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Cutting the Wire: Gaming Prohibition and the Internet: By David G. Schwartz (2005). Reno, NV: University of Nevada Press, xi, 282 pp., ISBN 0-87417-619-0 (hardcover), 0-87417-620-4 (paperback). Price: US\$49.95 (hardcover), US\$24.95 (paperback).

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Abstract

Cutting the Wire examines the American experience with gambling through the lens of the 1961 Wire Act. The book is a well-researched history of federal gambling policy, focusing on the Wire Act as part of Robert F. Kennedy's initiative against organized crime. The evolution of gambling, illicit and legal, in the U.S. is traced from premodern times through the advent of the Internet, with a discussion of the Department of Justice's reliance on the Wire Act in its response to this development. Professor Schwartz's well-researched study of the Wire Act is a unique and valuable contribution to the literature. His careful examination of (unsuccessful) Congressional attempts to ban interstate wagering on horse races in 1910 and again in the early 1950s is particularly useful. This often forgotten legislation is the precursor of not only the Wire Act of 1961 but also the Interstate Horseracing Act (1978) and the Unlawful Internet Gambling Enforcement Act (2006).

This book examines the American experience with gambling through the lens of the 1961 Federal Wire Act (18 U.S.C. § 1084). The author, David Schwartz, is the director of the Center for Gaming Research at the University of Nevada, Las Vegas. *Cutting the Wire* presents a history of federal gambling policy, focusing on the creation of the Wire Act during Robert F. Kennedy's tenure as United States Attorney General as part of his anti-organized crime initiative, with a summary of this law's enforcement history. The Wire Act is placed in the context of the evolution of gambling, illicit and legal, in the U.S., through the advent of gambling on the Internet and the Department of Justice's reliance on this law in its response to this development.

Histories of gambling are available elsewhere, but Professor Schwartz's well-researched review of the Wire Act and antecedent legislation is a unique and valuable contribution to the literature. His careful examination of (unsuccessful) Congressional attempts to ban interstate wagering on horse races in 1910 and again in the early 1950s is particularly useful. This often forgotten legislative history is the precursor of not only the Wire Act of 1961 but also the Interstate Horseracing Act of 1978 (15 U.S.C. §§ 3001–3007) and the Unlawful Internet Gambling Enforcement Act of 2006 (18 U.S.C. § 5361 *et seq.*). Lawyers and legal scholars dealing with these laws would do well to consult Professor Schwartz's book.

Cutting the Wire is narrowly focused on gambling and the history of a particular statute, but it illustrates recurring patterns in American history: the use of criminal laws as instruments of social control and their concomitant use to regulate markets, the tendency to demonize activities perceived to violate religious beliefs, attempts to combat these demons with unenforceable laws, and the changing targets of such laws as new demons emerge.

As Professor Schwartz shows, the Wire Act was intended as a tool for Robert Kennedy's Justice Department to use against organized crime: “Robert Kennedy believed that in dismantling the race wire he might fight a decisive battle in his war on organized crime, and he successfully pressed Congress for such a law ... the framers of the [Wire Act] realized that information is essentially power, and they hoped that without access to information organized [illegal] gambling would die, taking with it organized crime.” The Wire Act was enacted for a secular purpose, combating organized crime, not the moral/religious purpose of combating gambling.

Judging from the continuing presence of mob figures and drug lords in newspaper headlines, this purpose has not been realized. This is partly due to the evolution of gambling in the U.S. described in *Cutting the Wire*. In 1961 organized gambling was, Nevada excepted (an exception Kennedy's Department of Justice might not have allowed), organized *illegal* gambling. By the time the Internet materialized,

organized gambling was, with the exception of the sports betting the Wire Act prohibits, *legal*, conducted by governments and legitimate businesses pursuant to state licenses or the federal Indian Gaming Regulatory Act (IGRA) (25 U.S.C. § 2701 *et seq.*). As gambling operations passed from organized crime to regulated, publicly traded corporations doing business on the Internet Wire Act enforcement efforts were expanded from the mafia bosses who were Robert Kennedy's concern to include the managers of these corporations. The Wire Act combined with technological change to create a new class of criminals.

The Internet created a borderless global marketplace for gambling services; this borderless marketplace invalidated one of legal gambling's fundamental predicates: licensing. Without borders there is no jurisdiction, and without jurisdiction there are no gambling licenses. Governments around the world, including the government of the United States and the governments of its constituent states, were unprepared for this unintended consequence of an advance in information technology and are now in the process of responding to it. Many developed nations, including the United Kingdom, France, Germany, Italy, Sweden, Austria, Australia, and Hong Kong, and most of the world's national lotteries permit Internet gambling, including gambling on interactive television and mobile telephones, either by licensing and regulating private-sector operators that include computer technology and telecommunications companies to conduct interactive gambling, or by allowing government-owned gambling operations to offer products and services on interactive platforms.

