on the fundamental question regarding the regions within New York where casinos may be located. This is unfortunate because the geography of gambling will have a serious impact on the economic benefits and social costs of gambling that New Yorkers will experience for years to come.

The first geographic consideration, the increasing loss of potential tourism to neighboring states and provinces has been well documented and figures into many of the arguments that Governor Pataki and others have made. New Jersey legalized high-stakes commercial casinos in Atlantic City in 1976, drawing numerous day-trippers from the New York City metropolitan region. In Connecticut, the Pequot Indians opened Foxwoods Resort Casino in 1992, drawing heavily from the New York City metropolitan region. This has been particularly true

since Foxwoods was allowed by Connecticut to operate slot machines in exchange for 25% of the slot revenues (today Foxwoods claims to be the largest casino in the world). On the western side of the state, casinos were opened in Niagara Falls, Ontario drawing heavily from the Buffalo metropolitan population. Even in the furthest reaches of upstate New York there was competition with the St. Regis Mohawk casino from casinos recently opened in Quebec. As such, it was relatively easy for gambling proponents to make the argument that casinos were necessary in New York simply to stem the tide of lost tourism to neighboring states or provinces.

The second geographic consideration had to do with the location of the casinos within the state. Casinos can be categorized into three basic types depending on their scale and location: resort casinos, urban casinos, and dispersed or ubiquitous casinos. Resort casinos have a long history of being the type of casino most preferred by governments. They have tended to locate away from major population centers--in places like Baden-Baden, Germany or Bath, England--to encourage a more exclusive clientele and to discourage average working-class residents (Eadington, 2000). This strategy attempts to maximize tax revenues derived from gambling while mitigating the negative social impacts on the local population (Eadington, 1998). Furthermore, because resort casinos tend to be located away from metropolitan centers, they function as an export driven service industry, attracting gamblers from outside the region. As a result, resort casinos are the most effective at creating jobs and promoting local economic growth (Grinols and Omorov, 1996b; Eadington, 1995).

Compared to resort casinos, urban casinos are a relatively new phenomenon. They began to emerge in the nineteen-eighties in Holland and Canada and even more recently in the United States in places like New Orleans and Detroit. Urban casinos are located much closer to consumers, which tends to produce mixed results. From a strictly economic perspective, the large customer base, typically combined with a monopoly market, produces large potential, and in many cases real, earnings. However, the negative social impacts tend to be quite widespread leading to significant social costs and a great deal of contestation over their creation (Eadington, 1998). Furthermore, because urban casinos do not attract many customers from outside their region, they typically shift recreational spending from one sector to another at the expense of preexisting firms (Grinols and Omorov, 1996b). In their study of casinos in Illinois, Grinols and Omorov (1996b) found that not only do urban casinos have no positive impact on metropolitan employment levels,

but cities with casinos actually saw their employment rates lag behind state averages. Studies by the General Accounting Office of the United States (2000b) have found similar results as well. In addition, the Grinols and Omorov (1996b) study also found that levels of spending at casinos was inversely related to spending on general merchandise, retail and wholesale trade: suggesting that casinos simply cannibalize other types of economic activity in urban areas.

The final type of casino gambling is dispersed or ubiquitous casino gambling. The term does not usually refer to a diffusion of casinos themselves--though it does capture the effect of numerous small gambling establishments seen on some reservations--but rather to a diffusion of casino games. The placement of slot machines and other types of casino games throughout a city or region typically constitutes dispersed casino gambling. Such a strategy provides little economic impact either in terms of economic growth or job creation and carries with it a high degree of gambling problems for the local population (Eadington, 1998; USGAO, 2000a). Evidence of this on American Indian reservations has already been seen in Wisconsin where, factoring in its social costs, gambling has created a net loss in regions with widespread casino gambling (Thompson et al., 1995).

Given that gambling is going to be present in New York as a result of the 1988 Federal Indian Gaming Act, the problem confronting politicians is trying to ensure that New York receives as many economic benefits as possible while minimizing the social costs. This requires that particular attention be paid to the location of the casinos and that every attempt is made to site casinos in resort areas where they can best create jobs and help to revitalize the economy while keeping social costs to a minimum.

The most logical place for state lawmakers to attempt this strategy is in the Catskills, a resort region only an hour and a half drive from New York City. The Catskills were, for a century and a half, a primary destination for New York City vacationers in general and New York's Jewish population in particular (see Brown, 1998; Kanfer, 1989). But as modern modes of transportation have made other parts of the country more accessible the lure of the Catskills has gradually waned. Empty hotels and little used race-tracks still mark the landscape and it is the hope of many state leaders that gambling will resuscitate them, re-utilizing existing infrastructure and spurring local economic growth. If casinos in the Catskills are successful attracting day-trippers away from nearby casinos in New Jersey and Connecticut, this has the potential to create a significant economic impact and large accompanying tax-revenues.

The second area that is receiving serious consideration from state leaders is Niagara Falls. Without question, Niagara Falls represents a tourist destination that has been on the decline for decades and thus could use additional economic stimulus (see Irvin, 1996; McGreevy, 1994). However, Niagara Falls is also in an urban area and unless the overall number of visitors to the area are increased a casino will most likely shift spending in the local economy providing little economic stimulus. Furthermore, the presence of casinos just across the border in Ontario prevents Niagara Falls from controlling a monopoly market, which will further diminish any potential economic benefits. Thus, while the introduction of casinos to the New York side might very well stem the flow of some tax revenues out of New York, it will most likely spur increases in gambling pathologies because of its location within the greater Buffalo metropolitan area.

The same increase in social costs without any likely economic growth will also hold true of the desire to put a casino in Buffalo itself. Buffalo has never been a center of tourism and thus faces huge obstacles if it is going to try to transform itself into a major destination. Still, the political reality of New York politics suggests that the influence of Buffalo in upstate politics is of great importance and it will likely prove necessary for lawmakers in Albany to appease casino interests in the city if any gambling measure is going to get through the state legislature. Even more than a possible casino in Niagara Falls, a casino in Buffalo has the potential to create widespread social costs while simply shifting consumer spending within the region without creating any net economic growth.

## **CONCLUDING REMARKS**

Since the passage of the Indian Gambling Regulatory Act in 1988, New York has been forced to negotiate gambling compacts with various American Indian Nations. Without complete control over the location of casinos and without the benefit of additional tax revenues the state was in the unfortunate position of lacking necessary resources to deal with the increasing problems associated with gambling. In an effort to gain control over the planning of casinos and to ensure that they are located in the most beneficial areas--those areas where they will promote the greatest economic growth--New York attempted to legalize commercial gambling. With the failure of that bid in 1997, much of the state's ability to shape the landscape of casino gambling has been hampered by a further lack of

control. This lack of control has shifted much of the focus away from the geography of gambling towards questions over who has power to negotiate compacts, how to satisfy upstate and downstate interests, and how to simultaneously deal with casinos and land claims. If state lawmakers do not pay close attention to the location of casino development, future generations of New Yorkers may be burdened with rising social costs and little economic growth.

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