

## **The Politics of Sovereignty and the Federal Role in Gambling**

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Gambling policy in the United States has been largely a matter of state, not federal action. Rose chronicles three waves of legalized gambling in U.S. history from colonial times to the present that have crested and, in the first two instances, receded. In all three, the federal government has been a secondary actor. During the third wave, for example, the United States has been transformed from a nation with no legal lotteries in 1960 to one with forty-two lotteries today—all because of state action. Similarly, the recent spread of commercial casinos and “racinos” has been a state-by-state phenomenon.

The general rule that gambling policy making is concentrated in the states draws attention to some important recent exceptions. In 1988 Congress passed the Indian Gaming Regulatory Act to define and limit the right of Indian tribes to operate gambling facilities, including casinos. In 2006, as an unrelated part of the Safe Ports Act, Congress passed legislation designed to crack down on internet gambling.

How to explain these two recent and unusual interventions by the federal government and, by implication, how to anticipate future interventions? The explanation for IGRA and the internet crackdown lies in the nature of sovereignty. Sovereign tribes opened casinos on tribal land and state governments, alarmed but powerless to resist, turned of necessity to the federal government for help. Sovereign foreign governments legalized internet gambling in ways that reached into the American states and, out of the same necessity, state governments again turned to Washington.

A politics of sovereignty explanation draws strength from an important exception: a recent attempt by states to initiate federal intervention that failed. Responding to state-by-state spread of lotteries and commercial casinos, which was causing money lost by betters to flow states without such gambling to states that had them, the federal government created the National Gambling Impact Study Commission in 1996. The hope of those pushing for the NGISC’s creation was that federal legislation to curb state action would be enacted. These hopes were disappointed. In this instance, the necessity for federal action that spurred IGRA and the restriction on internet gambling, was absent: states had the sovereign authority to respond on their own, which most did by creating lotteries.

The chapter will present and develop this argument, then conclude by assessing the implications for the future politics of gambling in the United States.