Licensed private-sector, publicly traded companies, such as Britain's High Street bookmakers and entrepreneurs with no prior gambling experience, entered the Internet gambling marketplace, and many prospered. In 2005 a dozen of the largest Internet gambling firms went public, listing their shares on the London Stock Exchange or the London AIM and raising billions of pounds sterling in the process. With a publication date of 2005, Professor Schwartz concludes his book at this pregnant moment, unsure of what the United States will do next but skeptical that “Americans, confronted by a world in which the prerogatives of nations to regulate their own citizens’ conduct are eroded [by the Internet], will suddenly decide to gather a consensus and rationally administer the world of gaming offered by the Internet.”

Professor Schwartz's skepticism proved to be well founded. The United States is not responding to the new market conditions created by new information technology by “rationally administer[ing] the world of gaming offered by the Internet,” the course adopted by other countries, but by prohibiting it. Within a year of *Cutting the Wire's* publication federal agents arrested two British executives, David Carruthers, CEO of BetonSports plc (on July 16), on federal charges including violating the Wire Act, and Peter Dicks, the nonexecutive chairman of

SportingBet plc (on September 6), on a warrant issued by the State of Louisiana. Mr. Carruthers is free on bail but unable to leave the United States pending trial; Mr. Dicks was freed on a technicality and has returned to the United Kingdom. Then, on September 30, 2006, minutes before recessing for the fall election campaign, Congress passed the Unlawful Internet Gambling Enforcement Act of 2006, barring the use of wire transfers, electronic funds transfers of other kinds, credit cards, and checks for Internet gambling transactions as part of unrelated legislation intended to improve the security of U.S. ports. The long federal effort to regulate American gambling behavior with criminal law that *Cutting the Wire* recounts had borne its latest fruit.

Globalization is a two-way street, and shock waves from the Unlawful Internet Gambling Enforcement Act's passage were felt around the world. Two publicly traded companies, World Gaming plc and BetonSports plc, effectively shut down; the market capitalization of the 10 largest on-line gambling concerns was cut in half, with investor losses exceeding \$7 billion. All of the publicly traded Internet gambling suppliers announced that they would cease taking bets from the United States. In Israel IM Intermedia, which supplies services for on-line marketing and data mining for on-line gaming companies in the United States, dismissed half of its 100 workers; Israel has other on-line gambling companies and *Haaretz* (October 10, 2006) expected the layoffs to be the first of many. In Britain FireOne Group plc, which processes on-line credit card payments for the on-line gambling industry, said it would immediately stop processing transactions originating from the U.S.; as a result the company announced that it was “restructuring its business and cost base.” Across the Channel OPAP S.A., a publicly traded Greek firm, asked the Greek government to adopt laws like “those adopted by the US Congress in order to ban payments to online gaming companies” and called for the European Union and/or member states to implement similar measures. And in Washington's backyard tiny Trinidad said it would move to outlaw gambling on the Internet.

The Congressional action was unexpected by investors and financial analysts in other countries, many of whom had predicted that the United States would stop short of prohibition on the grounds that it is unenforceable. In the sense that the new law is unlikely to prevent privately owned (i.e., not publicly traded) companies from continuing to supply Internet gambling services to Americans this will almost certainly prove to be true. The sale (on October 13, 2006) by SportingBet plc of its U.S.-facing sports betting and casino business to privately owned Jazette Enterprises for a token \$1 was followed by a spate of announcements from privately owned Internet gambling operators affirming commitments to the U.S. market, the new law notwithstanding. Neteller, a third-party processor of credit card payments for the on-line gambling industry based in the Isle of Man, similarly announced its intention of staying in the U.S. market. These announcements point

toward a future in which U.S. demand for on-line gambling will not be supplied by regulated, publicly traded businesses but surreptitiously, by unlicensed, privately owned operators beyond the reach of regulatory control.

The decision to prohibit Internet gambling that is so puzzling to other countries is readily intelligible in the context of traditional American responses to activities unacceptable to the religious right and to moral reformers, and the federal response to gambling that is the subject of *Cutting the Wire* is easier to understand in this context. Of particular relevance in this regard is the 19th-century Temperance Reform movement, which culminated in the 18th Amendment to the United States Constitution and the enforcing Volstead Act of 1919, making the manufacture, sale, and distribution of alcoholic beverages federal crimes. The Noble Experiment, as fervent supporters called it, was ridiculed in other countries as unworkable, but Prohibition spoke to deeply felt American emotional needs. The millenarian rhetoric with which Prohibition was hailed is exemplified in a speech by William Jennings Bryan, a fundamentalist Christian and sometime ally of secular Reform who in later life famously opposed Darwin's theory of evolution: "They are dead, that sought the child's life! They are dead! They are dead! King Alcohol has slain more children than Herod ever did. The revolution that rocked the foundations of the Republic will be felt all over the earth. As we grow better and stronger through the good influence of Prohibition, we will be in a position to give greater aid to the world."¹ Bryan's words were echoed, consciously or not, by supporters of Internet gambling prohibition three quarters of a century later, who justified prohibition in part on the grounds that it would save the U.S.'s children from the evils of gambling.

The Volstead Act's practical effect was to transfer the alcoholic beverage industry from licensed and regulated legitimate businesses to criminal organizations, which determined federal enforcement efforts were unable to eradicate. The effects of that enforcement effort on American society were horrific, and Prohibition, generally considered the worst domestic public policy in modern American history, was repealed in 1933. Among the 18th Amendment's unintended consequences is the paradox that Demon Rum, illicit but ubiquitous, was perhaps never so visible a presence in American life as it was during the decade to which Prohibition gave the name by which it is still remembered: the Roaring Twenties.

The American response to alcohol has continuing relevance for readers of *Cutting the Wire*, for the organized crime that the Wire Act was meant to be used against is a legacy of Prohibition. Having created modern criminal organizations with one law, the Volstead Act, Congress sought to rectify the matter with another law, the Wire Act; finding the Wire Act ineffective in controlling Internet gambling Congress again resorted to prohibition with the Unlawful Internet Gambling Enforcement Act of 2006. The pattern is consistent: gambling and alcohol are demons that must be

cast out of American society by prohibitory laws. Mortal threats demand extreme measures, and no measures are too extreme in view of the mortal threat to moral and religious values human appetites for gambling and drinking represent.

That in spite of prohibition these appetites persist and exert continuing economic power is irrelevant. Rational discourse about demons is a contradiction in terms, which is why rational public policy in these areas has been so difficult for Americans to formulate. *The Economist*, a weekly British newsmagazine, puzzling over the decision of Congress to experiment yet again with prohibition, observed in an editorial (in the October 5, 2006, issue) that “there is a case to be made that online gambling is worse than the real-world sort. Internet sites encourage gambling among youngsters who would normally be kept out of casinos. In legal joints regulators can bar the most addictive sorts of gambling machines. Online casinos, on the other hand, often try to make their games as compulsive as they can. And the whole business is, critics argue, overshadowed by criminality. Because the punters in online casinos may have no idea who is on the other end of the line, they are vulnerable to swindles and crooks; they may be ripped off by rigged games; they may have their credit-card details stolen; and so on.” These are, however, *The Economist* continued, “arguments for regulating online gambling, not banning it.” The gulf between the United States and secular societies like the United Kingdom implicit in this observation is probably too wide to ever be bridged.

Bibliographical Note

Cutting the Wire has a bibliography that is selective rather than exhaustive. Scholars and legal professionals using this book may find the following items, which are not included in the bibliography, useful.

Abt, V., Smith, J. F., & Christiansen, E. M. (1985). *The business of risk*. Lawrence, KS: University Press of Kansas (contains a detailed review of federal estimates of illegal sports betting volumes from the Kefauver hearings in the early 1950s through the mid-1980s, with references to sources).

Anderson, A. G. (1979). *The business of organized crime*. Stanford: Hoover Press (detailed and well-researched study of an organized crime group, several members of which had been part of a Prohibition gang).

Blakey, G. R., & Kurland, H. A. (1978). The development of the Federal Law of Gambling. *Cornell Law Review*, 63, 923, 937–939 (more accessible than *The Development of the Law of Gambling 1776–1976*, prepared by Blakey for the National Institute of Law Enforcement and Criminal Justice, cited in *Cutting the Wire*'s bibliography; carries a review of federal gambling law through 1978).

Cabot, A. N., & Christiansen, E. (2005). Why the future of horseracing is at risk: The WTO decision and Senator Kyl. *Gaming Law Review*, 9, 201–210 (review of the federal treatment of Internet gambling, with detailed references).

Christiansen, E. M. (1999, November). It's 10 P.M. Do you know where your wager is? *Mid-Atlantic Thoroughbred*, 58–65 (review of federal and state judicial proceedings against Internet gambling with references, in an obscure trade publication).

Gambling. (1950). *The Annals of the American Academy of Political and Social Science*, 250.

Gambling: Socioeconomic Impacts and Public Policy. (1998). *The Annals of the American Academy of Political and Social Science*, 556 (three volumes devoted to gambling covering the past half century; valuable reference work).

Gambling: Views from the Social Sciences. (1984). *The Annals of the American Academy of Political and Social Science*, 474.

Reuter, P., & Rubinstein, J. B. (1978, fall). Fact, fancy, and organized crime. *The Public Interest*, 53, 45–67 (discussion of organized crime by the former director of research for the Federal Commission on the Review of the National Policy Toward Gambling).

Reuter, P., & Rubinstein, J. (1982). *Illegal gambling in New York. A case study in the operation, structure, and regulation of an illegal market*. Washington, DC: United States Department of Justice, National Institute of Justice (landmark study, essential for this subject).

Royal Commission on Gambling. (1978, July). *Final Report*. Chairman: The Lord Rothschild. Two volumes. London: Her Majesty's Stationery Office (exhaustive study of gambling by British commission; contrasts with federal studies of gambling over the past half-century at many points; the best English language treatment of the subject).

Symposium: Legal aspects of public gaming. (1980, summer). *Connecticut Law Review*, 12 (special issue devoted to gambling).

Notes

¹[i] anuary 17, 1920, at a public rally in Washington, D.C., the day Prohibition took effect.

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Wire Act of 1961

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